REGULAR CITY COUNCIL MEETING

6:30 PM – COUNCIL CHAMBERS – CITY HALL

AUGUST 21, 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. Silent Invocation
2. Pledge of Allegiance
3. Roll Call

B. CITY COUNCIL/TOWN CENTER CRA JOINT SPECIAL MEETING

C. CONSENT AGENDA

4. Public Comments on Consent Agenda Items Only
5. Agenda Approval
6. Approval of Minutes
    a. August 2, 2024 - Special City Council Meeting
    b. August 6, 2024 - Regular City Council Meeting
7. Bid Awards and Contract Items
    a. Approval to Award ITB #24-11 to Danus Utilities, Inc. for Christiancy Lift Station (LS11) Rehabilitation
    b. Approval of Task Authorization No. 15 with Kimley-Horn & Associates, Inc. for Construction Phase Services relating to ITB #24-11 Christiancy Lift Station Rehab Project
    c. Approval of Task Authorization No. 5 under the Master Contract for Architectural Services (RFSQ #20-03) with Schenkel & Shutz, Inc. as it relates to the Field Operations Facility Additional Services
    d. Approval to Award RFSQ #23-14 Construction Manager at Risk for Construction of Public Utilities Operations Facility to Wharton-Smith, Inc. and approve the

Preconstruction Services Phase Proposal

e. Approval of Change Order No. 2 to the Standard Contract for Services as it relates to RFSQ #20-02 for the 20-inch Force Main River Crossing with Kimley-Horn & Associates, Inc. for a time extension request

f. Approval of Change Order No. 2 to the EJCDC Agreement with McMahan Construction Company for ITB #22-10 Water Reclamation Facility East Master Lift Station Upgrades

g. Ratification and approval of Volusia County Cooperative ITB #24-B-61LS for bulk fuel purchases from Sunoco LLC, Palmdale Oil Company, and Greens Energy Services, Inc.

h. Approval to Award ITB #24-09 to Rush Marine, LLC for Memorial Park Pier Renovations

8. Resolution No. 24-31 - Accepting the Edward Byrne Memorial Justice Assistance Direct Award Grant for $10,000.00 from the Florida Department of Law Enforcement
9. Resolution No. 24-33 - Ratification of Emergency Powers Taken During Invest 97L (Hurricane Debby)
10. Amendment to Easement releasing portion of Access Drainage Retention and Maintenance Easement at 3738 Nova Road (Take 5 Oil Change)

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

E. COUNCIL COMMENTS

11. Comments/Concerns from Council Members

F. BOARD APPOINTMENTS, INTERVIEWS, AND REPORTS

12. Citizen Advisory Committee for TPO

G. ADDITIONAL ITEMS

13. City Attorney
14. City Manager

H. COUNCIL COMMITTEE REPORTS

15. City Council Committee Reports
    a. First Step Shelter - Mayor Don Burnette
    b. Port Orange/South Daytona Chamber of Commerce - Mayor Don Burnette

I. 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.

SPECIAL CITY COUNCIL MEETING MINUTES
COUNCIL CHAMBERS – CITY HALL
1000 CITY CENTER CIRCLE
PORT ORANGE, FLORIDA
AUGUST 2, 2024

THE SPECIAL CITY COUNCIL MEETING of the City of Port Orange was called to order by Mayor Donald O. Burnette at 4:00 p.m.

Silent Invocation

Pledge of Allegiance

Roll Call

Present:	Councilman Tracy Grubbs, Councilman Drew Bastian, Councilman Jonathan Foley, Vice Mayor Scott Stiltner, Mayor Donald Burnette
Absent:	
Also Present:	City Manager Wayne Clark, City Attorney Matthew Jones, Assistant City Manager Robin Fenwick

DISCUSSION / ACTION

4. Resolution No. 24-32 - Declaring a State of Local Emergency - Invest 97L Storm Event

City Attorney Matt Jones read Resolution No. 24-32.

RESOLUTION NO. 24-32

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, DECLARING A STATE OF LOCAL EMERGENCY; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXERCISE EMERGENCY MANAGEMENT POWERS; RATIFYING ALL ACTIONS TAKEN IN PREPARATION FOR INVEST 97L STORM EVENT; AND PROVIDING AN EFFECTIVE DATE.

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

Wayne Clark, City Manager, provided a brief update on the storm conditions predicted for our area and the preparation being done by Staff.

Mayor Don Burnette provided details on the location and hours that sandbags will be available.

Councilman Tracy Grubbs asked residents to help by checking for debris in storm drains even though Staff has and will continue checking them as well.

Motion carried unanimously by roll call vote with no public comments.

ADJOURNMENT - 4:06 p.m.

_____
Mayor Donald O. Burnette

Attest:

_____
Robin Fenwick, MMC
City Clerk

REGULAR CITY COUNCIL MEETING MINUTES
COUNCIL CHAMBERS – CITY HALL
1000 CITY CENTER CIRCLE
PORT ORANGE, FLORIDA
AUGUST 6, 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.

Invocation by Pastor Sheila Turner of A Touch of HIS Hem Ministries

Pledge of Allegiance

Roll Call	Present:	Councilman Tracy Grubbs Councilman Drew Bastian Councilman Jonathan Foley Vice Mayor Scott Stiltner Mayor Donald Burnette
	Also Present:	City Manager Wayne Clark City Attorney Matthew Jones Assistant City Manager Robin Fenwick

Council recessed to hold the Town Center CRA and Eastport CRA meetings, minutes of which are under separate cover.

TOWN CENTER CRA REGULAR MEETING

EASTPORT CRA REGULAR MEETING

CONSENT AGENDA

4. Public Comments on Consent Agenda Items Only

Robert Reinhagen, citizen, spoke regarding the payment method options being presented in the First Amendment to Wrecker Service Agreement with J&A Balboa Enterprises, Inc. d/b/a Arrow Service &Towing.

5. Agenda Approval

There were no changes requested by Council.

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

6. Approval of Minutes
   a. July 16, 2024 - Regular City Council Meeting

b. July 23, 2024 - Special City Council Meeting

7. Bid Awards and Contract Items

a. Approval to Award RFQ for Custodial Services at City Hall to Southern Cleaning Service, Inc.

b. Approval of Contract with Hydro-Dyne for replacement of the Water Reclamation Facility Influent Bar Screens

c. Approval of First Amendment to Wrecker Service Agreement with J&A Balboa Enterprises, Inc. d/b/a Arrow Service & Towing

8. Approval of Coastal Crisis Negotiations Team (CCNT) Mutual Aid Agreement
9. Resolution No. 24-23 - Approval of Third Quarter Budget Amendments for Fiscal Year 2023-2024
10. Resolution No. 24-24 - Housing and Urban Development Community Development Block Grant (CDBG) Plan Year 2024 Annual Action Plan and Second Amendment to Plan Year 2021
11. Resolution No. 24-25 - Approval of Grant Subcontract in the amount of $18,987.28 from University of North Florida Training and Services, Institute Inc., d/b/a Institute of Police Technology and Management for Florida's Bicycle Pedestrian Focused Initiative: Communication and High Visibility and Enforcement Project
12. Resolution No. 24-26 - Approval of the Vulnerability Assessment Grant Agreement for $164,650.00 from the Florida Department of Environmental Protection

Motion to approve the Consent Agenda as presented was made by Vice Mayor Scott Stiltner and seconded by Councilman Tracy Grubbs. Motion carried unanimously by roll call vote.

PUBLIC PARTICIPATION (Non-Agenda – 20 minutes)

There were none.

COUNCIL COMMENTS

13. Comments/Concerns from Council Members

Vice Mayor Scott Stiltner read the obituary of Michael Booker into the record and acknowledged his service to the community of Daytona Beach Shores. He also spoke regarding the shooting of a juvenile in July and the press release issued today. Vice Mayor Stiltner asked for an update on the Dunlawton Ave. median, specifically weeds and trimming.

Councilman Tracy Grubbs spoke regarding the public comments on the wrecker service agreement. He thanked staff and the community for being prepared for Tropical Storm Debby. He encouraged citizens to check the drains in their neighborhoods. He provided information on the bond initiative on the ballot.

Councilman Jonathan Foley provided a list of drains to the City Manager where he saw residents had piled debris. He asked residents to be aware and be sure to leave them clear.

Mayor Don Burnette asked residents to retain the sandbags for the entirety of the hurricane season. He thanked staff for their work at the sandbag location.

BOARD APPOINTMENTS, INTERVIEWS, AND REPORTS

14. Environmental Advisory Board Report

Kristine Cunningham, Chair, was unable to attend and will provide the report at another time.

PUBLIC HEARING

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

City Attorney Matt Jones read Ordinance No. 2024-10.

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.

Motion to adopt Ordinance No. 2024-10 was made by Vice Mayor Scott Stiltner and seconded by Councilman Drew Bastian. Motion carried unanimously by roll call vote.

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

City Attorney Matt Jones 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 adopt Ordinance No. 2024-12 was made by Vice Mayor Scott Stiltner and seconded by Councilman Tracy Grubbs. Motion carried unanimously by roll call vote.

17. Second 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)

City Attorney Matt Jones 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 adopt Ordinance No. 2024-13 was made by Vice Mayor Scott Stiltner and seconded by Councilman Tracy Grubbs. Motion carried unanimously by roll call vote.

18. First Reading - Ordinance No. 2024-14 - First Amendment to the Riveryard Master Development Agreement (Case No. PRZA-24-0005)

City Attorney Matt Jones read Ordinance No. 2024-14.

ORDINANCE NO 2024-14

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, APPROVING THE FIRST AMENDMENT TO

THE RIVERYARD MASTER DEVELOPMENT AGREEMENT; PROVIDING FOR THE REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY OF; AND PROVIDING AN EFFECTIVE DATE.

Motion to adopt Ordinance No. 2024-14 was made by Vice Mayor Scott Stiltner and seconded by Councilman Tracy Grubbs.

Tim Burman, Community Development Director, provided details of the interim uses being proposed and answered the questions of Council.

Charles Carlisle, Bristol Development Group, spoke regarding their plans for the interim uses. Michael Benedict, Dunes Brewing, spoke regarding his group's vision to activate the area until the full project is built.

Council members expressed their support and excitement about the plans.

Councilman Foley advised he has a current contract to play music for a business with Mr. Benedict and will need to abstain from voting.

Joe Mailki, citizen, supports the project but is concerned about panhandling at the site.

Mr. Reinhagen has concerns with a private developer using the property without any rental fees and suggested having the Parks and Recreation Department run the project for interim uses.

Motion carried 4-0-1 by roll call vote with Councilman Foley abstaining.

19. First Reading - Ordinance No. 2024-15 - Chapter 6 - Alcoholic Beverages - Article 1. In General of the Code of Ordinances

City Attorney Matt Jones read Ordinance No. 2024-15.

ORDINANCE NO 2024-15

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, AMENDING SECTION 6-3 RELATING TO THE LIST OF PROPERTIES EXEMPT FROM THE GENERAL PROHIBITION OF POSSESSION AND CONSUMPTION OF ALCOHOL ON PUBLIC PROPERTY OWNED OR CONTROLLED BY THE CITY OF PORT ORANGE; PROVIDING FOR CODIFICATION; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

Motion to adopt Ordinance No. 2024-15 was made by Vice Mayor Scott Stiltner and seconded by Councilman Drew Bastian.

Mr. Burman explained the details of the change in the ordinance.

Motion carried unanimously by roll call vote.

ADDITIONAL ITEMS

20. City Attorney

There was nothing further.

21. City Manager
    a. Budget Discussion

Wayne Clark, City Manager, provided answers to the Council's questions from the previous meeting relating to the millage rate and fund balance amounts.

Mayor Burnette thinks 30% fund balance is sufficient. Councilman Bastian believes a range of 30-35% has been working and doesn't think moving to a strict 30% is necessary. Consensus that 30% is the lowest fund balance amount.

Staff will target 4.975 mills with additional revenues being used for sidewalk repairs, striping, etc.

COUNCIL COMMITTEE REPORTS

22. City Council Committee Reports
    a. River to Sea TPO - Councilman Reed Foley had nothing to report.

ADJOURNMENT - 7:37 p.m.

_____
Mayor Donald O. Burnette

Attest:

_____
Robin Fenwick, MMC, City Clerk

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

LAST NAME—FIRST NAME—MIDDLE NAME	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE
Foley, Jonathan Reed	City of Port Orange City Council
MAILING ADDRESS: 1000 City Center Circle	THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF: ☒ CITY ☐ COUNTY ☐ OTHER LOCAL AGENCY
CITY: Port Orange COUNTY: Volusia	NAME OF POLITICAL SUBDIVISION: City of Port Orange
DATE ON WHICH VOTE OCCURRED: August 6, 2024	MY POSITION IS: ☒ ELECTIVE ☐ APPOINTIVE

WHO MUST FILE FORM 8B

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

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

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

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

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

* * * * * * * * * * * * * * * * *

ELECTED OFFICERS:

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

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

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

* * * * * * * * * * * * * * * * *

APPOINTED OFFICERS:

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

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

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

APPOINTED OFFICERS (continued)

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

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

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

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, Johnathan Reed Foley, hereby disclose that on August 6, 2024 :(a) A measure came or will come before my agency which (check one or more)

___ inured to my special private gain or loss;

___ inured to the special gain or loss of my business associate, _____ ;

___ inured to the special gain or loss of my relative, _____ ;

_X_ inured to the special gain or loss of Michael Benedict, by whom I am retained; or

___ inured to the special gain or loss of _____ , which is the parent subsidiary, or sibling organization or subsidiary of a principal which has retained me.

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

I am currently retained by Michael Benedict to perform at his establishment later this year and have abstained from a vote that may inure to his special gain.

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

8-6-24
Date Filed

Signature

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

CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 8/21/2024

SUBJECT: (C7a) Approval to Award ITB #24-11 to Danus Utilities, Inc. for Christiancy Lift Station (LS11) Rehabilitation

DEPARTMENT: Engineering

GOAL: 2 - Infrastructure

RECOMMENDED MOTION: Motion to approve the award of ITB #24-11 for Christiancy Lift Station (LS11) Rehabilitation to Danus Utilities, Inc.; authorize an allowance for unforeseen conditions (Contingency) in an amount to not exceed $50,000; and authorize Mayor and City Clerk to execute all necessary documents.

SUMMARY: The Engineering Department is requesting Council approval to award ITB #24-11 Christiancy Lift Station Rehabilitation to Danus Utilities, Inc. for the bid amount of $1,080,650. In addition, staff is requesting City Council authorize an allowance for unforeseen conditions in an amount not to exceed $50,000 (Contingency).

The Christiancy Lift Station is located on Commonwealth Blvd. This station was last upgraded in 2002 and needs rehabilitation in order to provide continued services. The lift station is a regional lift station that ultimately provides services to approximately 2,200 residents in the southeast portion of the city. The improvements will include converting from a suction lift pumping (above ground) to a submersible pumping (below ground), installation of new control panels with Variable Frequency Drives (VFD's), new emergency generator, and rehabilitation of the existing electrical building.

On July 5, the Purchasing Division received three (3) sealed bid responses:

- Danus Utilities, Inc. $1,080,650.00
- US Water Services $1,413,694.00
- Clearwater Solutions, Inc. Deemed non-responsive

Staff has reviewed the bids and recommends approval of Danus Utilities, Inc. as the best responsive bidder. Funding was approved by City Council during the FY23 budget.

PRESENTER: Junos Reed

ATTACHMENTS:

1.	EJCDC Agreement - Complete	ITB 24-11 EJCDC Package.pdf
2.	ITB 24-11 Danus Utilities Inc submittal 7.5.2024	ITB 24-11 Danus Utilities Inc submittal 7.5.2024.pdf
3.	ITB 24-11 Notice of Intent to Award FINAL (7.15.2024)	ITB 24-11 Notice of Intent to Award FINAL (7.15.2024).pdf
4.	ITB 24-11 Bid Tabulation FINAL (7.15.2024)	ITB 24-11 Bid Tabulation FINAL (7.15.2024).pdf
5.	Attachment 1 Schedule of Unit Pricing FINAL (5.23.2024)	Attachment 1 Schedule of Unit Pricing FINAL (5.23.2024).pdf
6.	ITB 24-11 Addendum No.1 FINAL (6.14.2023)	ITB 24-11 Addendum No.1 FINAL (6.14.2023).pdf
7.	ITB 24-11 Addendum No.2 FINAL (6.20.2023)	ITB 24-11 Addendum No.2 FINAL (6.20.2023).pdf
8.	ITB 24-11 Addendum No.3 Final (6.26.2024)	ITB 24-11 Addendum No.3 Final (6.26.2024).pdf
9.	ITB 24-11 Christiancy Lift Station (LS11) Rehabilitation FINAL (5.23.2024)	ITB 24-11 Christiancy Lift Station (LS11) Rehabilitation FINAL (5.23.2024).pdf
10.	ITB 24-11 Pre-Bid Meeting FINAL (5.31.2024)	ITB 24-11 Pre-Bid Meeting FINAL (5.31.2024).pdf
11.	MEMORANDUM	MEMORANDUM.pdf
12.	REVISED Attachment 1 Schedule of Unit Pricing FINAL(6.20.2024)	REVISED Attachment 1 Schedule of Unit Pricing FINAL(6.20.2024).pdf
13.	REVISED SHEET NUMBER E1 THROUGH E18	REVISED SHEET NUMBER E1 THROUGH E18.pdf
14.	Completed affidavits	Completed affidavits.pdf
15.	Danus Utilities, Inc. All 7.2.2025	Danus Utilities, Inc. All 7.2.2025.pdf
16.	Completed affidavits	Completed affidavits.pdf

Julia Wiggins	Created/Initiated - 7/16/2024
Richard Colby	Approved - 7/16/2024
Junos Reed	Approved - 7/22/2024
John McKinney	Approved - 7/25/2024
Matthew Jones	Approved - 8/12/2024
Wayne Clark	Approved - 8/12/2024
Tracee Cody	Final Approval - 8/12/2024

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
Danus Utilities, Inc.
2320 Beardall Avenue, Sanford, Florida 32771 ("Contractor").

The Effective Date of this Agreement shall be _____ (If no date is specified then the Effective Date shall be the date on which the Agreement is signed by the last of the two parties.)

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:

1.02 *Existing dry pit pumps will be replaced with two submersible pumps running on VFDs, and a new diesel bypass pump will be installed. Sod replacement, driveway repair, including concrete, soil, and gravel replacement in kind will be required at all disturbed areas. Existing building, generator, existing walls, electrical, and odor control device will be removed.*

ARTICLE 2 – THE PROJECT

2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

ITB 24-11 Christiancy Lift Station (LS11) Rehabilitation

ARTICLE 3 – ENGINEER

3.01 *The part of the Project that pertains to the Work has been designed by the Project Engineer, Nicole E. McConnell, P.E. ("Engineer") of Kimley-Horn and Associates, Inc., and shall act as Owner's representatives, 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 of the Essence*

A. All time limits for Substantial Completion and Final Completion as stated in the Contract Documents, particularly Paragraph 4.02 below, are of the essence of the Contract.

B. All time limits for Milestone dates set forth in the Contract Documents are of the essence of the Contract.

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4.02 *Days to Achieve Substantial Completion and Final Completion*

A. Unless as otherwise modified in a Notice to Proceed issued after the Effective Date of the Agreement or an allowable extension of time in accordance with Paragraph 12.02 of the General Conditions, the Work shall be substantially completed within 330 days after the Effective Date of the Agreement.

B. Unless as otherwise modified in a Notice to Proceed issued after the Effective Date of the Agreement or an allowable extension of time in accordance with Paragraph 12.02 of the General Conditions, the Work shall be finally completed in accordance with Paragraph 14.06 of the General Conditions within 30 days after the Effective Date of the Agreement.

C. If a Notice to Proceed is issued more than 60 days from the Effective Date of this Agreement, then the dates for Substantial Completion and the Final Completion shall be extended by the same number of days. (For example, if the Notice to Proceed is issued 63 days after the Effective Date of the Agreement, then the Substantial Completion and Final Completion dates shall be extended by 63 days.)

4.03 *Liquidated Damages*

A. Contractor and Owner agree and recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial loss that is not readily ascertainable as of the Effective Date of this Agreement if the Work is delayed and not Substantially Completed within the time period specified in Paragraph 4.02 above, plus any allowable extension of time in accordance with Paragraph 12.02 of the General Conditions. Contractor agrees and recognizes that any delay to Substantial Completion shall constitute a material breach. Accordingly, Owner and Contractor agree that as liquidated damages for delay, Contractor shall pay Owner $0.00 for each day that expires after the date the Work is required to be Substantially Completed until the Contractor achieves Substantial Completion with the Work. Contractor and Owner agree and recognize that the liquidated damages set forth herein shall not be treated as a penalty and are just damages that are proportionate to any damages that might reasonably be expected to follow from a delay to Substantial Completion.

B. Owner may withhold Contractor's final payment in order offset the liquidated damages that Contractor owes Owner. Owner may also withhold progress payments if Owner reasonably believes that Contractor's final payment will not sufficiency cover the liquidated damages that Contractor owes Owner.

ARTICLE 5 – CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to Paragraphs 5.01.A, 5.01.B, and 5.01.C below:

A. For all Work other than Unit Price Work, a lump sum of: $_____

Any allowances specifically identified and called for in the Contract Documents are included in the above price in accordance with Paragraph 11.02 of the General Conditions.

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B. For all Unit Price Work in accordance with Paragraph 11.03 of the General Conditions, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the actual quantity of that item:

UNIT PRICE WORK

Item No.	Description	Unit	Estimated Quantity	Bid Unit Price	Bid Price
	See Attachments				

Total of all Bid Prices (Unit Price Work) $1,080,650.00

The Bid Unit Prices set forth above are guaranteed prices. Although the Estimated Quantities are estimates and may increase or decrease based on determinations of Engineer, Contractor agrees and understands that the Bid Unit Prices shall remain the same irrespective of the quantities. Contractor understands that in agreeing to any Bid Unit Price it is agreeing to bear the risk associated with any material price increase or escalation. Owner agrees and understands that in agreeing to any Bid Unit Price it is agreeing to bear the risk associated with any material price decrease or reduction.

C. 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 Progress Payments*

A. Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions.

6.02 *Progress Payments; Retainage*

A. Progress payments shall be made on account of the Contract Price on the basis of Contractor's Applications for Payment during performance of the Work in accordance with Paragraph 14.02 of the General Conditions. All such payments will be measured by the schedule of values established as provided in Paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed). Progress payments will be made in an amount equal to the percentage of the Work completed in accordance with the Schedule of Values, less the aggregate of payments previously made, less the retainage, and less such amounts as Engineer may determine Owner may withhold, including, but not limited to, liquidated damages.

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

6.03 *Final Payment*

A. Final Payment inclusive of retainage shall be made to Contractor in accordance with Paragraph 14.07 of the General Conditions.

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ARTICLE 7 – INTEREST

7.01 All monies not paid in strict accordance with Florida Statute §218.735 shall bear interest as provided for therein.

ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS

8.01 In order to induce Owner to enter into this Agreement and in determining the Contract Price, Contractor makes the following representations:

A. Contractor has carefully examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.

B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.

D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities), if any, that have been identified in Paragraph SC-4.02 of the Supplementary Conditions as containing reliable "technical data," and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified in Paragraph SC-4.06 of the Supplementary Conditions as containing reliable "technical data." Contractor's receipt and study of such reports shall not relieve it of visiting the Site and becoming familiar with and satisfied with the Site conditions that may affect cost, progress, and performance of the Work.

E. Contractor has considered the information known to Contractor; 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 Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; and (3) Contractor's safety precautions and programs.

F. Based on the information and observations referred to in Paragraph 8.01.E above, Contractor does not consider that 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 Documents.

G. 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.

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H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.

I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 9 – CONTRACT DOCUMENTS

9.01 *Contents*

A. The Contract Documents consist of the following:

1. This Agreement (pages 1 to 10, inclusive).

2. Combination Payment and Performance Bond (pages 1 to 4, inclusive).

3. General Conditions (pages 1 to 69, inclusive).

4. Supplementary Conditions (pages 1 to 7, inclusive).

5. Technical Specifications as listed in ITB 24-11 "Attachment 2" "Christiancy Avenue Lift Station Rehabilitation," as identified in "Section 3 - Specifications" (pages 1 to 264, not attached, on file with Junos Reed, P.E., City Engineering and Construction Manager).

6. BID Set Documents as listed in ITB 24-11 "Attachment 3" "Lift Station Rehabilitation at Christiancy Avenue," as identified in "Section 3 – "Specifications" (pages 1 to 36, not attached, on file with Junos Reed, P.E., City Engineering and Construction Manager).

7. Bailey Engineering Consultants, Inc. Memorandum amending Specifications and Drawings, dated June 18, 2024 (pages 1 to 2, not attached, on file with Junos Reed, P.E., City Engineering and Construction Manager).

8. Addendum No. 1 dated June 14, 2024 (page 1, inclusive).

9. Addendum No. 2 dated June 20, 2024 (pages 1 – 4, inclusive).

10. Addendum No. 3 dated June 26, 2024 (page 1, inclusive).

11. Exhibits to this Agreement (enumerated as follows):

    a. Exhibit No. 1 Contractor's Bid Schedule of Unit Prices (page 1, inclusive).

    b. Documentation submitted by Contractor prior to Notice of Award (N/A).

        1. Affidavit Regarding Workers' Compensation (page 1, inclusive).

        2. Leased Employee Affidavit Exhibit (page 1, inclusive).

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c. Exhibit No. 2 Contractor's Submittal (pages 1 to 44, inclusive).

d. Composite Exhibit No. 3 City's Invitation to Bid Request No. 24-11 (pages 1 to 158, inclusive, not attached on file with City Clerk).

12. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:

a. Notice to Proceed (pages _____ to _____, inclusive).

b. Work Change Directives.

c. Change Orders.

B. The documents listed in Paragraph 9.01.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 9.

D. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions.

ARTICLE 10 – MISCELLANEOUS

10.01 *Terms*

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

10.02 *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.

10.03 *Successors and Assigns*

A. 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.

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10.04 *Severability*

A. Any provision 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.

10.05 *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 10.05:

1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing 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.

B. Contractor certifies that in the event a Lien is recorded on the Project by any person or entity providing labor, services, or materials with respect to any portion of the Work, it will immediately transfer such lien to its payment bond or take other appropriate action to immediately remove the encumbrance.

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10.06 *No-Damage-for-Delay*

A. 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 considered this no-damage-for-delay provision and understands that it is not entitled to any damages whatsoever for a delay to its Work.

10.07 *No Intended Third-Party Beneficiaries*

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

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IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement. Counterparts have been delivered to Owner and Contractor. All portions of the Contract Documents have been signed or have been identified by Owner and Contractor or on their behalf.

CITY OF PORT ORANGE
Owner

_____

By: Donald O. Burnette

Title: Mayor

Date:_____

_____

Attest: Robin L. Fenwick, MMC

Title: City Clerk

Address for giving notices:
1000 City Center Circle
Port Orange, Florida 32129
(386) 506-5500

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Danus Utilities, Inc.
Contractor

By: Dan J. Pardus

Title: President

Date:_____

Attest: _____

Title: _____

Address for giving notices:

2320 Beardall Avenue

Sanford, Florida 32771

Telephone: (386) 882-6200
E-Mail: raymond@danusutilities.com

License No.: CUC1224744

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Payment and Performance Bond

Consisting of 4 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:	Danus Utilities, Inc.
Principal Business Address:	2320 Beardall Avenue Sanford, Florida 32771
Contact Person:	Dan J. Pardus, President
Phone Number:	(386) 882-6200

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: $1,080,650.00 **City Case/Project No. ITB 24-11 Christiancy Lift Station (LS11) Rehabilitation**

Description of Work: ITB 24-11 Christiancy Lift Station (LS11) Rehabilitation
Project Location: 5403 Christiancy Avenue, Port Orange, Volusia County, Florida

Legal Description: Portions of: 5403 Christiancy Avenue, Port Orange, Volusia County, Florida
See Exhibit "A"

Front Page

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

City of Port Orange Christiancy Avenue Lift Station
5403 Christiancy Avenue, Port Orange, FL 32127

Short Parcel ID:
6310-07-37-0030

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

EXHIBIT "A"

Danus Utilities, Inc.

ITB 24-11 Christiancy Lift Station (LS11) Rehabilitation

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, **DANUS UTILITIES, INC.** as Principal, and _____, a corporation, as Surety, are bound to **CITY OF PORT ORANGE, FLORIDA**, a Florida municipal corporation, herein called "Owner" or sometimes referred to as "City," in the sum of **ONE MILLION EIGHTY THOUSAND SIX HUNDRED FIFTY AND 00/100 DOLLARS** (**$1,080,650.00**), for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

THE CONDITION OF THIS BOND is that if Principal:

1. Performs the terms of that certain EJCDC Agreement having an effective date of _____, entered into by and between the Principal and the City, for Christiancy Lift Station (LS11) Rehabilitation, 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 shall be deemed an original, this _____, day of _____, 2024.

Attest:

DANUS UTILITIES, INC.
(Name of Principal)

_____
(As to Corporate Principal) Secretary

By:_____
Dan J. Pardus, 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 - General Conditions

Consisting of 68 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

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly by

AMERICAN COUNCIL OF ENGINEERING COMPANIES

ASSOCIATED GENERAL CONTRACTORS OF AMERICA

AMERICAN SOCIETY OF CIVIL ENGINEERS

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
A Practice Division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

Endorsed by

CONSTRUCTION SPECIFICATIONS INSTITUTE

EJCDC C-700 Standard General Conditions of the Construction Contract
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These General Conditions have been prepared for use with the Suggested Forms of Agreement Between Owner and Contractor (EJCDC C-520 or C-525, 2007 Editions). Their provisions are interrelated and a change in one may necessitate a change in the other. Comments concerning their usage are contained in the Narrative Guide to the EJCDC Construction Documents (EJCDC C-001, 2007 Edition). For guidance in the preparation of Supplementary Conditions, see Guide to the Preparation of Supplementary Conditions (EJCDC C-800, 2007 Edition).

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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

A. Wherever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. 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 which is evidence of the agreement between Owner and Contractor covering the Work.

3. *Application for Payment*—The form acceptable to Engineer and Owner which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

4. *Asbestos*—Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

5. *Bid*—The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

6. *Bidder*—The individual or entity who submits a Bid directly to Owner.

7. *Bidding Documents*—The Bidding Requirements and the proposed Contract Documents (including all Addenda).

8. *Bidding Requirements*—The advertisement or invitation to bid, Instructions to Bidders, Bid security of acceptable form, if any, and the Bid Form with any supplements.

9. *Change Order*—A document recommended by Engineer and/or Owner 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, issued on or after the Effective Date of the Agreement.

10. *Claim*—A demand or assertion by Owner or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.

11. *Contract*—The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

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12. *Contract Documents*—Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.

13. *Contract Price*—The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).

14. *Contract Times*—The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any; (ii) achieve Substantial Completion; (iii) achieve Final Completion; and (iv) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.

15. *Contractor*—The individual or entity with whom Owner has entered into the Agreement.

16. *Cost of the Work*—See Paragraph 11.01 for definition.

17. *Drawings*—That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.

18. *Effective Date of the Agreement*—The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed by the last of the two parties.

19. *Engineer*—The individual or entity named as such in the Agreement.

20. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

21. *Final Completion* – This shall occur when Contractor, in the opinion of Engineer or Owner, performs and completes all corrective action associated with the Punchlist in addition to any other work required of Contractor under the Contract Documents.

22. *General Requirements*—Sections of Division 1 of the Specifications.

23. *Hazardous Environmental Condition*—The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto.

24. *Hazardous Waste*—The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

25. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

26. *Liens*—Charges, security interests, or encumbrances upon Project funds, real property, or personal property.

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27. *Milestone*—A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

28. *Notice of Award*—The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.

29. *Notice to Proceed*—A written notice given 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 under the Contract Documents.

30. *Owner*—The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.

31. *PCBs*—Polychlorinated biphenyls.

32. *Petroleum*—Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

33. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.

34. *Project*—The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.

35. *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.

36. *Punchlist* – The detailed list of incomplete, unsatisfactory or unacceptable, or defective items that Contractor is required to complete to achieve Final Completion that is generated in accordance with Paragraph 14.06 of the General Conditions.

37. *Radioactive Material*—Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

38. *Resident Project Representative*—The authorized representative of Engineer who may be assigned to the Site or any part thereof.

39. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

40. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.

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41. *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.

42. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, samples, product data, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.

43. *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 for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.

44. *Specifications*—That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.

45. *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 at the Site.

46. *Substantial Completion*—The time and date at which the Work has progressed to the point where, in the opinion of Engineer, the Work is sufficiently complete, in accordance with the Contract Documents, so that the Work 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 thereof. 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 is intended.

47. *Successful Bidder*—The Bidder submitting a responsive Bid to whom Owner makes an award.

48. *Supplementary Conditions*—That part of the Contract Documents which amends or supplements these General Conditions.

49. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, 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 Subcontractor.

50. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

51. *Unit Price Work*—Work to be paid for on the basis of unit prices.

52. *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

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providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

53. *Work Change Directive*—A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner and recommended by Engineer ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

1.02 *Terminology*

A. The words and terms discussed in Paragraph 1.02.B through F are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.

B. *Intent of Certain Terms or Adjectives:*

1. 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 Paragraph 9.09 or any other provision of the Contract Documents.

C. *Day:*

1. The word "day" means a calendar day of 24 hours measured from midnight to the next midnight.

D. *Defective:*

1. The word "defective," when modifying the word "Work," refers to Work that is unsatisfactory, faulty, or deficient in that it:

a. does not conform to the Contract Documents; or

b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or

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c. is failing or has been damaged.

E. *Furnish, Install, Perform, Provide:*

1. The word "furnish," when used in connection with services, materials, or equipment, shall mean 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, shall mean 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, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

4. When "furnish," "install," "perform," or "provide" is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, "provide" is implied.

F. 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 Bonds and Evidence of Insurance*

A. When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.

B. *Evidence of Insurance:* Before any Work at the Site is started, Contractor and Owner shall each deliver to the other, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request such as the specific additional insured endorsement included in the liability policy) which Contractor and Owner respectively are required to purchase and maintain in accordance with Article 5 and/or the Supplementary Conditions.

2.02 *Copies of Documents*

A. At the request of Contractor, Owner or Engineer shall furnish to Contractor up to 5 hard copies of the Drawings and Specifications. Additional copies of the Drawings and Specifications will be furnished upon request at the cost of reproduction.

2.03 *Notice to Proceed; Starting the Work*

A. 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 Agreement.

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2.04 *N/A*

2.05 *Before Starting Construction*

A. *Preliminary Schedules:* Within 10 days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), Contractor shall submit to Engineer and Owner 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 Documents, 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 / line-items 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.

2.06 *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 2.05.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, 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 instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.07 *Initial 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 for acceptability to Engineer or Owner as provided below the schedules submitted in accordance with Paragraph 2.05.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted 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 the 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

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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 component parts / line-items of the Work.

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 *Intent*

A. The Contract Documents are complementary; what is required by one 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. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to Owner.

C. Clarifications and interpretations of the Contract Documents (*e.g.*, answering Requests for Information) shall be issued by Engineer as provided in Article 9.

3.02 *Reference Standards*

A. Standards, Specifications, Codes, Laws, and Regulations

1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement 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, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees, from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to Owner, Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, 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 Contract Documents.

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3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies:*

1. *Contractor's Review of Contract Documents Before Starting Work*: Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements and dimensions. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy which Contractor discovers, or has actual knowledge of, and shall obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby.

2. *Contractor's Review of Contract Documents During Performance of Work*: If, 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) any standard, specification, manual, or code, or (c) 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 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04 below.

3. Contractor shall not be liable to Owner 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 the Contract Documents and checking and verifying pertinent figures therein and all applicable field measurements and dimensions.

B. *Resolving Discrepancies:*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:

    a. the provisions of any standard, specification, manual, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference in the Contract Documents); 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).

2. 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 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.

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3.04 *Amending and Supplementing Contract Documents*

A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by either a Change Order or a Work Change Directive.

B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways:

1. A Field Order;

2. Engineer's approval of a Shop Drawing or Sample (subject to the provisions of Paragraph 6.17.D.3); or

3. Engineer's written interpretation or clarification.

3.05 *Reuse of Documents*

A. Contractor and any Subcontractor or Supplier 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 editions; or

2. 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.

B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

3.06 *Electronic Data*

A. Unless otherwise stated in the Supplementary Conditions, the data furnished by Owner or Engineer to Contractor, or by Contractor to Owner or Engineer, that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party.

C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting

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from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

ARTICLE 4 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS

4.01 *Availability of Lands*

A. Owner shall furnish the Site. Owner shall notify Contractor 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. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in Owner's furnishing the Site or a part thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

B. *N/A*

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.

4.02 *Subsurface and Physical Conditions*

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

1. those reports known to Owner of explorations and tests of subsurface conditions at or contiguous to the Site; and

2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).

B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents and shall under no circumstance relieve Contactor 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. Such "technical data" is identified in the Supplementary Conditions. Except for such limited reliance on such "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; or

2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or

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3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

4.03 *Differing Subsurface or Physical Conditions*

A. *Notice:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed either:

1. is of such a nature as to establish that any "technical data" on which Contractor is entitled to rely as provided in Paragraph 4.02 is materially inaccurate; or

2. is of such a nature as to require a change in the Contract Documents; or

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 6.16.A), 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 as aforesaid) until receipt of written order to do so.

B. *Engineer's Review*: After receipt of written notice as required by Paragraph 4.03.A, Engineer will promptly review the pertinent condition, determine the necessity of Owner's obtaining additional exploration or tests with respect thereto, and advise Owner in writing (with a copy to Contractor) of Engineer's findings and conclusions.

C. *Possible Price and Times Adjustments:*

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition 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 meet any one or more of the categories described in Paragraph 4.03.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 Paragraphs 9.07 and 11.03; and

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

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2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:

    a. Contractor knew of the existence of such conditions at the time Contractor made a final 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

    b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or

    c. Contractor failed to give the written notice as required by Paragraph 4.03.A within 5 days after first becoming aware of such condition.

3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05. However, neither Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall be liable to Contractor for any claims, costs, losses, or 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) sustained by Contractor on or in connection with any other project or anticipated project.

4.04 *Underground Facilities*

A. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

    1. Owner and Engineer shall not be responsible for the accuracy or completeness of any such information or data provided by others; and

    2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:

        a. reviewing and checking all such information and data;

        b. locating all Underground Facilities shown or indicated in the Contract Documents;

        c. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction; and

        d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

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B. *Not Shown or Indicated:*

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, 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 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer within 5 days. Engineer will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

2. If Engineer concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that (i) they are attributable to the existence or location of any Underground Facility 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 existence or location, and (iii) Contractor notifies Owner and Engineer of such condition within 5 days after first becoming aware of such condition. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, Owner or Contractor may make a Claim therefor as provided in Paragraph 10.05.

4.05 *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.

4.06 *Hazardous Environmental Condition at Site*

A. *Reports and Drawings:* The Supplementary Conditions identify those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at the Site.

B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and

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drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "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; or

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 any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work or identified in a report listed in the Supplemental Conditions. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible or if such condition is caused by the negligence, recklessness, or intentional misconduct of Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.

D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.16.A); and (iii) 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 4.06.E.

E. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered written notice to Contractor: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. An equitable adjustment shall be made in the Contract Price or Contract Times, 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. If Owner and Contractor cannot agree as to entitlement

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to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefor as provided in Paragraph 10.05.

F. 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. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.

G. *N/A*

H. *N/A*

I. *N/A*

ARTICLE 5 – BONDS AND INSURANCE

5.01 *Performance, Payment, and Other Bonds*

A. Contractor shall furnish performance and payment bonds in accordance with Florida Statute §255.05, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents. The obligations, duties, responsibilities, and requirements of Contractor set forth in this Contract shall be incorporated into Contractor's performance bond.

B. All bonds shall be in the form prescribed by the Contract Documents. All bonds 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 shall show that it is effective on the date the agent or attorney-in-fact signed each bond. The performance and payments bonds shall be recorded in the public records in and for Volusia County, Florida. As a courtesy to the Contractor and to expedite recording, the City shall record the bond on behalf of the Contractor and shall cause a copy of the recording information to be provided to the Contractor by the Project Engineer.

C. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in Florida or it ceases to meet the requirements of Paragraph 5.01.B, Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02.

5.02 *Licensed Sureties and Insurers*

A. All bonds and insurance required by the Contract Documents to be purchased and maintained by Owner or Contractor shall be obtained from surety or insurance companies that are duly licensed

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or authorized in Florida to issue bonds or insurance policies for the limits and coverages so required.

5.03 *Certificates of Insurance*

A. Contractor shall deliver to Owner, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured) which Contractor is required to purchase and maintain.

B. Owner shall deliver to Contractor, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Contractor or any other additional insured) which Owner is required to purchase and maintain.

C. Failure of Owner to demand such certificates or other evidence of Contractor's full compliance with these insurance requirements or failure of Owner to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

D. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor.

E. *N/A*

F. In the event of any conflict between this Paragraph 5.03 and the specific insurance requirements of Contractor set forth in the Supplemental Conditions, the specific insurance requirements in the Supplemental Conditions govern.

5.04 *Contractor's Insurance*

A. Contractor shall purchase and maintain such insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed 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:

1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;

2. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;

3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;

4. claims for damages insured by reasonably available personal injury liability coverage which are sustained:

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a. by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or

b. by any other person for any other reason;

5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom;

6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle;

B. The policies of insurance required by this Paragraph 5.04 shall:

1. with respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive, be written on an occurrence basis, include as additional insureds (subject to any customary exclusion regarding professional liability) Owner and Engineer, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds for ongoing and completed operations, and include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;

2. include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;

3. include contractual liability insurance covering Contractor's indemnity obligations under Paragraph 6.20 below and as otherwise set forth in the Contract;

4. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Contractor pursuant to Paragraph 5.03 will so provide);

5. remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work in accordance with Paragraph 13.07; and

6. include completed operations coverage:

a. Such insurance shall remain in effect for 10 years after Substantial Completion.

b. Contractor shall furnish Owner and each other 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.

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C. Contractor shall be solely responsible for any insurance deductible or self-insured retention.

D. In the event of any conflict between this Paragraph 5.04 and the specific insurance requirements of Contractor set forth in the Supplemental Conditions, the specific insurance requirements in the Supplemental Conditions govern.

5.05 *Owner's Liability Insurance*

A. In addition to the insurance required to be provided by Contractor under Paragraph 5.04, Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.

5.06 *Property Insurance*

A. Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). Such policy shall identify both Contractor and Owner as named insureds. Contractor shall solely be responsible for any deductible. This insurance shall:

1. include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee;

2. be written on a Builder's Risk "all-risk" policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, flood, windstorm, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage (other than that caused by flood), and such other perils or causes of loss as may be specifically required by the Supplementary Conditions.

3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);

4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by Engineer;

5. allow for partial utilization of the Work by Owner;

6. include testing and startup; and

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7. be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor, and Engineer with 30 days written notice to each other loss payee to whom a certificate of insurance has been issued.

B. *N/A*

C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other loss payee to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with Paragraph 5.07.

D. *N/A*

E. *N/A*

F. Contractor's all-risk property insurance shall not terminate or expire if Owner elects to utilize or occupy any portion or portions of the Project prior to Substantial Completion. Contractor shall obtain an occupancy / use endorsement that allows Owner to utilize or occupy a portion or portions of the Project prior to Substantial Completion (such that if a temporary Certificate of Occupancy or Completion is issued for a portion(s) of the Project, the all-risk property insurance shall remain in full force).

G. In the event of any conflict between this Paragraph 5.06 and the specific insurance requirements of Contractor set forth in the Supplemental Conditions, the specific insurance requirements in the Supplemental Conditions govern.

5.07 *Waiver of Rights*

A. Owner and Contractor intend that all policies purchased in accordance with Paragraph 5.06 will protect Owner, Contractor, Subcontractors, and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or loss payees thereunder. Owner and Contractor waive all rights against each other and their 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 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 Subcontractors and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (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. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Contractor as trustee or otherwise payable under any policy so issued.

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B. *N/A*

C. *N/A*

D. In the event of any conflict between this Paragraph 5.07 and the specific insurance requirements of Contractor set forth in the Supplemental Conditions, the specific insurance requirements in the Supplemental Conditions govern.

5.08 *Receipt and Application of Insurance Proceeds*

A. Any insured loss under the policies of insurance required by Paragraph 5.06 will be adjusted with Contractor and made payable to Contractor as fiduciary for the loss payees, as their interests may appear, subject to the requirements of any applicable mortgage clause and of Paragraph 5.08.B. Contractor shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and, only if applicable, the cost thereof covered by an appropriate Change Order.

B. Contractor as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to Contractor's exercise of this power. If such objection be made, Contractor as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, Contractor as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Owner as fiduciary shall give bond for the proper performance of such duties.

C. 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.

D. In the event of any conflict between this Paragraph 5.08 and the specific insurance requirements of Contractor set forth in the Supplemental Conditions, the specific insurance requirements in the Supplemental Conditions govern.

5.09 *Acceptance Insurance; Option to Replace*

A. If Owner has any objection to the coverage afforded by or other provisions of the insurance required to be purchased and maintained by the Contractor in accordance with Article 5 and/or the Supplementary Conditions on the basis of non-conformance with the Contract Documents, Owner shall so notify Contractor in writing within 10 days after receipt of the certificates (or other evidence requested) required by Paragraph 2.01.B. Contractor shall provide Owner such additional information in respect of insurance provided as the Owner may reasonably request. If Contractor does not purchase or maintain all of the insurance required of it by the Contract

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Documents, Owner shall notify Contractor 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, which shall constitute a material breach of the Contract by Contractor. Without Owner's prejudice to any other right or remedy, Owner may elect to obtain equivalent insurance to protect its interests at the expense of Contractor, and a Change Order shall be issued to adjust the Contract Price accordingly.

B. In the event of any conflict between this Paragraph 5.09 and the specific insurance requirements of Contractor set forth in the Supplemental Conditions, the specific insurance requirements in the Supplemental Conditions govern.

5.10 *Partial Utilization, Acknowledgment of Property Insurer*

A. *N/A*

ARTICLE 6 – CONTRACTOR'S RESPONSIBILITIES

6.01 *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. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. Contractor shall not be responsible for the negligence of Owner or Engineer in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents. Contractor shall submit a Request for Information to Engineer seeking clarification as to any aspect of the Contract Documents as soon as practical to, among other things, maintain the orderly progress of the Work and avoid any delay to the Work.

B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent or superintendents, as appropriate, who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

6.02 *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 at all times maintain good discipline and order at the Site.

B. 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 shall be performed during regular working hours. Contractor will not permit the performance of Work on a Saturday, Sunday, or any legal holiday without Owner's written consent (which will not be unreasonably withheld) given after prior written notice to Engineer.

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6.03 *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.

B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall 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 shall 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.

6.04 *Progress Schedule*

A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.07 as it may be adjusted from time to time as provided below.

1. Contractor shall submit to Engineer and Owner for acceptance (to the extent indicated in Paragraph 2.07) proposed monthly adjustments in the Progress Schedule that will not result in changing the Contract Times. Such adjustments will be submitted with Contractor's Applications for Payment, as conditions precedent to payment, and will comply with any provisions of the General Requirements applicable thereto.

2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Times may only be made by a Change Order.

3. All proposed Progress Schedules submitted to Engineer and Owner shall identify Contractor's critical path sequence of scheduled activities of the Work as well as earliest start dates for scheduled activities, the earliest finish date for scheduled activities, the latest start date for scheduled activities, and the latest finish date for scheduled activities. All float in the Progress Schedules shall belong to Owner to offset a delay to Contractor's critical path attributable to Owner or its agents.

6.05 *Substitutes and "Or-Equals"*

A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description 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 or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to Engineer for review under the circumstances described below.

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1. *"Or-Equal" Items:* If in Engineer's sole discretion an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by Engineer as an "or-equal" item, in which case review and approval of the proposed item may, in Engineer's sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this Paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:

    a. in the exercise of reasonable judgment Engineer determines that:

        1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;

        2) it 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; and

        3) it has a proven record of performance and availability of responsive service.

    b. Contractor certifies that, if approved and incorporated into the Work:

        1) there will be no increase in cost to the Owner or increase in Contract Times; and

        2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.

2. *Substitute Items:*

    a. If in Engineer's sole discretion an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item under Paragraph 6.05.A.1, it will be considered a proposed substitute item.

    b. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by Engineer from anyone other than Contractor.

    c. The requirements for review by Engineer will be as set forth in Paragraph 6.05.A.2.d, as supplemented by the General Requirements, and as Engineer may decide is appropriate under the circumstances.

    d. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:

        1) shall certify that the proposed substitute item will:

            a) perform adequately the functions and achieve the results called for by the general design,

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b) be similar in substance to that specified, and

c) be suited to the same use as that specified;

2) will state:

a) the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of Substantial Completion on time,

b) 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

c) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;

3) will identify:

a) all variations of the proposed substitute item from that specified, and

b) available engineering, sales, maintenance, repair, and replacement services; and

4) shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change.

B. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by Engineer. Contractor shall submit sufficient information to allow Engineer, in Engineer's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The requirements for review by Engineer will be similar to those provided in Paragraph 6.05.A.2.

C. *Engineer's Evaluation:* Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraphs 6.05.A and 6.05.B. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized until Engineer's review is complete, which will be evidenced by a Change Order in the case of a substitute and an approved Shop Drawing for an "or equal." Engineer will advise Contractor in writing of any negative determination.

D. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.

E. *Engineer's Cost Reimbursement*: Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor pursuant to Paragraphs 6.05.A.2 and 6.05.B. Whether or not Engineer approves a substitute so proposed or submitted by Contractor,

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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.

F. *Contractor's Expense*: Contractor shall provide all data in support of any proposed substitute or "or-equal" at Contractor's expense.

6.06 *Concerning Subcontractors, Suppliers, and Others*

A. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to Owner as indicated in Paragraph 6.06.B), whether initially or as a replacement, against whom Owner may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection. Additionally, subject to Paragraph 6.06.B below, Contractor shall provide to Owner within 10 days from the Effective Date of this Agreement a written list of all Subcontractors (or other individuals or entities it plans on engaging to perform a scope of the Work), together with their Certificates of Insurance that must identify Owner as an additional insured. Subcontractors must identify Owner as an additional insured for purposes of ongoing and completed operations.

B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a specified date prior to the Effective Date of the Agreement, and if Contractor has submitted a list thereof in accordance with the Supplementary Conditions, Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Engineer to reject defective Work.

C. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents:

1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier or other individual or entity; nor

2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

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D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor and ensure that they perform the Work in a good and workmanlike manner and pursuant to the Contract Documents.

E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Engineer through Contractor.

F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.

G. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer. Whenever any such agreement is with a Subcontractor or Supplier who is listed as a loss payee on the property insurance provided in Paragraph 5.06, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Contractor, Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or loss payees (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 any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.

6.07 *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 a particular 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 shall be disclosed by Owner in the Contract Documents.

B. *N/A*

C. *N/A*

6.08 *Permits*

A. Unless otherwise provided in the Supplementary Conditions, Contractor shall obtain and pay for all construction permits and licenses. 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 opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

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6.09 *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. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.

B. If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear 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. However, it shall not be Contractor's responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.

C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work shall be the subject of an adjustment in Contract Price or Contract Times. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

6.10 *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.

6.11 *Use of Site and Other Areas*

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

1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.

2. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.

3. *N/A*

B. *Removal of Debris During Performance of the Work:* During the progress of the Work Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.

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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. At the completion of the Work Contractor shall remove from the Site 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 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 property to stresses or pressures that will endanger it.

6.12 *Record Documents*

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

6.13 *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. 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, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

B. 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. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.

C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.

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D. 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.

E. All damage, injury, or loss to any property referred to in Paragraph 6.13.A.2 or 6.13.A.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 (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).

F. Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.14 *Safety Representative*

A. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

6.15 *Hazard Communication Programs*

A. Contractor shall be responsible for coordinating any exchange of 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.

6.16 *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 threatened 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 thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

6.17 *Shop Drawings and Samples*

A. Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals (as required by Paragraph 2.07). Each submittal will be identified as Engineer may require.

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1. *Shop Drawings:*

    a. Submit number of copies specified in the General Requirements.

    b. Data shown on the Shop Drawings will 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 6.17.D.

2. *Samples:*

    a. Submit number of Samples specified in the Specifications.

    b. 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 6.17.D.

B. 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. *Submittal Procedures:*

1. Before submitting each Shop Drawing or Sample, Contractor shall have:

    a. thoroughly reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;

    b. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;

    c. determined and verified the suitability of all materials offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and

    d. determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.

2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review and approval of that submittal.

3. With each submittal, Contractor shall give Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop

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Drawings or Sample submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample submitted to Engineer for review and approval of each such variation.

D. *Engineer's Review:*

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. 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, conform to the information given in 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 (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

3. Engineer's review and approval shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 6.17.C.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's review and approval shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.17.C.1.

E. *Resubmittal Procedures:*

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.

6.18 *Continuing the Work*

A. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements regarding payment or otherwise, except as permitted by Paragraph 15.04 or as Owner and Contractor may otherwise agree in writing.

6.19 *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 and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on representation of Contractor's warranty and guarantee.

B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:

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1. abuse, modification, or improper 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.

C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:

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 or the issuance of a notice of acceptability by Engineer;

6. any inspection, test, or approval by others;

7. any correction of defective Work by Owner; or

8. the achievement of Final Completion (including Contractor's completion of Punchlist items that were deemed satisfactory to Engineer).

6.20 *Indemnification*

A. To the fullest extent permitted by Florida law including Florida Statute §725.06, Contractor shall indemnify and hold harmless Owner (including Owner's officers and employees) from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney's fees, 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. Contractor agrees and understands that the monetary limitation on the extent of its indemnification shall be $1 million per occurrence or the per occurrence limits of its commercial general liability (CGL) insurance, whichever is greater, which bears a reasonable commercial relationship to the Contract and is hereby part of the project specifications and bid documents.

B. To the fullest extent permitted by Florida law, Contractor shall defend Owner (including Owner's officers and employees) from claims, demands, and litigation asserted against Owner to the extent such claims, demands, or litigation are 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.

C. Contractor agrees and understands that its obligation to indemnify, hold harmless, and defend as set forth in Paragraphs 6.20.A and B above includes, without limitation, claims, losses, etc. for

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personal injury, death, property damage, Hazardous Environmental Conditions, infringement of patent rights or copyrights incident 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.

6.21 *Delegation of Professional Design Services*

A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable law.

B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.

C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.

D. Pursuant to this Paragraph 6.21, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 6.17.D.1.

E. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

ARTICLE 7 – OTHER WORK AT THE SITE

7.01 *Related Work at Site*

A. Owner may perform other work related to the Project at the Site with Owner's employees, or through other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:

1. written notice thereof will be given to Contractor prior to starting any such other work; and

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2. if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 10.05.

B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and properly coordinate the Work with theirs. 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. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.

C. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 7, 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.

7.02 *Coordination*

A. If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:

1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;

2. the specific matters to be covered by such authority and responsibility will be itemized; and

3. the extent of such authority and responsibilities will be provided.

B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

7.03 *Legal Relationships*

A. Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of Owner.

B. Each other direct contract of Owner under Paragraph 7.01.A shall provide that the other contractor is liable to Owner and Contractor for the reasonable direct delay and disruption costs incurred by Contractor as a result of the other contractor's wrongful actions or inactions.

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C. Contractor shall be liable to Owner and any other contractor under direct contract to Owner for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor's wrongful action or inactions.

ARTICLE 8 – OWNER'S RESPONSIBILITIES

8.01 *Communications to Contractor*

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

8.02 *Replacement of Engineer*

A. In case of termination of the employment of Engineer, Owner shall appoint an engineer to whom Contractor makes no reasonable objection, whose status under the Contract Documents shall be that of the former Engineer.

8.03 *Furnish Data*

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

8.04 *Pay When Due*

A. Owner shall make payments to Contractor when they are due as provided in Paragraphs 14.02.C and 14.07.C or as otherwise provided in Florida Statute §218.735.

8.05 *Lands and Easements; Reports and Tests*

A. Owner's duties with respect to providing lands and easements and providing engineering surveys to establish reference points are set forth in Paragraphs 4.01 and 4.05. Paragraph 4.02 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

8.06 *Insurance*

A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 5.

8.07 *Change Orders*

A. Owner is obligated to execute Change Orders as indicated in Paragraph 10.03.

8.08 *Inspections, Tests, and Approvals*

A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 13.03.B.

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8.09 *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.

8.10 *Undisclosed Hazardous Environmental Condition*

A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 4.06.

8.11 *Evidence of Financial Arrangements*

A. N/A

8.12 *Compliance with Safety Program*

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 pursuant to Paragraph 6.13.D.

ARTICLE 9 – ENGINEER'S STATUS DURING CONSTRUCTION

9.01 *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 Documents.

9.02 *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 9.09. 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,

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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.

9.03 *Project Representative*

A. If Owner and Engineer agree, Engineer will furnish a Resident Project Representative to assist Engineer in providing more extensive observation of the Work. The authority and responsibilities of any such Resident Project Representative and assistants will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 9.09. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer's consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

9.04 *Authorized Variations in Work*

A. Engineer may authorize minor variations in the Work from the requirements of the Contract Documents which 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. These may be accomplished by a Field Order and will be binding on Owner and also on Contractor, who shall perform the Work involved promptly. If Owner or Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, and the parties are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

9.05 *Rejecting Defective Work*

A. Engineer will have authority to reject Work which Engineer believes to be defective, or that Engineer believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Engineer will also have authority to require special inspection or testing of the Work as provided in Paragraph 13.04, whether or not the Work is fabricated, installed, or completed.

9.06 *Shop Drawings, Change Orders and Payments*

A. In connection with Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, see Paragraph 6.17.

B. In connection with Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, see Paragraph 6.21.

C. In connection with Engineer's authority as to Change Orders, see Articles 10, 11, and 12.

D. In connection with Engineer's authority as to Applications for Payment, see Article 14.

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9.07 *Determinations for Unit Price Work*

A. 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, subject to the provisions of Paragraph 10.05.

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

A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. All matters in question and other matters between Owner and Contractor arising prior to the date final payment is due relating to the acceptability of the Work, and the clarification or interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Engineer in writing as soon as practical (so as to maintain the orderly progress of the Work and to avoid any delay to the Work) but in no event later than 30 days of the event giving rise to the question.

B. Engineer will, with reasonable promptness, render a written decision on the issue referred or render a written answer with respect to any Request for Information Contractor submits to Engineer seeking clarification as to an aspect of the Contract Documents. If Owner or Contractor believes that any such decision entitles them to an adjustment in the Contract Price or Contract Times or both, a Claim may be made under Paragraph 10.05. The date of Engineer's decision shall be the date of the event giving rise to the issues referenced for the purposes of Paragraph 10.05.B.

C. *N/A*

D. When functioning as interpreter and judge under this Paragraph 9.08, Engineer will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

9.09 *Limitations on Engineer's Authority and Responsibilities*

A. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract Documents 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 shall 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.

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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 Paragraph 14.07.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 9.09 shall also apply to the Resident Project Representative, if any, and assistants, if any.

9.10 *Compliance with Safety Program*

A. While at the Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Engineer has been informed pursuant to Paragraph 6.13.D.

ARTICLE 10 – CHANGES IN THE WORK; CLAIMS

10.01 *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 by a Change Order, or a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

B. If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in Paragraph 10.05.

10.02 *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 as provided in Paragraph 3.04, except in the case of an emergency as provided in Paragraph 6.16 or in the case of uncovering Work as provided in Paragraph 13.04.D.

10.03 *Execution of Change Orders*

A. Owner and Contractor shall execute appropriate Change Orders recommended by Engineer covering:

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1. changes in the Work which are: (i) ordered by Owner pursuant to Paragraph 10.01.A, (ii) required because of acceptance of defective Work under Paragraph 13.08.A or Owner's correction of defective Work under Paragraph 13.09, or (iii) agreed to by the parties;

2. changes in the 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 a Work Change Directive; and

3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Engineer pursuant to Paragraph 10.05 that are then resolved by the parties to the Agreement.

10.04 *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.

10.05 *Claims*

A. *Engineer's Decision Required*: All Claims, except those otherwise waived pursuant to the Contract, shall be referred to the Engineer for decision. A decision by Engineer shall be required as a condition precedent to any exercise by Owner or Contractor of any rights or remedies either may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims. Owner, however, may, but is not required to, refer to Engineer its assessment of liquidated damages against Contractor in accordance with Paragraph 4.03 of the Agreement or any claim it has with respect to construction defects discovered after Final Completion.

B. *Notice:* Unless as otherwise set forth herein, written notice stating the general nature of each Claim shall be delivered by the claimant to Engineer and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. The responsibility to substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, with detailed, supporting data shall be delivered to the Engineer and the other party to the Contract within 60 days after the start of such event. A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.B. A Claim for an adjustment in Contract Times shall be prepared in accordance with the provisions of Paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event.

C. *Engineer's Action*: Engineer will review each Claim and, within 30 days after receipt of the last submittal of the claimant take one of the following actions in writing:

1. deny the Claim in whole or in part;

2. approve the Claim; or

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3. notify the parties that the Engineer is unable to resolve the Claim if, in the Engineer's sole discretion, it would be inappropriate for the Engineer to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.

D. In the event that Engineer does not take action on a Claim within said 30 days, the Claim shall be deemed denied.

E. *N/A*

F. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 10.05.

G. All Claims Contractor submits for an adjustment in Contract Time or Contract Price shall be subject to the No-Damage-For-Delay provision in Paragraph 10.06 of the Agreement.

ARTICLE 11 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

11.01 *Cost of the Work*

A. *Costs Included:* The term Cost of the Work means the sum of all costs, except those excluded in Paragraph 11.01.B, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 11.01.B, and shall 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. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall 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 shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.

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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, who 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 shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 11.01.

4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors) employed for services specifically related to the Work. Attorneys and accountants shall not constitute a Cost of the Work.

5. Supplemental costs including 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, and hand tools not owned by the workers, 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.

    c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the 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 property insurance established in accordance with Paragraph 5.06.D), 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 shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall 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.

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h. Minor expenses such as telegrams, long distance telephone calls, telephone 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 Contractor is required by the Contract Documents to purchase and maintain.

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

1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expediters, 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 11.01.A.1 or specifically covered by Paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the Contractor's fee.

2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.

3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.

4. 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.

5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraphs 11.01.A.

C. *Contractor's Fee:* When all the Work is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 12.01.C.

D. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to Paragraphs 11.01.A and 11.01.B, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data. Owner shall have the right to inspect and audit Contractor's books and cost records at any time during the course of the Project and for three years after Final Completion. Owner must give Contractor 7 days written notice that it plans on inspecting and auditing Contractor's books and cost records.

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11.02 *Allowances*

A. It is understood that Contractor has included in the Contract Price all allowances specifically identified and called for 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:*

1. Contractor agrees that:

a. 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

b. 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 on account of any of the foregoing will be valid.

C. *Contingency Allowance:*

1. Contractor agrees that a 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 on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

11.03 *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 are estimates and solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Engineer subject to the provisions of Paragraph 9.07.

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. Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Paragraph 10.05 if:

1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and

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2. there is no corresponding adjustment with respect to any other item of Work; and

3. Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense for supplying additional units or Owner believes that Owner is entitled to a decrease in Contract Price for Contractor supplying fewer units and the parties are unable to agree as to the amount of any such increase or decrease.

ARTICLE 12 – CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

12.01 *Change of Contract Price*

A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.

B. The value of any Work covered by a Change Order or of any Claim for 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, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.03); or

2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 12.01.C.2); or

3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01 excluding 11.01.A.1) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 12.01.C). Contractor shall keep detailed backup supporting its actual costs incurred associated with the adjustment in Contract Price.

C. *Contractor's Fee:* The Contractor's fee for overhead and profit shall 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 11.01.A.1 and 11.01.A.2, the Contractor's fee shall be 15 percent;

b. for costs incurred under Paragraph 11.01.A.3, the Contractor's fee shall be five 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 12.01.C.2.a and 12.01.C.2.b is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1

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and 11.01.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;

d. no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;

e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and

f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

12.02 *Change of Contract Times*

A. The Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Contract Times shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.

B. Any adjustment of the Contract Times covered by a Change Order or any Claim for an adjustment in the Contract Times will be determined in accordance with the provisions of this Article 12.

12.03 *Delays*

A. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in Paragraph 12.02.A. Delays beyond the control of Contractor shall include, but not be limited to, acts or neglect by Owner, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires not caused by Contractor or anyone whom Contractor is responsible, floods not caused by Contractor or anyone whom Contractor is responsible, epidemics, abnormal weather conditions not anticipated or customary in Volusia County, or acts of God.

B. If Owner, Engineer, or other contractors or utility owners performing other work for Owner as contemplated by Article 7, 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. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times. Contractor must provide Engineer and Engineer an updated Progress Schedule reflecting how the critical path has been impacted as a condition precedent to being entitled to an adjustment in Contract Time.

C. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions not anticipated or customary in Volusia County, acts of God, acts

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or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Owner and Contractor, then Contractor shall only be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Contractor's ability to complete the Work within the Contract Times. Contractor must provide Engineer and Engineer an updated Progress Schedule reflecting how the critical path has been impacted as a condition precedent to being entitled to an adjustment in Contract Time.

D. Owner, Engineer, and their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall not be liable to Contractor for any claims, costs, losses, or 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) sustained by Contractor on or in connection with any other project or anticipated project.

E. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

13.01 *Notice of Defects*

A. Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor. Defective Work may be rejected, corrected, or accepted as provided in this Article 13.

13.02 *Access to Work*

A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and governmental agencies with jurisdictional interests will 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 therewith as applicable.

13.03 *Tests and Inspections*

A. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

B. Owner shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:

1. for inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below;

2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in Paragraph 13.04.C; and

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3. as otherwise specifically provided in the Contract Documents.

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 and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer.

E. 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.

F. Uncovering Work as provided in Paragraph 13.03.E shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover the same and Engineer has not acted with reasonable promptness in response to such notice.

13.04 *Uncovering Work*

A. If any Work is covered contrary to the written request of Engineer, it must, if requested by Engineer, be uncovered for Engineer's observation and replaced at Contractor's expense.

B. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, 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, furnishing all necessary labor, material, and equipment.

C. If it is found that the uncovered Work is defective, Contractor shall pay 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 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 Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05.

D. 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, or both, 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, Contractor may make a Claim therefor as provided in Paragraph 10.05.

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13.05 *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, 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 shall 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.

13.06 *Correction or Removal of Defective Work*

A. Promptly after receipt of written notice, Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Engineer, remove it from the Project and replace it with Work that is not defective. Contractor shall pay 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 correction or removal (including but not limited to all costs of repair or replacement of work of others).

B. When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

13.07 *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 terms of any applicable special guarantee required by the Contract Documents) or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.11.A is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:

1. repair such defective land or areas; or

2. correct such defective Work; or

3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and

4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.

B. If 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. 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

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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) will be paid by Contractor.

C. 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.

D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 13.07, 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.

E. Contractor's obligations under this Paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 13.07 shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

13.08 *Acceptance of Defective Work*

A. If, instead of requiring correction or removal and replacement of defective Work, Owner (and, prior to Engineer's recommendation of final payment, Engineer) prefers to accept it, Owner may do so. Contractor shall pay 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) 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 pursuant to this sentence. If any such acceptance occurs prior to Engineer's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Owner shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor 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 the defective work (whether as-is, by receiving a credit, or receiving other compensation, losses, or damage from Contractor as discussed above in Paragraph 13.08). 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.

13.09 *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 rejected Work as required by Engineer in accordance with Paragraph 13.06.A, or if Contractor fails to perform the Work in accordance with the

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Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, 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 13.09, 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, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, 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 (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) incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 13.09 will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, Owner may make a Claim therefor as provided in Paragraph 10.05. 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 13.09.

ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 *Schedule of Values*

A. The Schedule of Values established as provided in Paragraph 2.07.A 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 on account of Unit Price Work will be based on the number of units completed.

14.02 *Progress Payments*

A. *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 or which will be completed by the end of the month, accompanied by such supporting documentation as is required by the Contract Documents. 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 shall also be accompanied by a bill of sale, invoice, or other documentation

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warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.

2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor (in a form approved by Owner) certifying that all previous progress payments received on account of the Work have been applied to pay Contractor's Subcontractors and Suppliers and to otherwise discharge Contractor's legitimate obligations associated with prior Applications for Payment.

3. The amount of retainage with respect to progress payments is set forth in Paragraph 6.02.B of the Agreement.

B. *Review of Applications:*

1. Engineer will, within 10 days after receipt of each Application for Payment, indicate in writing a recommendation of payment or nonpayment and present the Application to Owner. If Contractor's Application for Payment is deficient, Owner shall reject the payment request and return it to Contractor within 20 business days after the date on which the payment request is stamped as received indicating in writing the reasons for refusing to recommend payment; 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 9.07, 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 Documents; or

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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, or

   b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or

   c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or

   d. to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, 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 for any responsibility or liability with 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 14.02.B.2. Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Engineer's opinion to protect Owner from loss because:

   a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;

   b. the Contract Price has been reduced by Change Orders;

   c. Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or

   d. Engineer has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.

C. *Payment Becomes Due:*

1. Subject to the provisions of Paragraph 14.02.D and Florida Statute §218.735, Owner shall pay Contractor 25 business days after the date on which the payment request is stamped as received by Engineer.

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D. *Reduction in Payment:*

1. Owner may refuse to make payment of the full amount recommended by Engineer because:

   a. claims have been made against Owner on account of Contractor's performance or furnishing of the Work;

   b. 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;

   c. there are other items entitling Owner to a set-off against the amount recommended; or

   d. Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A.

2. If Owner refuses to make payment of the full amount recommended by Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and promptly pay Contractor any undisputed 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, when Contractor remedies the reasons for such action.

3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 14.02.C.1 and subject to interest as provided in the Agreement.

14.03 *Contractor's Warranty of Title*

A. Contractor warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to Owner no later than the time of payment free and clear of all Liens.

14.04 *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; provided, however, that Substantial Completion shall not occur until the governing building department issues a Certificate of Occupancy (or Certificate of Completion, if applicable) that allows Owner to utilize the entire Project for the purposes for which it is 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.

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C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion subject to the Certificate of Occupancy (or Completion).

D. 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 Punchlist.

14.05 *Partial Utilization*

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. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and 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 14.04.A through D for that part of the Work.

2. Contractor at any time may notify Owner and Engineer in writing that Contractor considers any such part of the Work ready for its intended use and 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 14.04 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 5.10 regarding property insurance.

14.06 *Final Completion- Punchlist*

A. Within 30 days from Contractor achieving Substantial Completion the following must occur: Contractor shall notify Engineer and Owner in writing that the Project is complete in which case Engineer and Owner will promptly make a final inspection (or inspections, if necessary) with Contractor for the purpose of reviewing and developing a detailed Punchlist of items that are incomplete, unsatisfactory or unacceptable, or defective that Contractor is required to complete. However, if the Contract Price is $10 million or more, the foregoing must occur within 60 days from Contractor achieving Substantial Completion.

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B. The Punchlist shall be provided to Contractor by Engineer and/or Owner no later than 5 days after the punchlist of items has been reviewed and developed in accordance with paragraph 14.06.A above. Contractor shall then have 30 days from its receipt of the Punchlist to perform and complete the corrective work identified therein.

C. Final Completion shall be the date that Engineer or Owner determines that Contractor satisfactorily performed and completed the corrective work identified in the Punchlist in addition to any other work required of Contractor under the Contract Documents.

14.07 *Final Payment*

A. *Application for Payment:*

1. After Contractor achieves Final Completion and furnishes all required maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, marked-up or as-built record documents (as provided in Paragraph 6.12), and other documents, Contractor may make application for final payment inclusive of retainage following the procedure for progress payments.

2. The final Application for Payment shall 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. a list of all Claims against Owner that Contractor believes are unsettled; and

d. complete and legally effective final releases or waivers (satisfactory to Owner) of all Lien rights or Liens filed in connection with the Work.

3. In lieu of the final releases or waivers of Liens specified in Paragraph 14.07.A.2.d and as approved by Owner, Contractor may furnish an affidavit of Contractor whereby Contractor swears that: (i) all payrolls, 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 (ii) 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.

4. The documents and materials that Contractor is required to submit to accompany its Final Application for Payment (as set forth in this Paragraph 14.07) are conditions precedent to final payment.

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B. *Engineer's Review of Application and Acceptance:*

1. 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 Documents have been fulfilled, Engineer will, within 10 days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of payment and present the Application for Payment to Owner for payment. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable subject to the provisions of Paragraph 14.09 below. 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. *Payment Becomes Due:*

1. Twenty-five (25) business days after the date on which the Application for Payment is stamped as received by Engineer, the amount recommended by Engineer, less any sum Owner is entitled to set off against Engineer's recommendation, including but not limited to liquidated damages, will become due and will be paid by Owner to Contractor.

14.08 *Final Completion Delayed*

A. If, through no fault of Contractor, final completion of the Work is significantly delayed, and if Engineer so confirms, Owner shall, upon receipt of Contractor's final Application for Payment (for Work fully completed and accepted) and recommendation of Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by Owner for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if bonds have been furnished as required in Paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Engineer with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

14.09 *Waiver of Claims*

A. The making and acceptance of final payment will constitute:

1. a waiver of all Claims by Owner against Contractor, except Claims arising from unsettled Liens, from defective Work, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Contractor's continuing obligations under the Contract Documents; and

2. a waiver of all Claims by Contractor against Owner other than those previously made in accordance with the requirements herein and expressly acknowledged by Owner in writing as still unsettled.

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ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

15.01 *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 notice in writing to Contractor and Engineer which will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be granted an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Contractor makes a Claim therefor as provided in Paragraph 10.05.

15.02 *Owner May Terminate for Cause*

A. The occurrence of any one or more of the following events will 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 established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04);

2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;

3. Contractor's repeated disregard of the authority of Engineer;

4. Contractor's violation in any substantial way of any provisions of the Contract Documents;

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 15.02.A occur, Owner may, after giving Contractor (and surety) 5 days written notice of its intent to terminate the services of Contractor:

1. exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion);

2. 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

3. complete the Work as Owner may deem expedient.

C. If Owner proceeds as provided in Paragraph 15.02.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 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) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed such

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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.

D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor's services will not be terminated if Contractor begins within 5 days of the notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.

E. 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. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.

F. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 5.01.A, the termination procedures of that bond shall supersede the provisions of Paragraphs 15.02.B and 15.02.C.

15.03 *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;

3. *N/A*; and

4. reasonable expenses directly attributable to termination such as demobilization expenses. Attorneys' fees, accountant fees, and home office overhead expenses shall not be deemed reasonable expenses.

B. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

15.04 *Contractor May Stop Work or Terminate*

A. If, through no act or fault of Contractor, (i) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority or (ii) Contractor complies with all conditions precedent to payment and Owner fails for 60 days to pay Contractor the sum Owner undisputedly determined to be due to Contractor, then Contractor may, upon 7 days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such

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suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Paragraph 15.03. Contractor, however, cannot terminate the Contractdue 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 Contractor complies with all conditions precedent to payment and Owner has failed for 60 days to pay Contractor any sum Owner undisputedly determined to be due to Contractor, 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 15.04 are not intended to preclude Contractor from making a Claim under Paragraph 10.05 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. Contract, 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 16 – DISPUTE RESOLUTION

16.01 *Methods and Procedures*

A. Mediation shall be a condition precedent to any dispute between Owner and Contractor relating to the Contract; provided, however, that Owner, in its sole discretion, can waive mediation as a condition precedent to pursue a claim / litigation against Contractor or defend a claim / litigation from Contractor. The party initiating mediation must submit written request to the other party of its desire to mediate and provide the names of suggested mediators. The parties shall work together to mutually agree on a mediator within 30 days from the written request. The parties shall mediate the dispute within 60 days from the written request unless a different date is agreed upon due to the availability of the mediator, the availability of the parties and their counsel, or upon the mutual agreement of the parties. If the parties are unable to agree on a mediator (and the Owner has not elected to waive mediation), the parties, subject to Paragraph 16.01.C below, agree to allow the court to unilaterally select the mediator and any litigation will be stayed pending the outcome of such mediation.

B. *N/A.*

1. *N/A.*

C. Any litigation arising out of or relating to the Contract shall be brought in the exclusive venue of Volusia County, Florida. The prevailing party shall be entitled to all attorneys' fees and court costs at the trial and appellate level. **CONTRACTOR VOLUNTARILY AND KNOWINGLY WAIVES IT RIGHT TO A TRIAL BY JURY**.

ARTICLE 17 – MISCELLANEOUS

17.01 *Giving Notice*

A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:

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1. delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended; or

2. delivered at or sent by registered or certified mail, postage prepaid, or an overnight carrier (such as UPS or FedEx) to the last business address known to the giver of the notice.

17.02 *Computation of Times*

A. When any period of time is referred to in the Contract Documents 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.

17.03 *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 Documents. 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.

17.04 *Survival of Obligations*

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

17.05 *Controlling Law*

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

17.06 *Headings*

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

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EJCDC - Supplemental Conditions

Consisting of 7 Pages

SUPPLEMENTARY CONDITIONS

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These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract, EJCDC C-700 (2007 Edition). All provisions which are not so amended or supplemented remain in full force and effect.

The terms used in these Supplementary Conditions have the meanings stated in the General Conditions. Additional terms used in these Supplementary Conditions have the meanings stated below, which are applicable to both the singular and plural thereof.

The address system used in these Supplementary Conditions is the same as the address system used in the General Conditions, with the prefix "SC" added thereto.

SC-4.02 *Subsurface and Physical Conditions*

SC-4.02 Delete Paragraphs 4.02.A and 4.02.B in their entirety and insert the following:

A. No reports of explorations or tests of subsurface conditions at or contiguous to the Site, or drawings of physical conditions relating to existing surface or subsurface structures at the Site, are known to Owner.

SC-4.06 *Hazardous Environmental Conditions*

SC-4.06 Delete Paragraphs 4.06.A and 4.06.B in their entirety and insert the following:

A. No reports or drawings related to Hazardous Environmental Conditions at the Site are known to Owner.

B. Not Used.

SC-5.04 *Contractor's Liability Insurance*

SC-5.04 Add the following new paragraph immediately after Paragraph 5.04.B:

C. The limits of liability for the insurance required by Paragraph 5.04 of the General Conditions shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations:

1. Workers' Compensation, and related coverages under Paragraphs 5.04.A.1 and A.2 of the General Conditions:

a. State:	**Statutory**
b. Applicable Federal (e.g., Longshoreman's):	**Statutory**
c. Employer's Liability:	**$1,000,000.00**

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2. Contractor's General Liability under Paragraphs 5.04.A.3 through A.6 of the General Conditions which shall include completed operations and product liability coverages and eliminate the exclusion with respect to property under the care, custody and control of Contractor:

a. General Aggregate	**$1,000,000.00**
b. Products - Completed Operations Aggregate	**N/A**
c. Personal and Advertising Injury	**$1,000.000.00**
d. Each Occurrence (Bodily Injury and Property Damage)	**$1,000,000.00**

e. Property Damage liability insurance will provide Explosion, Collapse, and Under-ground coverages where applicable.

f. Excess or Umbrella Liability

☒ General Aggregate	**$1,000,000.00**
☒ Each Occurrence	**$500,000.00**

3. Automobile Liability under Paragraph 5.04.A.6 of the General Conditions:

SC-5.06 *Property Insurance*

SC-5.06.A. Delete Paragraph 5.06.A in its entirety and insert the following in its place:

A. Contractor shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof. Contractor shall be responsible for any deductible or self-insured retention. This insurance shall:

1. include the interests of Owner, Contractor, Subcontractors, Engineer, and the officers, directors, partners, employees, agents and other consultants and subcontractors of any of them, each of whom is deemed to have an insurable interest and shall be listed as an insured or loss payee;

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2. **be written on a Builder's Risk "all-risk" policy form that shall at least include insurance for physical loss and damage to the Work, temporary buildings, falsework, and materials and equipment in transit and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage (other than that caused by flood), and such other perils or causes of loss as may be specifically required by these Supplementary Conditions.**

3. **include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);**

4. **cover materials and equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by Engineer;**

5. **allow for partial utilization of the Work by Owner;**

6. **include testing and startup;**

7. **be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor, and Engineer with 30 days written notice to each other loss payee to whom a certificate of insurance has been issued; and**

8. **comply with the requirements of Paragraph 5.06.C of the General Conditions.**

-SC-6.06 *Concerning Subcontractors, Suppliers, and Others*

SC-6.06 Add a new paragraph immediately after Paragraph 6.06.G:

H. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor on account of Work performed for Contractor by a particular Subcontractor or Supplier.

SC-12.01 *Change of Contract Price*

SC-12.01.C *Contractor's Fee.* Delete the semicolon at the end of GC 12.01.C.2.c, and add the following language:

, provided, however, that on any subcontracted work the total maximum fee to be paid by Owner under this subparagraph shall be

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no greater than 27 percent of the costs incurred by the Subcontractor who actually performs the work;

SC-17-07 *Public Records Compliance*

SC-17-07 Add the following new paragraph immediately after Paragraph 17.06:

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

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

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

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

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

If Contractor does not comply with a public records request, the City shall deem the non-compliance a breach of this Contract, and the Contractor may be subject to penalties under Section 119.10, Florida Statutes.

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

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SC-17-08 *Examination of Records*

SC-17-08 Add the following new paragraph immediately after Paragraph 17.07:

A. *Examination of Records*.

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

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

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

SC-17-09 *Sovereign Immunity*

SC-17-09 Add the following new paragraph immediately after Paragraph 17.08:

A. *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

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City which would otherwise be barred under the Doctrine of Sovereign Immunity or operation of law.

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EJCDC
Bid Specifications - ITB 24-11

Not attached, on file with Junos Reed, P.E., City Engineering and Construction Manager

Consisting of 264 Pages

EJCDC
BID Set Documents - ITB 24-11

Not attached, on file with Junos Reed, P.E., City Engineering and Construction Manager

Consisting of 36 Pages

EJCDC
ITB 24-11
Bailey Engineering Consultants, Inc.
Memorandum Amending Specifications and Drawings
Dated June 18, 2024

Consisting of 2 Pages

MEMORANDUM

BAILEY ENGINEERING CONSULTANTS, INC.
10620 Griffin Road, SUITE 202
Cooper City, FL 33328
TEL (954) 448-7930
FAX (954) 713-9959

To: Kimley-Horn & Associates, Inc.

From: Bailey Engineering Consultants, Inc.

Date: June 18, 2024

Project: Lift Station at Christiancy Avenue

Subject: Electrical Changes

The Contract Documents, Specifications and Drawings are hereby amended as follows:

A. **CHANGES TO SPECIFICATIONS:**

1. **Insert** the following into spec section 16120:

"**2.6 Variable Frequency Drive (VFD) Output Power Cable**

A. Section applies to power cables routed between the output of VFD's and motor terminals.

B. Cable shall be rated for 2000 volts and shall meet the requirements below:

1. Conductors shall be stranded Class B bare copper.
2. All wire shall be brought to the job in unbroken packages and shall bear the data of manufacturing; not older than 12 months.
3. Type of wire shall be XLPE RHH/RHW-2 rated 90 degrees C suitable for wet locations.
4. Provide overall 5 millimeter metallic shield (copper tape shield) overlapped 50%.
5. No wire smaller than No. 12 gauge shall be used unless specifically indicated.
6. Cable construction shall consist of three insulated current-carrying phase conductors and three bare ground conductors, symmetrically placed between the phase conductors, and twisted beneath a continuous overall PVC polymeric jacket.

C. Each ground conductor size (circular mil area) shall be one-third (1/3) of the NEC required size (circular mil area) for a single ground conductor. If one third of the required circular mil area does not correspond to a standard size (circular mil area) of construction, the next largest size of standard construction shall be used. All conductors shall be megger tested after installation and insulation must be in compliance with the Insulated Power Cable Engineers Association Minimum Values of Insulation Resistance.

D. Manufacturers:

1. Belden

2. Flex
3. Lutze”

B. **CHANGES TO DRAWINGS:**

1. **Delete** the following drawings in their entirety:
   E1 through E18

2. **Insert** the following revised drawings in their place:
   E1 through E18

END OF SECTION

EJCDC

Addendum No. 1 dated June 14, 2024 for ITB 24-11

Consisting of 1 Page

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

ADDENDUM # 1
June 14, 2024

ITB #24-11 CHRISTIANCY LIFT STATION (LS11) REHABILITATION

To All Bidders:
The following changes, clarifications and additions are hereby made part of the bidding and specifications for the above referenced project dated May 24, 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.

The due date for Bid Submittals is hereby changed to June 28, 2024, at 2:30 PM (EST).

The final addendum will be posted on or about June 18, 2024 and will include all other questions asked to date.

A. REVISIONS:
None

B. CHANGES TO THE ITB:
None

C. CLARIFICATIONS:
None

D. QUESTIONS AND ANSWERS

Question #1: Are there liquidated damages and what is the amount?
ANSWER: There are no liquidated damages on this project.

Question #2: What is the Engineer's Estimate/Budget?
ANSWER: Engineers Opinion of Probable Construction Costs is $1,063,000.

Question #3: What is the Substantial & Final Completion time?
ANSWER: 330 Days for Final Completion.

In all other respects, except as specifically stated herein, the subject ITB #24-11 CHRISTIANCY LIFT STATION (LS11) REHABILITATION remains the same.

END OF ADDENDUM #1

Joseph Castro
Buyer
jcastro@port-orange.org

EJCDC

Addendum No. 2 dated June 20, 2024 for ITB 24-11

Consisting of 4 Pages

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

ADDENDUM # 2
June 20, 2024

ITB #24-11 CHRISTIANCY LIFT STATION (LS11) REHABILITATION

To All Bidders:

The following changes, clarifications and additions are hereby made part of the bidding and specifications for the above referenced project dated May 24, 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:

1. **Pg. 01025 – 3 & pg. 01025 – 4: 1.16 6-IN HDPE FORCE MAIN - BYPASS PIPING** currently reads:

B. Payment for materials and installation of the 6-inch HDPE force main including restrained joints, fittings, camlocks, materials, equipment, and labor necessary to complete the installation will be made at the linear foot price named in the Bid Schedule under Item No. 14, which price shall constitute full compensation for all such work performed in accordance with the requirements of these Contract Documents.

Pg. 01025 – 3, pg. 01025 – 4: 1.16 8-IN HDPE FORCE MAIN - BYPASS PIPING is hereby changed to read:

B. Payment for materials and installation of the 8-inch HDPE force main including restrained joints, fittings, camlocks, materials, equipment, and labor necessary to complete the installation will be made at the linear foot price named in the Bid Schedule under Item No. 14, which price shall constitute full compensation for all such work performed in accordance with the requirements of these Contract Documents.

2. **Pg.01025 – 4: 1.18 6-IN PLUG VALVE** currently reads:

B. Payment for materials and installation of the 6-inch plug valve including materials, equipment, and labor necessary to complete the installation will be made at the unit price named in the Bid Schedule under Item No. 16, which price shall constitute full compensation for all such work performed in accordance with the requirements of these Contract Documents.

PG. 1.18 01025 – 4: 8-IN PLUG VALVE is hereby changed to read:

B. Payment for materials and installation of the 8-inch plug valve including materials, equipment, and labor necessary to complete the installation will be made at the unit price named in the Bid Schedule under Item No. 16, which price shall constitute full compensation for all such work performed in accordance with the requirements of these Contract Documents.

3. Pg. 15905-5, Item 2.06 currently reads:

2.06 PUMP DATA TABLE

Service	Raw Sewage
Number of Pumps Required	2
Motor Rating	28.2 HP, 3/230v
Maximum Nominal Speed	1800 RPM
Minimum Motor Efficiency at Full Load	93.5%
Minimum Shutoff Head	122 Feet
Flow Rate at Primary Duty Point	1025 GPM
TDH at Primary Duty Point	56.5 Feet
Min Hydraulic Efficiency at Primary Duty Point	72%
Flow Rate at Secondary Duty Point	390 GPM
TDH at Secondary Duty Point	50.8 Feet
Min Hydraulic Efficiency at Secondary Duty Point	58%
Flow Rate at Runout Condition	885 GPM
TDH at Runout Condition	12.2 Feet
Maximum NPSHR at Runout Condition	22 Feet
Minimum Pump Discharge Size	6 inches ANSI

Pg. 15905-5, Item 2.06 is hereby changed to read:

2.06 PUMP DATA TABLE

Service	Raw Sewage
Number of Pumps Required	2
Motor Rating	28.2 HP, 3/230v
Maximum Nominal Speed	1800 RPM
Minimum Motor Efficiency at Full Load	93.5%
Minimum Shutoff Head	109 Feet
Flow Rate at Primary Duty Point	1025 GPM
TDH at Primary Duty Point	56.5 Feet
Min Hydraulic Efficiency at Primary Duty Point	67%
Flow Rate at Secondary Duty Point	390 GPM
TDH at Secondary Duty Point	50.8 Feet
Min Hydraulic Efficiency at Secondary Duty Point	58%
Flow Rate at Runout Condition	1500 GPM
TDH at Runout Condition	21 Feet
Maximum NPSHR at Runout Condition	25 Feet
Minimum Pump Discharge Size	6 inches ANSI

4. CHANGES TO ELECTRICAL SHEET E1 THROUGH E18:

Original Sheet Number E1 through E18 are hereby removed from the ITB. Bidders must use

REVISED SHEET Number E1 through E18 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.This change is also referenced on the Memorandum which is also posted as a separate document on DemandStar and the City Web page.

5. **2.6 Variable Frequency Drive (VFD) Output Power Cable** is hereby added to pg.16120- 2 of the ITB as referenced in the document titled **"Memorandum"** that 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.

C. CLARIFICATIONS:

None

D. QUESTIONS AND ANSWERS

Question #1: Will the City approve additional System Suppliers that meet the qualifications listed in Section 13300: Process Instrumentation and Control System - General Requirements? If yes, can General Control Systems be added to the approved System Supplier list? GCS meets all the qualifications listed in Section 13300.

ANSWER: General Control Systems is added to the approved System Supplier list.

Question #2: Sheet M-1 calls for a 258mm impeller to be provided. Please note that a smaller impeller can be used to satisfy the specified duty point of 1025 GPM at 56.5' TDH. Can you please clarify what is to be supplied?

ANSWER: The 258mm impeller is hereby removed from Sheet M-1. A 250 mm impeller, model number XFP150G-CB1.6-PE210_4 is hereby added to Sheet M-1.

Question #3: The runout criteria (flow, TDH, NPSHR) specified in section 15905, paragraph 2.6, are not consistent with the pump curve specified. Please verify/confirm.

ANSWER: Please refer to **Changes To the ITB**, **Number 3** of this addendum.

Question#4: Sheet M-1 depicts a VEGA radar level transmitter as well as a Blue Ribbon transmitter. I believe only one of these would be required, not both, and I believe the city is current using the VEGA unit. Please confirm.

ANSWER: The Blue Ribbon transmitter is hereby removed from Sheet Number M-1. The VEGA radar level transmitter remains on Sheet Number M-1.

Question #5 and #6: The bid form Item #14 calls out 6" HDPE Force Main Bypass but the drawings C1 and C4 show 8" HDPE Force Main Bypass? Bid form Item #16 is 6" Plug Valve, but the drawing C4 calls out for 8" Plug Valve?

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

1) Item #14: 6 -In HDPE Force Main is now changed to 8-In HDPE Force Main Drawing.
2) Item #16: 6" Plug Valve is now changed to 8" Plug Valve.

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 #7: What size line is the gravity line going into lift station?

ANSWER: The size of the existing influent line going into the lift station is 8"PVC.

Question #8: Bid Item 12 calls for Submersible Sulzer Pumps, per section 15905 2.02A calls for 3" solids size. On drawing M1 it calls for ABS manufacturer with a min solid size of 4". Which do we bid?
ANSWER: The pump is to be per Specification Section 15905 with a minimum solids passage size of 3 inches.

Question #9: Bid Item 21 calls for Bypass operations. What is the connection to existing details, flow rates for sizing, is there redundancy, will auto dialers be required and is there a preferred area to put the pumps since site is small?
ANSWER: The Bypass pumping shall connect to the existing force main at the existing 8" plug valve just down stream of the force main being removed between the wet well and plug valve. The location of this valve is shown on sheets C2 and C4 of the drawings. The flow rates for sizing the bypass pumps shall be the flow rates listed on Sheet M1 note 10. 1,025 GPM at 56.5 feet TDH for peak flow and 390 GPM at 50.8 feet TDH for average flow. It will be the contractors responsibility to maintain the bypass pumping operation at all times during construction 24 hours a day 7 days a week. Therefore redundant pumps with auto dialers shall be required. The city will coordinate with the contractor for placement of the bypass operations.

In all other respects, except as specifically stated herein, the subject ITB #24-11 CHRISTIANCY LIFT STATION (LS11) REHABILITATION remains the same.

END OF ADDENDUM #2

Joseph Castro
Buyer
jcastro@port-orange.org

EJCDC

Addendum No. 3 dated June 26, 2024 for ITB 24-11

Consisting of 1 Page

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

ADDENDUM # 3
June 26, 2024

ITB #24-11 CHRISTIANCY LIFT STATION (LS11) REHABILITATION

To All Bidders:
The following changes, clarifications and additions are hereby made part of the bidding and specifications for the above referenced project dated May 24, 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.

The due date for Bid Submittals is hereby changed to July 5, 2024, at 2:30 PM (EST).

A. REVISIONS:
None

B. CHANGES TO THE ITB:
None

C. CLARIFICATIONS:
None

D. QUESTIONS AND ANSWERS
None

In all other respects, except as specifically stated herein, the subject ITB #24-11 CHRISTIANCY LIFT STATION (LS11) REHABILITATION remains the same.

END OF ADDENDUM #3

Joseph Castro
Buyer
jcastro@port-orange.org

EXHIBIT "1"

ITB 24-11 Contractor's BID Schedule of Unit Prices

Consisting of 1 Page

REVISED (ATTACHMENT 1) SCHEDULE OF UNIT PRICING

ITB #24-11

CHRISTIANCY LIFT STATION (LS11) REHABILITATION

Name of Business:	Danus Utilities, Inc.
Contact Person:	Dan Pardus
Email Address:	danus2@cfl.rr.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.

ITEM #	DESCRIPTION	UNIT OF MEASURE	ESTIMATED QUANTITY	UNIT PRICE	EXTENDED PRICE
1	Mobilization/Demobilization	LS	1	$100,000.00	$100,000.00
2	Insurance, Performance and Payment Bond	LS	1	$29,000.00	$29,000.00
3	Preconstruction Video	LS	1	$2,000.00	$2,000.00
4	Construction Restoration - (site cleanup, seed and mulch)	LS	1	$9,000.00	$9,000.00
5	Site Work Demolition - 3 suction lift pumps - Well top and internal piping - 30 LF of lift Station discharge piping to existing plug valve - Sandblast concrete lift station interior - Generator slab and generator, and surrounding wall - Roof, windows, and interior wall of electical and odor control room - Electrical, odor control unit and associated conduit/piping	LS	1	$75,000.00	$75,000.00
6	Site Work (erosion control)	LS	1	$3,500.00	$3,500.00
7	Construction Testing (Pressure, Density Testing, etc.)	LS	1	$5,500.00	$5,500.00
8	Survey Layout & Record Drawings	LS	1	$12,000.00	$12,000.00
9	Concrete Restoration - (concrete driveway)	CY	90	$300.00	$27,000.00
10	Concrete Pads	CY	8	$400.00	$3,200.00
11	Lift Station Improvements (8-ft Diameter) - Liner - Replace top and hatch - Replace interior suction and discharge piping, rails, etc. - Reduce concrete fillet at bottom of well	LS	1	$149,000.00	$149,000.00
12	Submersible Sulzer Pump (Including base elbows, anchor bolts, guide rail systems, access hatch, and startup)	EA	2	$42,000.00	$84,000.00
13	8-in Above Ground Valve Assembly (Piping, Fittings, Valves, etc.)	LS	1	$85,000.00	$85,000.00
14	8-in HDPE Force Main - Bypass Piping (Including Fittings, Restraints, Adapters, Camlocks, etc.)	LF	120	$310.00	$37,200.00
15	8-in PVC Force Main (Including Fittings, Restraints, Adapters, etc.)	LF	90	$225.00	$20,250.00
16	8" Plug Valve	EA	1	$2,500.00	$2,500.00
17	Diesel Bypass Pump (includes 4" Vacuum Assisted Centrifugal Pump, Sound Attenuated Canopy, 2- 10 m Floats, and Control Panel)	EA	1	$150,000.00	$150,000.00
18	Connection to Existing 8" Force Main Plug Valve	EA	1	$6,500.00	$6,500.00
19	6-ft Vinyl Fence	LF	150	$100.00	$15,000.00
20	CMU Wall (8-ft height)	LF	40	$750.00	$30,000.00
21	Bypass Operations	LS	1	$60,000.00	$60,000.00
22	Electrical I&C	LS	1	$175,000.00	$175,000.00
				TOTAL PRICE	$1,080,650.00

LEGEND:

LS - Lump Sum
EA - Each
LF - Linear Feet
CY - Cubic Yards

EJCDC

EXHIBIT

Affidavit Regarding Workers' Compensation

and

Leased Employee Affidavit

Consisting of 2 Pages

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 # ITB #24-11

☑ **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: Danus Utilities, Inc.

Signature of Owner/Officer: _____

Title: President Date: 7/17/24

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 Seminole

I, Daniel J Pardus, 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 National Builders Insurance Company Company, under the terms of Policy Number WCV 0264441 08 for a period from July 2, 2024 to July 2, 2025.

WITNESS:

By: _____

Name: Preston Pardus

CONTRACTOR:

Company: Danus Utilities, Inc.

By: _____

Name/Title: Daniel J Pardus - President

Sworn to/Affirmed and subscribed before me this 17 day of July, 2024, by Daniel J Pardus, who is personally known to me or who produced PK as identification.

_____

NOTARY PUBLIC – STATE OF FLORIDA

Type or Print Name: Robert H Brown

Commission No.: HH 145052

Commission Expires: October 23, 2025

(Seal)

ROBERT H. BROWN
MY COMMISSION EXPIRES
OCTOBER 23, 2025
#HH 145052
Bonded thru
Notary Public Underwriters
NOTARY PUBLIC, STATE OF FLORIDA

EJCDC

EXHIBIT "2"

Contractor's Submittal

Consisting of 44 Pages

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 F.S. 287.138

✓ Form 7.15 – No Submittal Response Form N\A

✓ 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: Danus Utilities, Inc.
Name of Business

Authorized Signature

7/5/2024
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):

_____

_____

Danus Utilities, Inc.	2320 Beardall Ave
Name of Business	Mailing Address
	Sanford, FL 32771
Authorized Signature	City, State & Zip Code
Daniel J Pardus	407-878-1254
Printed Name and Title	Telephone Number
27-0404772	danus2@cfl.rr.com
Federal Identification No.	E-mail Address

STATE OF: FLORIDA COUNTY OF: SEMINOLE

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

5 day of July, 2024, by Daniel J Pardus and who:

☑Is personally known to me; or ☐ has produced PK as identification.

_____ Notary Public, State of Florida

Printed, typed or stamped name, commission and expiration: Robert H Brown - 10/23/2025

ROBERT H. BROWN
MY COMMISSION EXPIRES
OCTOBER 23, 2025
#HH 145052
Bonded thru Notary Public Underwriters
NOTARY PUBLIC, STATE OF FLORIDA

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# 1 Date: 6/14/2024 Addendum# 2 Date: 6/20/2024

Addendum# 3 Date: 6/26/2024 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:

Danus Utilities, Inc.
Name of Business

Authorized Signature

Daniel J Pardus
Printed Name and Title

STATE OF: FLORIDA COUNTY OF: SEMINOLE

The foregoing instrument was acknowledged before me by means of ☑physical presence or ☐online notarization, this 5 day of July, 2024, by Daniel J Pardus and who:

☑is personally known to me; or ☐ has produced PK as identification.

Notary Public, State of Florida

Printed, typed or stamped name, commission and expiration: Robert H Brown - 10/23/2025

ROBERT H. BROWN
MY COMMISSION EXPIRES OCTOBER 23, 2025
#HH 145052
Bonded thru Notary Public Underwriters
NOTARY PUBLIC, STATE OF FLORIDA

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.

Danus Utilities, Inc.
Name of Business

Authorized Signature

Daniel J Pardus
Printed Name and Title

STATE OF: FLORIDA COUNTY OF: SEMINOLE

The foregoing instrument was acknowledged before me by means of ☑physical presence or ☐online notarization, this 5 day of July, 2024, by Daniel J Pardus and who:

☑Is personally known to me; or ☐ has produced PK as identification.

Notary Public, State of Florida

Printed, typed or stamped name, commission and expiration: Robert H Brown - 10/23/2025

ROBERT H. BROWN MY COMMISSION EXPIRES OCTOBER 23, 2025 HH 145052 Bonded thru Notary Public Underwriters NOTARY PUBLIC, STATE OF FLORIDA

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 Daniel J Pardus, who, being by me first duly sworn, made the following statement:

1. The business address of Danus Utilities, Inc. (name of Offeror or business) is 2320 Beardall Ave, Sanford, FL 32771.
2. My relationship to Danus Utilities, 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)**

Danus Utilities, Inc.
Name of Business

Authorized Signature

Daniel J Pardus
Printed Name and Title

STATE OF: FLORIDA

COUNTY OF: SEMINOLE

The foregoing instrument was acknowledged before me by means of ☑physical presence or ☐online notarization, this 5 day of July, 2024, by Daniel J Pardus and who:

☑Is personally known to me; or ☐ has produced PK as identification.

_____ Notary Public, State of _____

Printed, typed or stamped name, commission and expiration: Robert H Brown - 10/23/2025

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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: Danus Utilities, Inc.

SIGNED BY: _____

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

PRINTED SIGNATURE: Daniel J Pardus

TITLE: President

ADDRESS: 2320 Beardall Ave

CITY, STATE AND ZIP CODE: Sanford, FL 32771

TELEPHONE: 407-878-1254 FAX: 407-878-1254

F.E.I.N.: 27-0404772

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: Danus Utilities, Inc.

B. Permanent main office address: 2320 Beardall Ave, Sanford, FL 32771

C. Date organized: August 2009

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? 15 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** See Attachment 1 - Open Contracts

G. General character of work performed by your company: Certified Underground Utilities and Excavation Contractor

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** See Atachment 2

K. List your major equipment currently owned or leased: **USE SEPARATE SHEET & ATTACH TO SUBMITTAL** See Attachment 3 - Equipment List

L. Background and experience of the principal members of your organization, including the officers: USE **SEPARATE SHEET & ATTACH TO SUBMITTAL** See Attachment 4 - Resumes

M. Credit currently available: $ 500,000.00

N. Give bank name, contact name and phone number: Seacoast Bank - Bill Zirkelbach - 386-274-6020

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 compromising the Statement of Bidder's Qualifications.

Danus Utilities, Inc.
Name of Business

Authorized Signature

Daniel J Pardus - President
Printed Name and Title

STATE OF: FLORIDA

COUNTY OF: SEMINOLE

The foregoing instrument was acknowledged before me by means of ☑physical presence or ☐online notarization, this 5 day of July, 2024, by Daniel J Pardus - President and who:

☑Is personally known to me; or ☐ has produced PK as identification.

Notary Public, State of

Printed, typed or stamped name, commission and expiration: Robert H Brown - 10/23/2025

ROBERT H. BROWN
MY COMMISSION EXPIRES
OCTOBER 23, 2025
#HH 145052
Bonded thru Notary Public Underwriters
NOTARY PUBLIC, STATE OF FLORIDA

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DANUS UTILITIES
2320 Beardall Ave, Sanford, FL 32771 • P.O. BOX 291671, Port Orange, FL 32129 • (386) 233-5588
State License # CUC 1224744

OPEN CONTRACTS				
	EST. COMPLETION	CONTRACT NAME	OWNER INFORMATION	VALUE
	October 2024	Temple Terrace Tree - Tupelo Lift Station	City of Temple Terrace	$ 1,197,658.00
	July 2024	Holly Hill Lift Station 19	City of Holly Hill	$ 468,768.00
	July 2024	Holly Hill Lift Station 20	City of Holly Hill	$ 355,780.00
	October 2024	Brevard County Lift Station M-16	Brevard County	$ 2,668,550.00
	August 2024	Brevard County Lift Station S-26	Brevard County	$ 946,000.00
				$ 5,636,756.00

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JOB REFERENCES

START DATE	COMPLETE DATE	DESCRIPTION	OWNER INFORMATION AND CONTACTS	VALUE
1/2023	11/2023	**City of Titusville: Causeway Lift Station Improvements** The scope of work consists of demolition, new installations, new sewer manholes, new force main connection to existing, new gravity sewer, misc. electrical instrumentation, piping valves and fittings, electrical service, level monitoring and control system, installation of a City provided radio telemetry unit (RTU) and all other necessary sitework, testing, and incidentals for satisfactory project completion and satisfactory operational system.	**City of Titusville** 2836 Garden St. Titusville, FL 32796 Kevin Meulman kevin.meulman@titusville.com 321-288-6778	$775,825.00
12/2021	6/2023	**City of Temple Terrace: Tree Tops Lift Station** This project consisted of the Rehabilitation of the existing Tree Tops lift station and the replacement of approximately 2,800 LF of force main. The force main will be rerouted into the SWFWMD easement adjacent to the Tree Tops lift station site. The lift station rehabilitation includes replacing all pumps, wet well piping, fittings, valves, concrete top slab, and lining the existing wet well. Tree Tops Lift Station is located at 8124 Tom Sawyer Drive, Temple Terrace, FL 33637	**City of Temple Terrace** 11250 N.56th Street Temple Terrace, FL 33617 Engineer: Kimley - Horn mike.semago@kimley-horn.com 727-498-3633	$760,925.00
5/2021	5/2022	**City of Daytona Beach: Lift Station 97** The work generally consists of furnishing all coordination, labor, materials and construction services to complete the project work as noted in the Drawings. The primary work includes construction. This project involves the rehabilitation of the City's Lift Station #97 by conversion of a top mounted style to submersible pumps. Work includes removal of existing hardware and installation of new pumps, rails, pipes, controls, backup diesel pump, wet well and manhole lining, new valve vault, fencing and electrical equipment	**City of Daytona Beach** 301 S. Ridgewood Avenue Daytona Beach, FL 32114 Jeff Lane lanejeff@codb.us 321-288-6778	$686,630.00
12/2021	4/2022	**City of Palm Bay: Lift Station 21** Work consisted of by-passing the location, prep, and cleaning wet-well. Equipment removal with demolition of old top slab. Installed discharge piping and valve assembly along with new top slab and hatch. Coated wet-well as well.	**City of Palm Bay** 120 Malabar Road, Suite 200 Palm Bay, FL 32907 Glen Beckett glen.beckett@palmbayflorida.org 321-288-6778	$99,000.00
3/2021	11/2021	**City of Temple Terrace: Lift Station SA** This project included the rehabilitation of Lift Station SA with the installation of a new wet well (precast well and top slab), 3 new submersible pumps, all piping (12" and 24") associated with the lift station (header piping, valve vault piping and appurtenances). The inside of the receiving gravity manhole is to be rehabilitated/re-coated. Demo of previous lift station building as well as restoration of the lot	**City of Temple Terrace** 11250 N.56th Street Temple Terrace, FL 33617 Engineer: *Kimley - Horn* mike.semago@kimley-horn.com 727-498-3633	$1,979,790.80
12/2020	7/2021	**City of Daytona Beach: Clyde Morris Manhole Rehabs** Project consisted of the rehabilitation of 29 manholes. They were lined using Urathane or epoxy coating. Some were located in the pavement and had ring and cover replacement. Bench and invert work was done where it had been lacking.	**City of Daytona Beach** 301 S. Ridgewood Avenue Daytona Beach, FL 32114 Jeff Lane lanejeff@codb.us 321-288-6778	$231,682.50

DANUS UTILITIES

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JOB REFERENCES

START DATE	COMPLETE DATE	DESCRIPTION	OWNER INFORMATION AND CONTACTS	VALUE
10/2020	4/2021	**St. Johns County: Multiple Lift Station Upgrades** Rehabilitation of Mayo Clinic (PS 114), Corpus Christi (PS 115), and I-95 Rest Area (Mile Marker 302) North Bound (PS 118) Lift Station Upgrades project required the contractor to furnish all labor, materials, equipment, and incidentals necessary for improvements to the titled lift stations located in Saint Augustine, FL. Work included bypass pumping, demolition, relining existing wet wells and influent manholes, new wet well tops and hatches, new submersible pumps, new force main piping, valves, and appurtenances and connection to existing force main, electrical and instrumentation, coordination with FPL, fencing, site work, and permitting per all applicable St. Johns County Utility Department (SJCUD) standards and as provided in the Contract documents.	**St. Johns County** 500 San Sebastian View St. Augustine, FL 32084 Teri Pinaon, P.E. 904-209-2604	$1,004,847.00
9/2020	5/2021	**City of Casselbery: Seminola Master Lift Station** Consists of the rehabilitation and replacement of equipment, materials, and/or structures at the Seminola Master Lift Station, including installation of a new concrete wet well; rehabilitation of the existing wet well to an influent manhole; installation of new submersible pumps, piping and fittings, control panel, electrical wiring, concrete and asphalt driveway, and emergency generator and fuel tank; and restoration of the site.	**City of Casselberry** 95 Triplet Lake Drive Casselberry, FL 32707 Engineer: *CHA Engineering* sceriana@chacompanies.com 407-679-5358	$1,203,442.65
5/2020	12/2020	**Brevard County: T-09 Lift Station Rehabilitation** Work consisted of by-passing the location, prep and installation of wet well fiberglass liner, install of 12" wet well top slab and hatch, install of 6" gate valve, force main discharge piping and valves, install of 40' ROHN Tower, antenna, conduit, and wiring.	**Brevard County** 2725 Judge Fran Jamieson Way Viera, FL 32940 robert.edmiston@brevardfl.gov 321-617-7391	$155,500.00
2/2020	6/2020	**City of West Melbourne: Multiple Lift Station Rehabilitation** Installation and wiring of city supplied control panels. Installation of fiberglass liners and floors. Installation of HDPE discharge piping, duplex guide rail systems, wet-well top slabs, pipes, valves, and fittings. Removal of debris and restoration.	**City of West Melbourne** 1415 Henry Ave. West Melbourne, FL 32904 michael.deberry@jacobs.com 321-727-3710	$401,876.00
5/2020	12/2020	**Brevard County: T-09 Lift Station Rehabilitation** Work consisted of by-passing the location, prep and installation of wet well fiberglass liner, install of 12" wet well top slab and hatch, install of 6" gate valve, force main discharge piping and valves, install of 40' ROHN Tower, antenna, conduit, and wiring.	**Brevard County** 2725 Judge Fran Jamieson Way Viera, FL 32940 robert.edmiston@brevardfl.gov 321-617-7391	$155,500.00
1/2020	4/2020	**City of Winter Park: Lift Station 66 Rehabiliation** Work consisted of high pressure water blasting, controlled by-passing at 500 GPM, application of Raven 405 Epoxy coating, installed new stainless-steel base plates and base elbows, installed new top slab, and installed new 4" piping.	**City of Winter Park** 1409 Howell Branch Road BG#1 Winter Park, FL 32789 lkastschor@cityofwinterpark.org 407-599-3254	$78,733.70

DANUS UTILITIES

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JOB REFERENCES

START DATE	COMPLETE DATE	DESCRIPTION	OWNER INFORMATION AND CONTACTS	VALUE
5/2020	5/2020	**City of West Melbourne: WWTP** Headworks Structure, Floor, and Walls Coating. Provided all labor, materials, equipment, and all supervision nesscary to prepare and coat the interior of existing concrete structures. Patched/Repaired all minor voids as nesscary with Raven approved repair mortars up to 1/2" thick. The top was coated with Raven 405 Ultra Build Epoxy at 200 mil thick. The monolithic epoxy coating of entire structure inspected with high voltage Holiday detection equipment.	**City of West Melbourne** 1415 Henry Ave. West Melbourne, FL 32904 Mike DeBerry 321-727-3710 Michael.DeBerry@jacobs.com	$143,814.00
1/2020	4/2020	**City of Winter Park: Lift Station 66 Rehabiliation** Work consisted of high pressure water blasting, controlled by-passing at 500 GPM, application of Raven 405 Epoxy coating, installed new stainless-steel base plates and base elbows, installed new top slab, and installed new 4" piping.	**City of Winter Park** 1409 Howell Branch Road BG#1 Winter Park, FL 32789 lkastschor@cityofwinterpark.org 407-599-3254	$78,733.70
10/2019	4/2020	**Flagler Rehabilitation Project:** Rehabilitation of 3 lift stations in the City of Flagler Beach. Work consisted of removing and replacing pumps, elbows, stainless rails, check/plug valves, concrete slabs, etc. Raven approved repair mortars up to 1/2" thick. The top was coated with Raven 405 Ultra Build Epoxy at 200 mil thick. The monolithic epoxy coating of entire structure inspected with high voltage Holiday detection equipment.	**City of Flagler Beach** 105 S 2nd St. Flagler Beach, FL 32136 Alliant Engineering, Inc. 7406 Fullerton St, Suite 110 Jacksonville, FL 32256 Marcus DePasquale 904-683-8352 MDePasquale@alliant-inc.com	$305,655.00
11/2019	1/2020	**City of Macclenny CDBG 18 NR Lift Station Rehabilitation and Replacement** The Project consists of constructing three (3) new duplex submersible pump stations; rehabilitating two (2) duplex self-priming pump stations; associated gravity sewer and force main work; bypass pumping; demolition; sitework; electrical, including emergency standby generators; and associated restoration. piping.	**Macclenny, FL** 118 E Macclenny Ave. Macclenny, FL 32063 Mittauer & Associates, Inc. 580-1 Wells Road Orange Park, FL 32073 Tim Norman 904-278-0030	$1,029,213.00
1/2020	4/2020	**Brevard County Lift Station S-04:** The project consists of the installation of the proposed Lift Station S-04, including but not limited to; the rehabilitation of the existing wet well, installation of a new wet well, pumps, risers, valves, piping, valve pad, control panel, and associated electrical components, telemetry infrastructure, and the associated instrumentation and controls; gravity wall, sidewalk, and guiderails; and all other incidentals necessary to complete the work in accordance with the Contract documents.	**Brevard County, FL** 2725 Judge Fran Jamieson Way Viera, Florida 32940 Owen Callard 321-633-2089 Owen.Callard@brevardfl.gov Engineering: Bussen-Mayer Scott Nickle 321-453-0010	$781,135.00

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JOB REFERENCES

START DATE	COMPLETE DATE	DESCRIPTION	OWNER INFORMATION AND CONTACTS	VALUE
9/2019	4/2020	**City of Temple Terrace Lift Station A:** This project consists of the rehabilitation of an existing lift station and installation of approximately 30 LF of 8" DI Forcemain. Lift station rehabilitation includes replacing all pumps, wet well piping, fittings, valves and lining the existing wet wells.	**City of Temple Terrace** 11250 N.56th Street Temple Terrace, FL 33617 Engineering: Kimley-Horn Mike Semago Mike.Semago@kimley-horn.com 727-498-3633	**$296,890.00**
10/2019	2/2020	**City of Holly Hill Lift Station 13 Rehabilitation:** The rehabilitation of the City of Holly Hill Lift Station #13 includes the conversion of the can lift station into a submersible station. Work includes bypass pumping, demolition of (2) existing pumps, piping, and valves to abandon pump can. Installation of two (2) new submersible pumps, top slab, piping, valves, valve vault, electrical panel and control panel.	**City of Holly Hill** 1065 Ridgewood Ave Holly Hill, FL 32117 Rick Glass 386-566-1600 rglass@hollyhillfl.org Engineering: Mead & Hunt Kevin Lee 386-414-5053	**$240,430.00**
10/2019	1/2020	**Holiday Isle Lift Station Improvements-** Installation of new 8 ft diameter precast concrete wetwell and 5 ft diameter precast doghouse/pour-in-place receiving manhole, coating the existing and proposed wetwell/manhole interior with Raven405 or approved equal, precast concretetop slab withHoliday Isle Lift Station access hatch, 316 stainless steel piping, valves, guide rails, pump bases, submersible pumps, diesel bypass pump, and water service for lift station, relocation/replacement of existing 4" and 6" backflow preventers, concrete slab/driveway, concrete masonry block wall with stucco finish and cantilever gate, electrical rack including control panel, explosion-proof terminal boxes, RTU, electrical wiring, service disconnect, and electrical meter per SJCUD standards, temporary bypass pumping and demolition / removal of existing lift station components and building and conversion of theexisting wetwell into a manhole.	**St. Johns County Purchasing Dept.** 500 San Sebastian View St. Augustine FL 32084. James Overton 904-209-2514 joverton@sjcfl.us	**$399,010.00**
5/2019	11/2019	**City of Ormond Beach Lift Stations 3M, Tomoka Meadows, & Ashford Lakes Improvements -** The work consists of improvements to Lift Stations 3M, Tomka Meadows & Ashford Lakes. For Lift Station 3M, electrical and control improvements; including voltage change and SCADA reprogramming; wet well top slab replacement; removal of fiberglass pole and light fixture; bypass pumping; installation of new light on existing concrete pole; new drain line. For the Lift Station at Tomoka Meadows, work consists of removal of a fiberglass pole and light fixture; installation of a new light on existing concrete pole; realign discharge pipe, guide rails and discharge elbows to be centered in wet well; new discharge pipe; new valve pit centered on realigned discharge pipes; bypass pumping; new drain line; additional 2-inch conduit for pump lead; 90-degree bend and drop pipe on influent line in wet well. For the Lift Station at Ashford Lakes, work consists of removal and replacement of the pumps and discharge elbows; new guide rails and upper guide rail brackets; new discharge pipe; new control panel; new SCADA panel; new equipment rack; bypass pumping.	**City of Ormond Beach** 22 South Beach Street Ormond Beach, FL 32174 Ron Burk: 386-676-3368 Ron.Burk@ormondbeach.org Engineering: McKim & Creed, Inc. 139 Executive Circle, Suite	**$378,400.00**

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JOB REFERENCES

START DATE	COMPLETE DATE	DESCRIPTION	OWNER INFORMATION AND CONTACTS	VALUE
4/2019	11/2019	**Brevard County Lift Station N-04 Demolition & Gravity Line Installation-** The project consisted of replacing an existing sanitary sewerage lift station with a new sanitary sewerage gravity main and all other incidentals necessary to complete the work in accordance with the Contract Documents. The incoming waste water flow to the existing station must be continuously pumped at all times; this required the contractor to provide a means of pumping during down times of the existing station due to construction or change over to new gravity main.	**Brevard County, FL** 2725 Judge Fran Jamieson Way Viera, Florida 32940 Owen Callard 321-633-2089 Owen.Callard@brevardfl.gov Engineering: Honeycutt and Associates: Rodney Honeycutt: 321-269-7847	**$421,993.00**
6/2019	11/2019	**Brevard County Lift Station T-45 Rehabilitation** The project involved complete rehabilitation of an existing duplex, submersible sanitary sewer lift station.	**Brevard County, FL** 2725 Judge Fran Jamieson Way Viera, Florida 32940 Owen Callard 321-633-2089 Owen.Callard@brevardfl.gov Engineering: Bussen-Mayer Scott Nickle 321-453-0010	**$108,600.00**
5/2019	10/2019	**Lift Station 60 Automatic Transfer Switch Upgrade** Contractor was responsible for providing labor and materials to install a new three-way bypass/isolation valve system on the existing 30" DIP Force Main at lift station 60. The bypass valve required a valve vault. Contractor provided the excavation and restoration required. Affected areas were restored to grade and sodded. Contractor ensured all work meets the UCNSB wastewater rules and standards.	**Utilities Commission, City of New Smyrna Beach** 200 Canal Street New Smyrna Beach, FL 32168 Darren Phegley: 386-275-2475 dphegley@ucnsb.org	**$836,539.40**
1/2019	9/2019	**City of Groveland Sunshine Parkway WWTF Headworks Relining** Trench excavation, addition of 16" diameter raw wastewater piping, and lining of two effluent boxes in existing headworks structure.	**City of Groveland** 156 South Lake Avenue Groveland, FL 34736 Ricky Rodriguez: 352-557-1109 ricky.rodriguez@groveland-fl.gov	**$124,749.50**
1/2019	5/2019	**City of Cocoa - Lift Station 29 Gravity Main -** This project involves the removal, grade correction and replacement of approximately 100 lineal ft of 10" gravity sewer.	**City of Cocoa** 65 Stone Street Cocoa, FL 32922 Chris Collier 407-616-1921 ccollier@cocoafl.org County Engineering	**$167,850.00**
1/2019	4/2019	**Brevard County Lift Station T-14 Rehabilitation** The project consists of the rehabilitation of Lift Station T-14 to include rehabilitation of existing wet well; demolition of underground valve box and its replacement with an aboveground valve pad; replacement of the pumps, base elbows, discharge piping, guiderail system, valves / fittings, electrical and RTU panels; and connection to the existing force main. The project also involves bypass pumping during rehabilitation and site restoration such as construction access driveway and replanting of the screening hedge after completion of rehabilitation.	**Brevard County, FL** 2725 Judge Fran Jamieson Way Viera, Florida 32940 Owen Callard 321-633-2089 Owen.Callard@brevardfl.gov Engineering: Bussen-Mayer Scott Nickle 321-453-0010	**$340,800.00**

DANUS UTILITIES

Equipment List

Vehicles	
1	2015 Dodge 5500 Utility Truck w/ Auto Crane and Tools (2)
2	2000 Ford F-350 Utility Truck
3	2020 Ford F-450 Flatbed Truck
4	2020 Ford F-250 Blue Truck
5	2015 Ford F-250 Red Truck
6	2008 Chevrolet C4500 Duramax Flatbed
7	2009 Ford F-150 Red Truck
8	2016 Ford F-150 Red Truck
9	2017 Ford F-150 Red Truck
10	2006 Ford F-150 Silver
Trailers	
1	2018 SureTrac Flat "Blue" Trailer
2	2015 Big Tex Flat "Black" Trailer
3	Big Tex 70PI Dewatering Trailer
4	2017 SureTrac Dump Trailer
5	2013 Big Tex 14LX Dump Trailer
6	2007 Drag Dump Hydraulic Dump
7	Vermeer 750 Gallon Vactor
8	2005 750 Super Vac
9	2019 Raven Spray Rig
By-Pumps	
1	2018 Godwin 8" By-Pass #1
2	Godwin 4" By-Pass
3	Godwin 4" By-Pass
4	DBA 4" Dewatering Pump
Machinary	
1	2013 CAT 304 Mini Excavator
2	2013 CAT 259 Skid Steer W/ Attachments
3	CAT 320E Excavator
4	2019 Cat Skid Steer
5	Bobcat 331 Mini Excavator
Miscellaneous Equipment	
1	McCroy HDPE Butt Fusion Machine
2	Central Thermoplast HDPE Electro Fusion Machine
3	Generators / Welders
4	Bosch Jack Hammer
5	ISC 695-F4 5HP Concrete Chain Saw
6	Stihl 14" Gas Chop Saws (3)
7	Confined Space Tripods
8	Gas Detectors
9	Hilti Chisel Hammer
10	Compactor / Tamper
12	Vacall Vactor Tuck
13	All Required Piping tools

DANUS UTILITIES

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State License # CUC 1224744

Resumes of Key Employees

Dan Pardus – President/Project Manager: Over 30 years experience in underground utilities as an owner and project manager. Dan Pardus is the sole owner /operator of Danus Utilities Inc. Dan Pardus founded Danus Utilities Inc. Dan holds a current Florida Underground Utility Contractor License. Other certifications include; Confined Space, 10-hour OSHA, HDPE Butt Fusion Welding, Backflow Repair / Tester and MOT. Danus Utilities currently has 18 full time employees. 3000 sq. ft. shop is located at 2320 Beardall Ave, Sanford FL 32771. Danus Utilities Inc. offers complete rehab services and installation to lift stations, manholes and sanitary sewer force main /gravity sewer connections installation of fiberglass liners in wet wells and manholes. Danus Utilities, Inc. is also a certified Raven applicator and various coating to precast surfaces. HDPE electro/butt fusion welding. Chemical pump grouting of precast structures. vactor services, cleaning and lining of lines. Dan's success in all his past business ventures is due to the fact he is a hands-on owner that works side by side with all his employees to ensure the finished product is the best it can be. Before Danus Utilities, Inc. Dan Pardus was Project Manager / Superintendent for J & H Waterstop, Inc. supervising lift station rehab jobs for Manatee County, Brevard County, Orange County, The City of Deltona, and the City of Winter Haven. He operated the bobcat and backhoe, supervised dewatering, installations of the piping, valves, fittings, and supervised the force main tie-ins, and supervised subs including electrical, asphalt, and concrete contractors, and supervised crane operators setting structures and performing trench box shoring and scheduled and performed startup of pumps. His additional duties included preparation of submittals to the engineering firm, holding pre-construction meetings with City Dept. Heads, review of plans, set up by-pass system and maintenance of traffic, ordered and scheduled material and equipment, ensured compliance with OSHA regulations. Starting his underground career in 1993 Dan Pardus was owner of Multi-Communications and was the Project Manager and equipment operator supervising crews running conduits on 1-75 installing 20 miles of 4" duct and pull boxes. He also supervised the installation, maintenance, and servicing of all cable systems located in Volusia County, installing coax and fiber cables, jack and boring of roads and driveways, splice taps, setting ground rods, and underground pull boxes. His responsibilities included operating the ditch witch, and plow trencher combo, digging pull boxes in with backhoe, holding pre-construction meetings, reviewing plans, applying for permits, scheduling jobs and material and equipment deliveries, ensuring all work was in compliance with D.O.T and ensuring job site safety

DANUS UTILITIES

Stephen Coxon– Foreman: Stephen Joined the Danus Utilities Team in August of 2016 as an Utilities Laborer. He quickly learned the ins and outs in the field and was moved into a foreman role supervising all phases of lift station rehabilitations, manhole lining, water and wastewater treatment plant repairs/ improvements, excavation of sanitary sewer/water mains. Management of crew and materials. job and consumer safety control. Stephen holds current Confined Space, Excavation and Trench Safety Certifications and a Class A CDL License. He is a competent heavy equipment operator Backhoe/Loader. Has been an active working participant on-site at over 100 plus lift station Rehabs or new Lift station installations in the throughout Florida. Stephen has competently performed the following: Installing new and rehabs lift station pipe, valves and fittings, construction of new lift stations from the pre-cast only stages. He operates an autocrane, bob cat and backhoe. Assisted in lift station bypassing & dewatering setups for rehabs. Installation of Force main tie-ins and all piping associated with tie-ins. Pouring concrete slabs and driveways. Removal and installation of lift station pumps & controls.

Raymond Rogers – Estimator/Project Manager: Raymond began his career in 1989 as a delivery driver for Hughes Supply, and diligently worked his way up the ranks to Branch Manager before leaving in 2004. He worked as an Estimator/Project Manager/Product Specialist for 5 years finishing several successful projects along the way. From 2009 to 2013 Raymond worked for the City of Clermont continuing to expand his knowledge of sewer and water systems. He was an Environmental Services Manager in charge of the Distribution Division, Collections Division, Storm Water Division and Inventory for Warehouse Supplies. In 2013 Raymond had the opportunity to join Danus Utilities as an Estimator/Project Manager/Product Specialist. Since then he has helped with the successful completion of hundreds of projects and is an integral part of the success of Danus Utilities, Inc.

Utility Technicians/Laborers: Danus Utilities has 3 crews of hand-picked members that have a combined over 30 years of combined service. There certifications include OSHA-10, Confined Space Safety, Competent Person and Excavation Safety, Respiratory Protection, Hazard Communication supported Scaffolding, and Ladder Safety. With these crew members Danus Utilities is able to provide services that exceed our customers' expectations.

DANUS UTILITIES

Manager of Spray Coating Operations

Andrew W Darling

Mr. Darling manages and supervises all aspects of the rehabilitation business of Danus Utilties. Mr. Darling is a hands-on supervisor conducting all the in-house training for crew members, developing written quality procedures for Raven Lining Systems and AFE rigid fiberglass liners.

Mr. Darling conducts monthly training sessions with all crew members in conjunction with the company's safety manager, focusing on confined space training, OSHA requirements, gas detection, and the proper use of all safety equipment. All crew members are crossed-trained on every aspect of running the equipment and conducting the operations to give our customers the most flexibility possible when it comes to their underground utilities rehabilitation projects.

Danus Utilities is approved to install Raven Lining Systems 10-year warranty products and AFE fiberglass liners with a 25 year warranty

Project Completion:

Darling has managed the installation of 250,000 square feet of spray applied epoxy. Mr. Darling has completed 2019- 2024 annual rehabilitation projects for the City of Port orange, City of Daytona Beach and City of South Daytona. He has also installed Raven throughout the state of Florida for the past 5 years.

2320 Beardall Ave, Sanford, FL 32771 • P.O. BOX 291671, Port Orange, FL 32129 • (386) 233-5588
State License # CUC 1224744

Miguel Arriaga Field Supervisor Spray Coating Operations

Background:

Mr. Arriaga joined Danus Utilities in 2019, for the express purpose of developing the equipment and specifications for spraying epoxy coating products. Mr. Arriaga has been responsible for the building and maintaining our plural component spray equipment as well as several airless pumps which we use in the spray coating business.

Before joining Danus Utilities, Mr. Arriaga was a employed at Plastic Composites Inc. His responsibilities included the supervision of various projects which included dealing with sewer systems from manholes to wet wells.

Current Operations:

Mr. Arriaga has managed the Danus Utilities spray coating crews since 2020. His responsibilities include quality control for each project, including the maintenance of the equipment, training of the personnel, safety, and time management for each project.

Mr. Arriaga has managed over 250,000 sq. ft. of coating installation over the last ten years, while maintaining a record of no accidents, and spraying each product within specified ratio for the manufacturer's specification.

Mr. Arriaga has been recertified to spray Raven Lining Systems product and Tnemec products. Further, Mr. Arriaga is qualified in spraying various cement products.

Mr. Arriaga is responsible for assisting in all new employee training on all coating products.

Dan Pardus
President – Danus Utilities

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: City of Temple Terrace
   Contact Person: Mike Semago
   City, State: Temple Terrace, FL 33617
   Telephone Number: 727-498-3633
   Email Address: mike.semago@kimley-horn.com
   Description of goods/services provided: Lift Station Rehabilitation - Tree Tops Lift Station
   Contract Amount: $760,925.00
   Start/End Date of Contract: 12/2021 - 6/2023
2. Company Name: City of Casselberry
   Contact Person: Tara Lamoureux.
   City, State: Casselberry, FL 32707
   Telephone Number: 407-262-7725
   Email Address: tlamoureux@casselberry.org
   Description of goods/services provided: Seminola Master Lift Station Rehabilitation
   Contract Amount: 1,203,442.65
   Start/End Date of Contract: 9/2020 to 5/2021
3. Company Name: St Johns County
   Contact Person: Teri Pinson - PE
   City, State: St Johns County
   Telephone Number: 904-209-2604
   Email Address: tpinson@sjcfl.us
   Description of goods/services provided: Lift Stations Rehabilitation Corpus Cristi, Mayo Clinic and I-95 Rest Area
   Contract Amount: $1,004,847.00
   Start/End Date of Contract: 10/2020 - 4/2021

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: Owen Callard
   Phone: 321-633-2089
   Current Client: ☑Yes ☐ No
   Number of years of service provided: 14 Years
   Description of service: Multiple Lift Station and Sewer System Rehabilitations

2. Contact Name: Ron Burk
   Phone: 386-676-3368
   Current Client: ☑Yes ☐ No
   Number of years of service provided: 14 Years
   Description of service: Multiple Lift Station and Sewer System Rehabilitations

3. Contact Name: Jeff Elder
   Phone: 386-575-6800
   Current Client: ☑Yes ☐ No
   Number of years of service provided: 14 Years
   Description of service: Multiple Lift Station and Sewer System Rehabilitations

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: Chinchor Electric, Inc.

Description of Work: Electrical

Percent of Contract Price: 11%

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, Daniel J Pardus, on behalf
(Print Name and Title)

of Danus Utilities, Inc. ("Company"), certify that Danus Utilities, 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.

Danus Utilities, Inc.
COMPANY NAME

SIGNATURE

Daniel J Pardus
PRINT NAME

President
TITLE

FORM 7.10 SCRUTINIZED COMPANIES CERTIFICATION (page 2)

STATE OF FLORIDA

COUNTY OF: SEMINOLE

The foregoing instrument was acknowledged before me by means of ☑physical presence or ☐online notarization, this 5 day of July, 2024, by Daniel J Pardus and who:

☑Is personally known to me; or ☐ has produced PK as identification.

Notary Public, State of Florida

Printed, typed or stamped name, commission and expiration: Robert H Brown - 10/23/2025

ROBERT H. BROWN
MY COMMISSION EXPIRES
OCTOBER 23, 2025
#HH 145052
Bonded thru
Notary Public Underwriters
NOTARY PUBLIC, STATE OF FLORIDA

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)*: ITB #24-11

Business Name: Danus Utilities, Inc. Contact Person/Title: Daniel J Pardus - President

Mailing Address: PO Box 291671 City,State,Zip: Port Orange, FL 32129

Phone Number: 407-878-1254 Email address: danus2@cfl.rr.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): 27-0404772

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.

Danus Utilities, Inc.
Name of Business

Authorized Signature

STATE OF: FLORIDA

COUNTY OF: SEMINOLE

Daniel J Pardus - President
Printed Name and Title

The foregoing instrument was acknowledged before me by means of ☑physical presence or ☐online notarization, this 5 day of July, 2024, by Daniel J Pardus and who:

☑Is personally known to me; or ☐ has produced PK as identification.

Notary Public, State of Florida

Printed, typed or stamped name, commission and expiration: Robert H Brown - 10/23/2025

ROBERT H. BROWN MY COMMISSION EXPIRES OCTOBER 23, 2025 #HH 145052 Bonded thru Notary Public Underwriters NOTARY PUBLIC, STATE OF FLORIDA

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: CHRISTIANCY LIFT STATION (LS11) REHABILITATION

Solicitation Number: ITB #24-11

I, the undersigned hereby certify that Danus Utilities, 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 Danus Utilities, 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.

Daniel J Pardus - President
Print or Type Name, Title

Signature of Affiant

27-0404772
Federal Employer ID Number (FEIN)

961730
E-Verify Number

STATE OF FLORIDA

COUNTY OF: SEMINOLE

The foregoing instrument was acknowledged before me by means of ☑physical presence or ☐online notarization, this 5 day of July, 2024, by Daniel J Pardus and who:

☑Is personally known to me; or ☐ has produced PK as identification.

Notary Public, State of Florida

Printed, typed or stamped name, commission and expiration: Robert H Brown - 10/23/2025

ROBERT H. BROWN
MY COMMISSION EXPIRES OCTOBER 23, 2025
#HH 145052
Bonded thru Notary Public Underwriters
NOTARY PUBLIC, STATE OF FLORIDA

This document to be completed and returned with your Submittal

Company ID Number: 961730

Approved by:

Employer Danus Utilities, Inc.	
Name (Please Type or Print) Robert H Brown	Title
Signature Electronically Signed	Date 04/08/2016
Department of Homeland Security – Verification Division	
Name (Please Type or Print) USCIS Verification Division	Title
Signature Electronically Signed	Date 04/08/2016

Company ID Number: 961730

Information Required for the E-Verify Program **Information relating to your Company:**	
Company Name	Danus Utilities, Inc.
Company Facility Address	2320 Beardall Ave Sanford, FL 32771
Company Alternate Address	
County or Parish	SEMINOLE
Employer Identification Number	270404772
North American Industry Classification Systems Code	221
Parent Company	
Number of Employees	10 to 19
Number of Sites Verified for	1

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 withing a three-year period preceding this proposal bee 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.

Danus Utilities, Inc.	ITB #24-11
Organization Name	Bid Number or Project Name
Daniel J Pardus - President	7-5-2024
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 Daniel J Pardus (Title) of Danus Utilities, Inc. (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: July 5, 2024 Signed: _____

Entity: Danus Utilities, Inc. Name: Daniel J Pardus

Title: President

STATE OF: FLORIDA COUNTY OF: SEMINOLE

The foregoing instrument was acknowledged before me by means of ☑physical presence or ☐online notarization, this 5 day of July, 2024, by Daniel J Pardus and who:

☑is personally known to me; or ☐ has produced PK as identification.

_____
Notary Public, State of Florida at Large:
Printed Name/Seal of Notary, Commission and Expiration Date:

ROBERT H. BROWN
MY COMMISSION EXPIRES
OCTOBER 23, 2025
(seal)
#HH 145052
Bonded thru Notary Public Underwriters
NOTARY PUBLIC, STATE OF FLORIDA

My commission expires: October 23, 2025

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 #24-11 Christiancy Lift Station (LS11) Rehabilitation

Company Name: Danus Utilities, Inc.

Contact Person Name & Title: Daniel J Pardus - President

Address: 2320 Beardall Ave, Sanford, FL 32771

Telephone: 407-878-1254 Email Address: danus2@cfl.rr.com

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: _____

N/A

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, Danus Utilities, 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

Daniel J Pardus - President

Name & Title of Contractor's Authorized Official

Date: July 5, 2024

This document must be completed and returned with your Submittal

REVISED (ATTACHMENT 1) SCHEDULE OF UNIT PRICING

ITB #24-11

CHRISTIANCY LIFT STATION (LS11) REHABILITATION

Name of Business:	Danus Utilities, Inc.
Contact Person:	Dan Pardus
Email Address:	danus2@cfl.rr.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.

ITEM #	DESCRIPTION	UNIT OF MEASURE	ESTIMATED QUANTITY	UNIT PRICE	EXTENDED PRICE
1	Mobilization/Demobilization	LS	1	$100,000.00	$100,000.00
2	Insurance, Performance and Payment Bond	LS	1	$29,000.00	$29,000.00
3	Preconstruction Video	LS	1	$2,000.00	$2,000.00
4	Construction Restoration - (site cleanup, seed and mulch)	LS	1	$9,000.00	$9,000.00
5	Site Work Demolition - 3 suction lift pumps - Well top and internal piping - 30 LF of lift Station discharge piping to existing plug valve - Sandblast concrete lift station interior - Generator slab and generator, and surrounding wall - Roof, windows, and interior wall of electical and odor control room - Electrical, odor control unit and associated conduit/piping	LS	1	$75,000.00	$75,000.00
6	Site Work (erosion control)	LS	1	$3,500.00	$3,500.00
7	Construction Testing (Pressure, Density Testing, etc.)	LS	1	$5,500.00	$5,500.00
8	Survey Layout & Record Drawings	LS	1	$12,000.00	$12,000.00
9	Concrete Restoration - (concrete driveway)	CY	90	$300.00	$27,000.00
10	Concrete Pads	CY	8	$400.00	$3,200.00
11	Lift Station Improvements (8-ft Diameter) - Liner - Replace top and hatch - Replace interior suction and discharge piping, rails, etc. - Reduce concrete fillet at bottom of well	LS	1	$149,000.00	$149,000.00
12	Submersible Sulzer Pump (Including base elbows, anchor bolts, guide rail systems, access hatch, and startup)	EA	2	$42,000.00	$84,000.00
13	8-in Above Ground Valve Assembly (Piping, Fittings, Valves, etc.)	LS	1	$85,000.00	$85,000.00
14	8-in HDPE Force Main - Bypass Piping (Including Fittings, Restraints, Adapters, Camlocks, etc.)	LF	120	$310.00	$37,200.00
15	8-in PVC Force Main (Including Fittings, Restraints, Adapters, etc.)	LF	90	$225.00	$20,250.00
16	8" Plug Valve	EA	1	$2,500.00	$2,500.00
17	Diesel Bypass Pump (includes 4" Vacuum Assisted Centrifugal Pump, Sound Attenuated Canopy, 2- 10 m Floats, and Control Panel)	EA	1	$150,000.00	$150,000.00
18	Connection to Existing 8" Force Main Plug Valve	EA	1	$6,500.00	$6,500.00
19	6-ft Vinyl Fence	LF	150	$100.00	$15,000.00
20	CMU Wall (8-ft height)	LF	40	$750.00	$30,000.00
21	Bypass Operations	LS	1	$60,000.00	$60,000.00
22	Electrical I&C	LS	1	$175,000.00	$175,000.00
				TOTAL PRICE	$1,080,650.00

LEGEND:

LS - Lump Sum
EA - Each
LF - Linear Feet
CY - Cubic Yards

BID BOND

BID BOND

Bond No.: N/A

KNOW ALL MEN BY THESE PRESENTS that Danus Utilities, Inc., as Contractor, duly authorized to conduct business in the State of Florida, whose principal place of business is located at 2320 Beardall Avenue, Sanford, FL 32771, Tel.: (386) 233-5588, (hereinafter called "PRINCIPAL"), and Swiss Re Corporate Solutions America Insurance Corporation, as SURETY, duly authorized to conduct business in the State of Florida, whose principal place of business is located at 1200 Main Street, Suite 800, Kansas City, MO 64105-2478, Tel: 816-235-3700 (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 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 June 21, 20 24, for:

Project Name/Bid No.: ITB #24-11, CHRISTIANCY LIFT STATION (LS11) REHABILITATION

Project Address: City of Port Orange, FL

Legal Description: CHRISTIANCY LIFT STATION (LS11) REHABILITATION

Description of Work: The existing dry pit pumps will be replaced with two submersible pumps running on VFDs, and a new diesel bypass pump will be installed. Sod replacement, driveway repair, including concrete, soil, and gravel replacement in kind will be required at all disturbed areas. Existing building, generator, existing walls, electrical, odor control device will be removed.

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 21st day of June, 20 24, 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: Danus Utilities, Inc.

Signature

Daniel J Pardus - President

Corporate Officer & Title

ATTEST:

Alice M Pardus

Signature

Alice M Pardus

Corporate Secretary (Affix Corporate Seal)

WITTNESSESS:

SURETY:
Swiss Re Corporate Solutions America Insurance Corporation

Attorney-in-Fact (signature)

Jeffrey W. Reich*, Attorney-In-Fact

Name & Title

Jeffrey W. Reich*, FL Licensed Resident Agent

Name of Local Resident Agent

1200 Main Street, Suite 800, Kansas City, MO 64105-2478

City, State, Zip

816-235-3700

Telephone:

A.M. Best No.: 001866 NAIC No.: 29874

*Inquiries: 407-786-7770

ATTEST:

Susan L. Reich

Signature

Susan L. Reich

Corporate Secretary (Affix Corporate Seal)

STATE OF FLORIDA

COUNTY OF ORANGE

Before me this day personally appeared Jeffrey W. Reich (affiant), who, being duly sworn, deposes and says that he/she is the Attorney-in-Fact for the Swiss Re Corporate Solutions America Insurance Corporation (corporate surety) and that this person has been authorized by Swiss Re Corporate Solutions America Insurance Corporation (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: Jeffrey W. Reich

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 21st day of June, 2024, by Jeffrey W. Reich and who:

☒ Is personally known to me; or ☐ has produced N/A as identification.

Elizabeth Luu Karoly

Notary Public, State of FLORIDA

Printed, typed or stamped name, commission and expiration: HH 283384 07/09/2026

Notary Public State of Florida
Elizabeth Luu Karoly
My Commission HH 283384
Expires 7/9/2026

END OF BID BOND

This document must be completed and returned with your Submittal

Swiss Re
Corporate Solutions
SWISS RE CORPORATE SOLUTIONS AMERICA INSURANCE CORPORATION

1450 American Lane, Suite 1100, SCHAUMBURG, ILLINOIS 60173
800/338-0753

SWISS RE CORPORATE SOLUTIONS AMERICA INSURANCE CORPORATION
A Missouri Corporation

BALANCE SHEET AS OF DECEMBER 31, 2023
(Statutory Basis)

Valuation of securities on National Association of Insurance Commissioner Basis

ASSETS		**LIABILITIES**	
Cash	730,164,557	Reserve for Unearned Premiums	276,334,609
Bonds	1,444,904,017	Reserve for Losses and Loss Adjustment Expenses	776,256,136
Common Stock	300,203,129	Funds Withheld	150,819,630
Other Invested Assets	0	Taxes and Other Liabilities	811,407,215
Other Admitted Assets	745,946,601	Surplus	1,206,400,714
TOTAL ADMITTED ASSETS	3,221,218,304	**TOTAL LIABILITIES & POLICYHOLDERS' SURPLUS**	3,221,218,304

The undersigned, being duly sworn, says: That he is Vice President of Swiss Re Corporate Solutions America Insurance Corporation, Kansas City, Missouri that said company is a corporation duly organized, existing by virtue of the Laws of the State of Missouri and that said Company has also complied with and is duly qualified to act as Surety under the Act of Congress approved; July 1947 6 U.S.C. sec. 6-13; and that to the best of his knowledge and belief the above statement is a full, true and correct statement of the financial condition of the said Company on the 31st day of December, 2023.

Erik Janssens, Senior Vice President
Swiss Re Corporate Solutions America Insurance Corporation

Subscribed and sworn before me,
this 26th day of March, 2024

OFFICIAL SEAL
KAREN M SZWEDA
Notary Public, State of Illinois
Commission No. 978628
My Commission Expires September 26, 2027

Notary Public

SWISS RE CORPORATE SOLUTIONS

SWISS RE CORPORATE SOLUTIONS AMERICA INSURANCE CORPORATION ("SRCSAIC")
SWISS RE CORPORATE SOLUTIONS PREMIER INSURANCE CORPORATION ("SRCSPIC")
WESTPORT INSURANCE CORPORATION ("WIC")

GENERAL POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, THAT SRCSAIC, a corporation duly organized and existing under laws of the State of Missouri, and having its principal office in the City of Kansas City, Missouri, and SRCSPIC, a corporation organized and existing under the laws of the State of Missouri and having its principal office in the City of Kansas City, Missouri, and WIC, organized under the laws of the State of Missouri, and having its principal office in the City of Kansas City, Missouri, each does hereby make, constitute and appoint:

JEFFREY W. REICH, SUSAN L. REICH, KIM E. NIV, TERESA L. DURHAM, CHERYL A. FOLEY, LISA A. ROSELAND, EMILY J. GOLECKI, SONJA AMANDA FLOREE HARRIS, ROBERT P. O'LINN, NATHAN K. REICH, and SARAH K. O'LINN

JOINTLY OR SEVERALLY

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

TWO HUNDRED MILLION ($200,000,000.00) DOLLARS

This Power of Attorney is granted and is signed by facsimile under and by the authority of the following Resolutions adopted by the Boards of Directors of both SRCSAIC and SRCSPIC at meetings duly called and held on the 18th of November 2021 and WIC by written consent of its Executive Committee dated July 18, 2011.

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

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

SWISS RE CORPORATE SOLUTIONS AMERICA INSURANCE CORPORATION CORPORATE SEAL 1973 MISSOURI

SWISS RE CORPORATE SOLUTIONS PREMIER INSURANCE CORPORATION CORPORATE SEAL MISSOURI

By _____
Erik Janssens, Senior Vice President of SRCSAIC & Senior Vice President of SRCSPIC & Senior Vice President of WIC

By _____
Gerald Jagrowski, Vice President of SRCSAIC & Vice President of SRCSPIC & Vice President of WIC

WESTPORT INSURANCE CORPORATION CORPORATE SEAL MISSOURI

IN WITNESS WHEREOF, SRCSAIC, SRCSPIC, and WIC have caused their official seals to be hereunto affixed, and these presents to be signed by their authorized officers

this 10TH day of NOVEMBER, 20 23

Swiss Re Corporate Solutions America Insurance Corporation
Swiss Re Corporate Solutions Premier Insurance Corporation
Westport Insurance Corporation

State of Illinois
County of Cook ss

On this 10TH day of NOVEMBER, 20 23, before me, a Notary Public personally appeared Erik Janssens, Senior Vice President of SRCSAIC and Senior Vice President of SRCSPIC and Senior Vice President of WIC and Gerald Jagrowski, Vice President of SRCSAIC and Vice President of SPCSPIC and Vice President of WIC, personally known to me, who being by me duly sworn, acknowledged that they signed the above Power of Attorney as officers of and acknowledged said instrument to be the voluntary act and deed of their respective companies.

Karen M. Szweda, Notary

I, Jeffrey Goldberg, the duly elected Senior Vice President and Assistant Secretary of SRCSAIC and SRCSPIC and WIC, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney given by said SRCSAIC and SRCSPIC and WIC, which is still in full force and effect.
IN WITNESS WHEREOF, I have set my hand and affixed the seals of the Companies this 21st day of June, 20 24.

OFFICIAL SEAL
KAREN M SZWEDA
Notary Public, State of Illinois
Commission No. 978628
My Commission Expires September 26, 2027

Jeffrey Goldberg, Senior Vice President & Assistant Secretary of SRCSAIC and SRCSPIC and WIC

FLORIDA SURETY BONDS, INC. Phone 407-786-7770 Maitland, FL

FLORIDA SURETY BONDS, INC.

620 N. Wymore Road, Suite 200
Maitland, FL 32751
407-786-7770
Fax 407-786-7766

888-786-BOND (2663)
Fax 888-718-BOND (2663)

www. FloridaSuretyBonds.com

June 18, 2024

RE: Danus Utilities, Inc.

To Whom It May Concern,

We are pleased to be the surety agents for Danus Utilities, Inc.. Bonds are currently written through Swiss Re Corporate Solutions America Insurance Corporation which is A.M. Best Rated A+, XV and has a Treasury Listing of $ 95,035,000.00.

We have investigated the financial capabilities, performance references, and think you'll be pleased with the quality of their work.

We usually anticipate no difficulties in providing surety bonds for Danus Utilities, Inc. in the $7,000,000 single, $15,000,000 aggregate range. This letter is not a commitment to provide any bonds unless all underwriting requirements including contract, bond form and financing review are met prior to issuing any bonds. Neither our agency, nor the surety are liable for any damages relating to this letter or project.

Should you have any questions, please do not hesitate to contact us.

Sincerely,

Jeffrey W. Reich
CPCU
President

Ron DeSantis, Governor

Melanie S. Griffin, Secretary

Florida dbpr

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

CONSTRUCTION INDUSTRY LICENSING BOARD

THE UNDERGROUND UTILITY & EXCAVATION CO HEREIN IS CERTIFIED UNDER THE PROVISIONS OF CHAPTER 489, FLORIDA STATUTES

PARDUS, DANIEL J

DANUS UTILITIES INC
2320 BEARDALL AVE
SANFORD FL 32771

LICENSE NUMBER: CUC1224744

EXPIRATION DATE: AUGUST 31, 2024

Always verify licenses online at MyFloridaLicense.com

Do not alter this document in any form.

This is your license. It is unlawful for anyone other than the licensee to use this document.

State of Florida
Department of State

I certify from the records of this office that DANUS UTILITIES INC is a corporation organized under the laws of the State of Florida, filed on June 22, 2009, effective June 20, 2009.

The document number of this corporation is P09000053628.

I further certify that said corporation has paid all fees due this office through December 31, 2024, that its most recent annual report/uniform business report was filed on March 11, 2024, and that its status is active.

I further certify that said corporation has not filed Articles of Dissolution.

Given under my hand and the Great Seal of the State of Florida at Tallahassee, the Capital, this the Eleventh day of March, 2024

Secretary of State

Tracking Number: 8137870117CC

To authenticate this certificate,visit the following site,enter this number, and then follow the instructions displayed.

https://services.sunbiz.org/Filings/CertificateOfStatus/CertificateAuthentication

2024 FLORIDA PROFIT CORPORATION ANNUAL REPORT

DOCUMENT# P09000053628

Entity Name: DANUS UTILITIES INC

Current Principal Place of Business:

2320 BEARDALL AVE
SANFORD, FL 32771

Current Mailing Address:

P.O. BOX 291671
PORT ORANGE, FL 32129 US

FEI Number: 27-0404772

FILED
Mar 11, 2024
Secretary of State
8137870117CC

Certificate of Status Desired: Yes

Name and Address of Current Registered Agent:

PARDUS, DAN J
4133 SADDLE CLUB DR
NEW SMYRNA BEACH, FL 32168 US

The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida.

SIGNATURE:

Electronic Signature of Registered Agent — Date

Officer/Director Detail :

Title	PRES	Title	SECRETARY
Name	PARDUS, DAN J	Name	PARDUS, ALICE M
Address	4133 SADDLE CLUB DR	Address	4133 SADDLE CLUB DR
City-State-Zip:	NEW SMYRNA BEACH FL 32168	City-State-Zip:	NEW SMYRNA BEACH FL 32168

I hereby certify that the information indicated on this report or supplemental report is true and accurate and that my electronic signature shall have the same legal effect as if made under oath; that I am an officer or director of the corporation or the receiver or trustee empowered to execute this report as required by Chapter 607, Florida Statutes; and that my name appears above, or on an attachment with all other like empowered.

SIGNATURE: ALICE PARDUS SECTARY 03/11/2024

Electronic Signature of Signing Officer/Director Detail — Date

SEMINOLE COUNTY BUSINESS TAX RECEIPT

PO BOX 630, SANFORD, FL 32772 • 407-665-1000
WWW.SEMINOLECOUNTY.TAX

VALID THROUGH 09/30/24

DANUS UTILITIES INC
2320 BEARDALL AVE
SANFORD, FL 32771

Account #: 197339

REGULATED
License # - CUC1224744
Qualifier- PARDUS DANIEL J
**SANFORD CITY LICENSE REQUIRED **

DAN J PARDUS (OFFICER)

Receipt #: 12442023082100757 Amount Paid: $ 45.00 Date Paid: 08/21/2023

BUSINESS OWNER, PLEASE NOTE THE FOLLOWING:

• **DISPLAY THE ABOVE RECEIPT PROMINENTLY:** This Business Tax Receipt shall be displayed conspicuously at the place of business in such a manner that it can be open to the view of the public and subject to inspection by all duly authorized officers of the County. Upon failure to do so the business shall be subject to the payment of another business tax for the same business or profession.

• **RENEW THIS TAX BEFORE IT EXPIRES:** Pursuant to Florida Statutes, all Business Tax Receipts shall be issued by the Tax Collector beginning July 1st of each year, and it shall expire on September 30th of the succeeding year. Those Business Tax Receipts issued as renewal accounts beginning October 1st shall be delinquent and subject to a delinquency penalty of 10% for the month of October, plus an additional 5% penalty for each month of delinquency thereafter until paid; provided that the total penalty shall not exceed 25% of the business tax for the delinquent establishment (Florida Statute [FS] 205.053 [1]).

A 25% penalty shall be imposed on any individual engaged in any new business or profession without first obtaining a Seminole County Business Tax receipt ([FS] 205.053 [2]).

This Business Tax Receipt is only a receipt for business taxes paid. It does not permit the taxpayer to violate any existing regulatory or zoning laws of the state, county, or municipality, nor does it exempt the taxpayer from any other required licenses, registrations, certifications, or permits. Business Tax requirements are subject to legislative change.

REPORT ALL CHANGES: The holder of this Business Tax Receipt is required to report a change in the following: Ownership, Business Location, Mailing Address, or any other information that would alter the status of the current year's information. This includes, but is not limited to, the loss of or a change in a State or Regulatory License which was used to qualify for the business identified on the current County Business Tax Receipt. If you have any changes to report, contact the Business Tax Department at 407-665-7636.

DANUS UTILITIES INC
PO BOX 291671
PORT ORANGE, FL 32129

CITY OF SANFORD
FLORIDA

CITY OF SANFORD
Building Division
PO Box 1788, Sanford, FL 32772-1788

2024

LOCAL BUSINESS TAX RECEIPT

VALID THROUGH SEPTEMBER 30, 2024

DANUS UTILITIES INC
2320 BEARDALL AVE

SANFORD FL 32771

This receipt is a local business tax only. It does not permit the local business taxpayer to violate any existing zoning or regulatory laws of the state or county, nor does it exempt the business taxpayer from any other license or permits required by law.

Issue Date:	**10/01/2023**	**BTR19-031005**
Business Location:	**2320 BEARDALL AVE**	

Classification	**Amount**
Fire Inspection Fee	50.00
Contractor	200.00
TOTAL:	**250.00**

Comments: UNDERGROUND UTILITY LOCATOR/CONTRACTOR
Restrictions: SUBJECT TO MEETING P & Z CONDITIONS

SEMINOLE COUNTY TAX RECEIPT REQUIRED
ORIGINAL TAX RECEIPT MUST BE DISPLAYED ON PREMISES

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 06/20/2024

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	CONTACT NAME: Melissa Adrian, CPSR	
Caton-Hosey Insurance 3731 Nova Rd Port Orange FL 32129	PHONE (A/C, No, Ext): (386) 767-3161 FAX (A/C, No): (386) 760-1770 E-MAIL ADDRESS: melissa@catonhosey.com	
	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A : Specialty Builders Ins. Co	16826
INSURED Danus Utilities, Inc 4133 Saddle Club Dr New Smyrna Beach FL 32168	INSURER B : Auto-Owners Ins	18988
	INSURER C : Travelers Excess & Surplus Lines Co	29696
	INSURER D : National Builders Insurance Company	16632
	INSURER E : Federal Insurance Company	20281
	INSURER F :	

COVERAGES **CERTIFICATE NUMBER:** CL2462032848 **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	[X] COMMERCIAL GENERAL LIABILITY [ ] CLAIMS-MADE [X] OCCUR [X] Contractual Liability [X] XCU Included GEN'L AGGREGATE LIMIT APPLIES PER [ ] POLICY [X] PRO-JECT [ ] LOC [ ] OTHER			PKG-0351006-01	07/02/2024	07/02/2025	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG [ ]	$ 1,000,000 $ 100,000 $ 5,000 $ 1,000,000 $ 2,000,000 $ 2,000,000 $
B	AUTOMOBILE LIABILITY [X] ANY AUTO [ ] OWNED AUTOS ONLY [ ] SCHEDULED AUTOS [ ] HIRED AUTOS ONLY [ ] NON-OWNED AUTOS ONLY			4806741403	07/02/2024	07/02/2025	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident) PIP-Basic	$ 1,000,000 $ $ $ $ 10,000
C	[X] UMBRELLA LIAB [X] OCCUR EXCESS LIAB [ ] CLAIMS-MADE [ ] DED [X] RETENTION $ 10,000			CUP-8W978480-24-NF	07/02/2024	07/02/2025	EACH OCCURRENCE AGGREGATE [ ]	$ 4,000,000 $ 4,000,000 $
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N [N] If yes, describe under DESCRIPTION OF OPERATIONS below	N/A		WCV 0264441 08	07/02/2024	07/02/2025	[X] PER STATUTE [ ] OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	 $ 1,000,000 $ 1,000,000 $ 1,000,000
E	Rented & Leased Equipment			45471710	06/24/2024	06/24/2025	Limit Deductible	$350,000 $1,000

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

CERTIFICATE HOLDER

Proof of Coverage

CANCELLATION

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

AUTHORIZED REPRESENTATIVE

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The ACORD name and logo are registered marks of ACORD

EJCDC

EXHIBIT "3"

ITB 24-11

(Not attached, on file with City Clerk)

Consisting of 158 Pages

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 F.S. 287.138

✓ Form 7.15 – No Submittal Response Form N\A

✓ 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: Danus Utilities, Inc.
Name of Business

Authorized Signature

7/5/2024
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):

_____

_____

Danus Utilities, Inc.	2320 Beardall Ave
Name of Business	Mailing Address
	Sanford, FL 32771
Authorized Signature	City, State & Zip Code
Daniel J Pardus	407-878-1254
Printed Name and Title	Telephone Number
27-0404772	danus2@cfl.rr.com
Federal Identification No.	E-mail Address

STATE OF: FLORIDA COUNTY OF: SEMINOLE

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

5 day of July, 2024, by Daniel J Pardus and who:

☑Is personally known to me; or ☐ has produced PK as identification.

_____ Notary Public, State of Florida

Printed, typed or stamped name, commission and expiration: Robert H Brown - 10/23/2025

ROBERT H. BROWN
MY COMMISSION EXPIRES
OCTOBER 23, 2025
#HH 145052
Bonded thru Notary Public Underwriters
NOTARY PUBLIC, STATE OF FLORIDA

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# 1 Date: 6/14/2024 Addendum# 2 Date: 6/20/2024

Addendum# 3 Date: 6/26/2024 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:

Danus Utilities, Inc.
Name of Business

Authorized Signature

Daniel J Pardus
Printed Name and Title

STATE OF: FLORIDA COUNTY OF: SEMINOLE

The foregoing instrument was acknowledged before me by means of ☑physical presence or ☐online notarization, this 5 day of July, 2024, by Daniel J Pardus and who:

☑is personally known to me; or ☐ has produced PK as identification.

Notary Public, State of Florida

Printed, typed or stamped name, commission and expiration: Robert H Brown - 10/23/2025

ROBERT H. BROWN
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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.

Danus Utilities, Inc.
Name of Business

Authorized Signature

Daniel J Pardus
Printed Name and Title

STATE OF: FLORIDA COUNTY OF: SEMINOLE

The foregoing instrument was acknowledged before me by means of ☑physical presence or ☐online notarization, this 5 day of July, 2024, by Daniel J Pardus and who:

☑Is personally known to me; or ☐ has produced PK as identification.

Notary Public, State of Florida

Printed, typed or stamped name, commission and expiration: Robert H Brown - 10/23/2025

ROBERT H. BROWN MY COMMISSION EXPIRES OCTOBER 23, 2025 HH 145052 Bonded thru Notary Public Underwriters NOTARY PUBLIC, STATE OF FLORIDA

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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 Daniel J Pardus, who, being by me first duly sworn, made the following statement:

1. The business address of Danus Utilities, Inc. (name of Offeror or business) is 2320 Beardall Ave, Sanford, FL 32771.
2. My relationship to Danus Utilities, 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)**

Danus Utilities, Inc.
Name of Business

Authorized Signature

Daniel J Pardus
Printed Name and Title

STATE OF: FLORIDA

COUNTY OF: SEMINOLE

The foregoing instrument was acknowledged before me by means of ☑physical presence or ☐online notarization, this 5 day of July, 2024, by Daniel J Pardus and who:

☑Is personally known to me; or ☐ has produced PK as identification.

_____ Notary Public, State of _____

Printed, typed or stamped name, commission and expiration: Robert H Brown - 10/23/2025

ROBERT H. BROWN MY COMMISSION EXPIRES OCTOBER 23, 2025 #HH 145052 Bonded thru Notary Public Underwriters NOTARY PUBLIC, STATE OF FLORIDA

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: Danus Utilities, Inc.

SIGNED BY: _____

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

PRINTED SIGNATURE: Daniel J Pardus

TITLE: President

ADDRESS: 2320 Beardall Ave

CITY, STATE AND ZIP CODE: Sanford, FL 32771

TELEPHONE: 407-878-1254 FAX: 407-878-1254

F.E.I.N.: 27-0404772

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: Danus Utilities, Inc.

B. Permanent main office address: 2320 Beardall Ave, Sanford, FL 32771

C. Date organized: August 2009

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? 15 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** See Attachment 1 - Open Contracts

G. General character of work performed by your company: Certified Underground Utilities and Excavation Contractor

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** See Atachment 2

K. List your major equipment currently owned or leased: **USE SEPARATE SHEET & ATTACH TO SUBMITTAL** See Attachment 3 - Equipment List

L. Background and experience of the principal members of your organization, including the officers: USE **SEPARATE SHEET & ATTACH TO SUBMITTAL** See Attachment 4 - Resumes

M. Credit currently available: $ 500,000.00

N. Give bank name, contact name and phone number: Seacoast Bank - Bill Zirkelbach - 386-274-6020

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 compromising the Statement of Bidder's Qualifications.

Danus Utilities, Inc.
Name of Business

Authorized Signature

Daniel J Pardus - President
Printed Name and Title

STATE OF: FLORIDA

COUNTY OF: SEMINOLE

The foregoing instrument was acknowledged before me by means of ☑physical presence or ☐online notarization, this 5 day of July, 2024, by Daniel J Pardus - President and who:

☑Is personally known to me; or ☐ has produced PK as identification.

Notary Public, State of

Printed, typed or stamped name, commission and expiration: Robert H Brown - 10/23/2025

ROBERT H. BROWN
MY COMMISSION EXPIRES
OCTOBER 23, 2025
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DANUS UTILITIES
2320 Beardall Ave, Sanford, FL 32771 • P.O. BOX 291671, Port Orange, FL 32129 • (386) 233-5588
State License # CUC 1224744

OPEN CONTRACTS				
	EST. COMPLETION	CONTRACT NAME	OWNER INFORMATION	VALUE
	October 2024	Temple Terrace Tree - Tupelo Lift Station	City of Temple Terrace	$ 1,197,658.00
	July 2024	Holly Hill Lift Station 19	City of Holly Hill	$ 468,768.00
	July 2024	Holly Hill Lift Station 20	City of Holly Hill	$ 355,780.00
	October 2024	Brevard County Lift Station M-16	Brevard County	$ 2,668,550.00
	August 2024	Brevard County Lift Station S-26	Brevard County	$ 946,000.00
				$ 5,636,756.00

DANUS UTILITIES

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JOB REFERENCES

START DATE	COMPLETE DATE	DESCRIPTION	OWNER INFORMATION AND CONTACTS	VALUE
1/2023	11/2023	**City of Titusville: Causeway Lift Station Improvements** The scope of work consists of demolition, new installations, new sewer manholes, new force main connection to existing, new gravity sewer, misc. electrical instrumentation, piping valves and fittings, electrical service, level monitoring and control system, installation of a City provided radio telemetry unit (RTU) and all other necessary sitework, testing, and incidentals for satisfactory project completion and satisfactory operational system.	**City of Titusville** 2836 Garden St. Titusville, FL 32796 Kevin Meulman kevin.meulman@titusville.com 321-288-6778	$775,825.00
12/2021	6/2023	**City of Temple Terrace: Tree Tops Lift Station** This project consisted of the Rehabilitation of the existing Tree Tops lift station and the replacement of approximately 2,800 LF of force main. The force main will be rerouted into the SWFWMD easement adjacent to the Tree Tops lift station site. The lift station rehabilitation includes replacing all pumps, wet well piping, fittings, valves, concrete top slab, and lining the existing wet well. Tree Tops Lift Station is located at 8124 Tom Sawyer Drive, Temple Terrace, FL 33637	**City of Temple Terrace** 11250 N.56th Street Temple Terrace, FL 33617 Engineer: Kimley - Horn mike.semago@kimley-horn.com 727-498-3633	$760,925.00
5/2021	5/2022	**City of Daytona Beach: Lift Station 97** The work generally consists of furnishing all coordination, labor, materials and construction services to complete the project work as noted in the Drawings. The primary work includes construction. This project involves the rehabilitation of the City's Lift Station #97 by conversion of a top mounted style to submersible pumps. Work includes removal of existing hardware and installation of new pumps, rails, pipes, controls, backup diesel pump, wet well and manhole lining, new valve vault, fencing and electrical equipment	**City of Daytona Beach** 301 S. Ridgewood Avenue Daytona Beach, FL 32114 Jeff Lane lanejeff@codb.us 321-288-6778	$686,630.00
12/2021	4/2022	**City of Palm Bay: Lift Station 21** Work consisted of by-passing the location, prep, and cleaning wet-well. Equipment removal with demolition of old top slab. Installed discharge piping and valve assembly along with new top slab and hatch. Coated wet-well as well.	**City of Palm Bay** 120 Malabar Road, Suite 200 Palm Bay, FL 32907 Glen Beckett glen.beckett@palmbayflorida.org 321-288-6778	$99,000.00
3/2021	11/2021	**City of Temple Terrace: Lift Station SA** This project included the rehabilitation of Lift Station SA with the installation of a new wet well (precast well and top slab), 3 new submersible pumps, all piping (12" and 24") associated with the lift station (header piping, valve vault piping and appurtenances). The inside of the receiving gravity manhole is to be rehabilitated/re-coated. Demo of previous lift station building as well as restoration of the lot	**City of Temple Terrace** 11250 N.56th Street Temple Terrace, FL 33617 Engineer: *Kimley - Horn* mike.semago@kimley-horn.com 727-498-3633	$1,979,790.80
12/2020	7/2021	**City of Daytona Beach: Clyde Morris Manhole Rehabs** Project consisted of the rehabilitation of 29 manholes. They were lined using Urathane or epoxy coating. Some were located in the pavement and had ring and cover replacement. Bench and invert work was done where it had been lacking.	**City of Daytona Beach** 301 S. Ridgewood Avenue Daytona Beach, FL 32114 Jeff Lane lanejeff@codb.us 321-288-6778	$231,682.50

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JOB REFERENCES

START DATE	COMPLETE DATE	DESCRIPTION	OWNER INFORMATION AND CONTACTS	VALUE
10/2020	4/2021	**St. Johns County: Multiple Lift Station Upgrades** Rehabilitation of Mayo Clinic (PS 114), Corpus Christi (PS 115), and I-95 Rest Area (Mile Marker 302) North Bound (PS 118) Lift Station Upgrades project required the contractor to furnish all labor, materials, equipment, and incidentals necessary for improvements to the titled lift stations located in Saint Augustine, FL. Work included bypass pumping, demolition, relining existing wet wells and influent manholes, new wet well tops and hatches, new submersible pumps, new force main piping, valves, and appurtenances and connection to existing force main, electrical and instrumentation, coordination with FPL, fencing, site work, and permitting per all applicable St. Johns County Utility Department (SJCUD) standards and as provided in the Contract documents.	**St. Johns County** 500 San Sebastian View St. Augustine, FL 32084 Teri Pinaon, P.E. 904-209-2604	$1,004,847.00
9/2020	5/2021	**City of Casselbery: Seminola Master Lift Station** Consists of the rehabilitation and replacement of equipment, materials, and/or structures at the Seminola Master Lift Station, including installation of a new concrete wet well; rehabilitation of the existing wet well to an influent manhole; installation of new submersible pumps, piping and fittings, control panel, electrical wiring, concrete and asphalt driveway, and emergency generator and fuel tank; and restoration of the site.	**City of Casselberry** 95 Triplet Lake Drive Casselberry, FL 32707 Engineer: *CHA Engineering* sceriana@chacompanies.com 407-679-5358	$1,203,442.65
5/2020	12/2020	**Brevard County: T-09 Lift Station Rehabilitation** Work consisted of by-passing the location, prep and installation of wet well fiberglass liner, install of 12" wet well top slab and hatch, install of 6" gate valve, force main discharge piping and valves, install of 40' ROHN Tower, antenna, conduit, and wiring.	**Brevard County** 2725 Judge Fran Jamieson Way Viera, FL 32940 robert.edmiston@brevardfl.gov 321-617-7391	$155,500.00
2/2020	6/2020	**City of West Melbourne: Multiple Lift Station Rehabilitation** Installation and wiring of city supplied control panels. Installation of fiberglass liners and floors. Installation of HDPE discharge piping, duplex guide rail systems, wet-well top slabs, pipes, valves, and fittings. Removal of debris and restoration.	**City of West Melbourne** 1415 Henry Ave. West Melbourne, FL 32904 michael.deberry@jacobs.com 321-727-3710	$401,876.00
5/2020	12/2020	**Brevard County: T-09 Lift Station Rehabilitation** Work consisted of by-passing the location, prep and installation of wet well fiberglass liner, install of 12" wet well top slab and hatch, install of 6" gate valve, force main discharge piping and valves, install of 40' ROHN Tower, antenna, conduit, and wiring.	**Brevard County** 2725 Judge Fran Jamieson Way Viera, FL 32940 robert.edmiston@brevardfl.gov 321-617-7391	$155,500.00
1/2020	4/2020	**City of Winter Park: Lift Station 66 Rehabiliation** Work consisted of high pressure water blasting, controlled by-passing at 500 GPM, application of Raven 405 Epoxy coating, installed new stainless-steel base plates and base elbows, installed new top slab, and installed new 4" piping.	**City of Winter Park** 1409 Howell Branch Road BG#1 Winter Park, FL 32789 lkastschor@cityofwinterpark.org 407-599-3254	$78,733.70

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JOB REFERENCES

START DATE	COMPLETE DATE	DESCRIPTION	OWNER INFORMATION AND CONTACTS	VALUE
5/2020	5/2020	**City of West Melbourne: WWTP** Headworks Structure, Floor, and Walls Coating. Provided all labor, materials, equipment, and all supervision nesscary to prepare and coat the interior of existing concrete structures. Patched/Repaired all minor voids as nesscary with Raven approved repair mortars up to 1/2" thick. The top was coated with Raven 405 Ultra Build Epoxy at 200 mil thick. The monolithic epoxy coating of entire structure inspected with high voltage Holiday detection equipment.	**City of West Melbourne** 1415 Henry Ave. West Melbourne, FL 32904 Mike DeBerry 321-727-3710 Michael.DeBerry@jacobs.com	$143,814.00
1/2020	4/2020	**City of Winter Park: Lift Station 66 Rehabiliation** Work consisted of high pressure water blasting, controlled by-passing at 500 GPM, application of Raven 405 Epoxy coating, installed new stainless-steel base plates and base elbows, installed new top slab, and installed new 4" piping.	**City of Winter Park** 1409 Howell Branch Road BG#1 Winter Park, FL 32789 lkastschor@cityofwinterpark.org 407-599-3254	$78,733.70
10/2019	4/2020	**Flagler Rehabilitation Project:** Rehabilitation of 3 lift stations in the City of Flagler Beach. Work consisted of removing and replacing pumps, elbows, stainless rails, check/plug valves, concrete slabs, etc. Raven approved repair mortars up to 1/2" thick. The top was coated with Raven 405 Ultra Build Epoxy at 200 mil thick. The monolithic epoxy coating of entire structure inspected with high voltage Holiday detection equipment.	**City of Flagler Beach** 105 S 2nd St. Flagler Beach, FL 32136 Alliant Engineering, Inc. 7406 Fullerton St, Suite 110 Jacksonville, FL 32256 Marcus DePasquale 904-683-8352 MDePasquale@alliant-inc.com	$305,655.00
11/2019	1/2020	**City of Macclenny CDBG 18 NR Lift Station Rehabilitation and Replacement** The Project consists of constructing three (3) new duplex submersible pump stations; rehabilitating two (2) duplex self-priming pump stations; associated gravity sewer and force main work; bypass pumping; demolition; sitework; electrical, including emergency standby generators; and associated restoration. piping.	**Macclenny, FL** 118 E Macclenny Ave. Macclenny, FL 32063 Mittauer & Associates, Inc. 580-1 Wells Road Orange Park, FL 32073 Tim Norman 904-278-0030	$1,029,213.00
1/2020	4/2020	**Brevard County Lift Station S-04:** The project consists of the installation of the proposed Lift Station S-04, including but not limited to; the rehabilitation of the existing wet well, installation of a new wet well, pumps, risers, valves, piping, valve pad, control panel, and associated electrical components, telemetry infrastructure, and the associated instrumentation and controls; gravity wall, sidewalk, and guiderails; and all other incidentals necessary to complete the work in accordance with the Contract documents.	**Brevard County, FL** 2725 Judge Fran Jamieson Way Viera, Florida 32940 Owen Callard 321-633-2089 Owen.Callard@brevardfl.gov Engineering: Bussen-Mayer Scott Nickle 321-453-0010	$781,135.00

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JOB REFERENCES

START DATE	COMPLETE DATE	DESCRIPTION	OWNER INFORMATION AND CONTACTS	VALUE
9/2019	4/2020	**City of Temple Terrace Lift Station A:** This project consists of the rehabilitation of an existing lift station and installation of approximately 30 LF of 8" DI Forcemain. Lift station rehabilitation includes replacing all pumps, wet well piping, fittings, valves and lining the existing wet wells.	**City of Temple Terrace** 11250 N.56th Street Temple Terrace, FL 33617 Engineering: Kimley-Horn Mike Semago Mike.Semago@kimley-horn.com 727-498-3633	**$296,890.00**
10/2019	2/2020	**City of Holly Hill Lift Station 13 Rehabilitation:** The rehabilitation of the City of Holly Hill Lift Station #13 includes the conversion of the can lift station into a submersible station. Work includes bypass pumping, demolition of (2) existing pumps, piping, and valves to abandon pump can. Installation of two (2) new submersible pumps, top slab, piping, valves, valve vault, electrical panel and control panel.	**City of Holly Hill** 1065 Ridgewood Ave Holly Hill, FL 32117 Rick Glass 386-566-1600 rglass@hollyhillfl.org Engineering: Mead & Hunt Kevin Lee 386-414-5053	**$240,430.00**
10/2019	1/2020	**Holiday Isle Lift Station Improvements-** Installation of new 8 ft diameter precast concrete wetwell and 5 ft diameter precast doghouse/pour-in-place receiving manhole, coating the existing and proposed wetwell/manhole interior with Raven405 or approved equal, precast concretetop slab withHoliday Isle Lift Station access hatch, 316 stainless steel piping, valves, guide rails, pump bases, submersible pumps, diesel bypass pump, and water service for lift station, relocation/replacement of existing 4" and 6" backflow preventers, concrete slab/driveway, concrete masonry block wall with stucco finish and cantilever gate, electrical rack including control panel, explosion-proof terminal boxes, RTU, electrical wiring, service disconnect, and electrical meter per SJCUD standards, temporary bypass pumping and demolition / removal of existing lift station components and building and conversion of theexisting wetwell into a manhole.	**St. Johns County Purchasing Dept.** 500 San Sebastian View St. Augustine FL 32084. James Overton 904-209-2514 joverton@sjcfl.us	**$399,010.00**
5/2019	11/2019	**City of Ormond Beach Lift Stations 3M, Tomoka Meadows, & Ashford Lakes Improvements -** The work consists of improvements to Lift Stations 3M, Tomka Meadows & Ashford Lakes. For Lift Station 3M, electrical and control improvements; including voltage change and SCADA reprogramming; wet well top slab replacement; removal of fiberglass pole and light fixture; bypass pumping; installation of new light on existing concrete pole; new drain line. For the Lift Station at Tomoka Meadows, work consists of removal of a fiberglass pole and light fixture; installation of a new light on existing concrete pole; realign discharge pipe, guide rails and discharge elbows to be centered in wet well; new discharge pipe; new valve pit centered on realigned discharge pipes; bypass pumping; new drain line; additional 2-inch conduit for pump lead; 90-degree bend and drop pipe on influent line in wet well. For the Lift Station at Ashford Lakes, work consists of removal and replacement of the pumps and discharge elbows; new guide rails and upper guide rail brackets; new discharge pipe; new control panel; new SCADA panel; new equipment rack; bypass pumping.	**City of Ormond Beach** 22 South Beach Street Ormond Beach, FL 32174 Ron Burk: 386-676-3368 Ron.Burk@ormondbeach.org Engineering: McKim & Creed, Inc. 139 Executive Circle, Suite	**$378,400.00**

DANUS UTILITIES

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386-233-5588

JOB REFERENCES

START DATE	COMPLETE DATE	DESCRIPTION	OWNER INFORMATION AND CONTACTS	VALUE
4/2019	11/2019	**Brevard County Lift Station N-04 Demolition & Gravity Line Installation-** The project consisted of replacing an existing sanitary sewerage lift station with a new sanitary sewerage gravity main and all other incidentals necessary to complete the work in accordance with the Contract Documents. The incoming waste water flow to the existing station must be continuously pumped at all times; this required the contractor to provide a means of pumping during down times of the existing station due to construction or change over to new gravity main.	**Brevard County, FL** 2725 Judge Fran Jamieson Way Viera, Florida 32940 Owen Callard 321-633-2089 Owen.Callard@brevardfl.gov Engineering: Honeycutt and Associates: Rodney Honeycutt: 321-269-7847	**$421,993.00**
6/2019	11/2019	**Brevard County Lift Station T-45 Rehabilitation** The project involved complete rehabilitation of an existing duplex, submersible sanitary sewer lift station.	**Brevard County, FL** 2725 Judge Fran Jamieson Way Viera, Florida 32940 Owen Callard 321-633-2089 Owen.Callard@brevardfl.gov Engineering: Bussen-Mayer Scott Nickle 321-453-0010	**$108,600.00**
5/2019	10/2019	**Lift Station 60 Automatic Transfer Switch Upgrade** Contractor was responsible for providing labor and materials to install a new three-way bypass/isolation valve system on the existing 30" DIP Force Main at lift station 60. The bypass valve required a valve vault. Contractor provided the excavation and restoration required. Affected areas were restored to grade and sodded. Contractor ensured all work meets the UCNSB wastewater rules and standards.	**Utilities Commission, City of New Smyrna Beach** 200 Canal Street New Smyrna Beach, FL 32168 Darren Phegley: 386-275-2475 dphegley@ucnsb.org	**$836,539.40**
1/2019	9/2019	**City of Groveland Sunshine Parkway WWTF Headworks Relining** Trench excavation, addition of 16" diameter raw wastewater piping, and lining of two effluent boxes in existing headworks structure.	**City of Groveland** 156 South Lake Avenue Groveland, FL 34736 Ricky Rodriguez: 352-557-1109 ricky.rodriguez@groveland-fl.gov	**$124,749.50**
1/2019	5/2019	**City of Cocoa - Lift Station 29 Gravity Main -** This project involves the removal, grade correction and replacement of approximately 100 lineal ft of 10" gravity sewer.	**City of Cocoa** 65 Stone Street Cocoa, FL 32922 Chris Collier 407-616-1921 ccollier@cocoafl.org County Engineering	**$167,850.00**
1/2019	4/2019	**Brevard County Lift Station T-14 Rehabilitation** The project consists of the rehabilitation of Lift Station T-14 to include rehabilitation of existing wet well; demolition of underground valve box and its replacement with an aboveground valve pad; replacement of the pumps, base elbows, discharge piping, guiderail system, valves / fittings, electrical and RTU panels; and connection to the existing force main. The project also involves bypass pumping during rehabilitation and site restoration such as construction access driveway and replanting of the screening hedge after completion of rehabilitation.	**Brevard County, FL** 2725 Judge Fran Jamieson Way Viera, Florida 32940 Owen Callard 321-633-2089 Owen.Callard@brevardfl.gov Engineering: Bussen-Mayer Scott Nickle 321-453-0010	**$340,800.00**

DANUS UTILITIES

Equipment List

Vehicles	
1	2015 Dodge 5500 Utility Truck w/ Auto Crane and Tools (2)
2	2000 Ford F-350 Utility Truck
3	2020 Ford F-450 Flatbed Truck
4	2020 Ford F-250 Blue Truck
5	2015 Ford F-250 Red Truck
6	2008 Chevrolet C4500 Duramax Flatbed
7	2009 Ford F-150 Red Truck
8	2016 Ford F-150 Red Truck
9	2017 Ford F-150 Red Truck
10	2006 Ford F-150 Silver
Trailers	
1	2018 SureTrac Flat "Blue" Trailer
2	2015 Big Tex Flat "Black" Trailer
3	Big Tex 70PI Dewatering Trailer
4	2017 SureTrac Dump Trailer
5	2013 Big Tex 14LX Dump Trailer
6	2007 Drag Dump Hydraulic Dump
7	Vermeer 750 Gallon Vactor
8	2005 750 Super Vac
9	2019 Raven Spray Rig
By-Pumps	
1	2018 Godwin 8" By-Pass #1
2	Godwin 4" By-Pass
3	Godwin 4" By-Pass
4	DBA 4" Dewatering Pump
Machinary	
1	2013 CAT 304 Mini Excavator
2	2013 CAT 259 Skid Steer W/ Attachments
3	CAT 320E Excavator
4	2019 Cat Skid Steer
5	Bobcat 331 Mini Excavator
Miscellaneous Equipment	
1	McCroy HDPE Butt Fusion Machine
2	Central Thermoplast HDPE Electro Fusion Machine
3	Generators / Welders
4	Bosch Jack Hammer
5	ISC 695-F4 5HP Concrete Chain Saw
6	Stihl 14" Gas Chop Saws (3)
7	Confined Space Tripods
8	Gas Detectors
9	Hilti Chisel Hammer
10	Compactor / Tamper
12	Vacall Vactor Tuck
13	All Required Piping tools

DANUS UTILITIES

2320 Beardall Ave, Sanford, FL 32771 • P.O. BOX 291671, Port Orange, FL 32129 • (386) 233-5588

State License # CUC 1224744

Resumes of Key Employees

Dan Pardus – President/Project Manager: Over 30 years experience in underground utilities as an owner and project manager. Dan Pardus is the sole owner /operator of Danus Utilities Inc. Dan Pardus founded Danus Utilities Inc. Dan holds a current Florida Underground Utility Contractor License. Other certifications include; Confined Space, 10-hour OSHA, HDPE Butt Fusion Welding, Backflow Repair / Tester and MOT. Danus Utilities currently has 18 full time employees. 3000 sq. ft. shop is located at 2320 Beardall Ave, Sanford FL 32771. Danus Utilities Inc. offers complete rehab services and installation to lift stations, manholes and sanitary sewer force main /gravity sewer connections installation of fiberglass liners in wet wells and manholes. Danus Utilities, Inc. is also a certified Raven applicator and various coating to precast surfaces. HDPE electro/butt fusion welding. Chemical pump grouting of precast structures. vactor services, cleaning and lining of lines. Dan's success in all his past business ventures is due to the fact he is a hands-on owner that works side by side with all his employees to ensure the finished product is the best it can be. Before Danus Utilities, Inc. Dan Pardus was Project Manager / Superintendent for J & H Waterstop, Inc. supervising lift station rehab jobs for Manatee County, Brevard County, Orange County, The City of Deltona, and the City of Winter Haven. He operated the bobcat and backhoe, supervised dewatering, installations of the piping, valves, fittings, and supervised the force main tie-ins, and supervised subs including electrical, asphalt, and concrete contractors, and supervised crane operators setting structures and performing trench box shoring and scheduled and performed startup of pumps. His additional duties included preparation of submittals to the engineering firm, holding pre-construction meetings with City Dept. Heads, review of plans, set up by-pass system and maintenance of traffic, ordered and scheduled material and equipment, ensured compliance with OSHA regulations. Starting his underground career in 1993 Dan Pardus was owner of Multi-Communications and was the Project Manager and equipment operator supervising crews running conduits on 1-75 installing 20 miles of 4" duct and pull boxes. He also supervised the installation, maintenance, and servicing of all cable systems located in Volusia County, installing coax and fiber cables, jack and boring of roads and driveways, splice taps, setting ground rods, and underground pull boxes. His responsibilities included operating the ditch witch, and plow trencher combo, digging pull boxes in with backhoe, holding pre-construction meetings, reviewing plans, applying for permits, scheduling jobs and material and equipment deliveries, ensuring all work was in compliance with D.O.T and ensuring job site safety

DANUS UTILITIES

Stephen Coxon– Foreman: Stephen Joined the Danus Utilities Team in August of 2016 as an Utilities Laborer. He quickly learned the ins and outs in the field and was moved into a foreman role supervising all phases of lift station rehabilitations, manhole lining, water and wastewater treatment plant repairs/ improvements, excavation of sanitary sewer/water mains. Management of crew and materials. job and consumer safety control. Stephen holds current Confined Space, Excavation and Trench Safety Certifications and a Class A CDL License. He is a competent heavy equipment operator Backhoe/Loader. Has been an active working participant on-site at over 100 plus lift station Rehabs or new Lift station installations in the throughout Florida. Stephen has competently performed the following: Installing new and rehabs lift station pipe, valves and fittings, construction of new lift stations from the pre-cast only stages. He operates an autocrane, bob cat and backhoe. Assisted in lift station bypassing & dewatering setups for rehabs. Installation of Force main tie-ins and all piping associated with tie-ins. Pouring concrete slabs and driveways. Removal and installation of lift station pumps & controls.

Raymond Rogers – Estimator/Project Manager: Raymond began his career in 1989 as a delivery driver for Hughes Supply, and diligently worked his way up the ranks to Branch Manager before leaving in 2004. He worked as an Estimator/Project Manager/Product Specialist for 5 years finishing several successful projects along the way. From 2009 to 2013 Raymond worked for the City of Clermont continuing to expand his knowledge of sewer and water systems. He was an Environmental Services Manager in charge of the Distribution Division, Collections Division, Storm Water Division and Inventory for Warehouse Supplies. In 2013 Raymond had the opportunity to join Danus Utilities as an Estimator/Project Manager/Product Specialist. Since then he has helped with the successful completion of hundreds of projects and is an integral part of the success of Danus Utilities, Inc.

Utility Technicians/Laborers: Danus Utilities has 3 crews of hand-picked members that have a combined over 30 years of combined service. There certifications include OSHA-10, Confined Space Safety, Competent Person and Excavation Safety, Respiratory Protection, Hazard Communication supported Scaffolding, and Ladder Safety. With these crew members Danus Utilities is able to provide services that exceed our customers' expectations.

DANUS UTILITIES

Manager of Spray Coating Operations

Andrew W Darling

Mr. Darling manages and supervises all aspects of the rehabilitation business of Danus Utilties. Mr. Darling is a hands-on supervisor conducting all the in-house training for crew members, developing written quality procedures for Raven Lining Systems and AFE rigid fiberglass liners.

Mr. Darling conducts monthly training sessions with all crew members in conjunction with the company's safety manager, focusing on confined space training, OSHA requirements, gas detection, and the proper use of all safety equipment. All crew members are crossed-trained on every aspect of running the equipment and conducting the operations to give our customers the most flexibility possible when it comes to their underground utilities rehabilitation projects.

Danus Utilities is approved to install Raven Lining Systems 10-year warranty products and AFE fiberglass liners with a 25 year warranty

Project Completion:

Darling has managed the installation of 250,000 square feet of spray applied epoxy. Mr. Darling has completed 2019- 2024 annual rehabilitation projects for the City of Port orange, City of Daytona Beach and City of South Daytona. He has also installed Raven throughout the state of Florida for the past 5 years.

2320 Beardall Ave, Sanford, FL 32771 • P.O. BOX 291671, Port Orange, FL 32129 • (386) 233-5588
State License # CUC 1224744

Miguel Arriaga Field Supervisor Spray Coating Operations

Background:

Mr. Arriaga joined Danus Utilities in 2019, for the express purpose of developing the equipment and specifications for spraying epoxy coating products. Mr. Arriaga has been responsible for the building and maintaining our plural component spray equipment as well as several airless pumps which we use in the spray coating business.

Before joining Danus Utilities, Mr. Arriaga was a employed at Plastic Composites Inc. His responsibilities included the supervision of various projects which included dealing with sewer systems from manholes to wet wells.

Current Operations:

Mr. Arriaga has managed the Danus Utilities spray coating crews since 2020. His responsibilities include quality control for each project, including the maintenance of the equipment, training of the personnel, safety, and time management for each project.

Mr. Arriaga has managed over 250,000 sq. ft. of coating installation over the last ten years, while maintaining a record of no accidents, and spraying each product within specified ratio for the manufacturer's specification.

Mr. Arriaga has been recertified to spray Raven Lining Systems product and Tnemec products. Further, Mr. Arriaga is qualified in spraying various cement products.

Mr. Arriaga is responsible for assisting in all new employee training on all coating products.

Dan Pardus
President – Danus Utilities

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: City of Temple Terrace
   Contact Person: Mike Semago
   City, State: Temple Terrace, FL 33617
   Telephone Number: 727-498-3633
   Email Address: mike.semago@kimley-horn.com
   Description of goods/services provided: Lift Station Rehabilitation - Tree Tops Lift Station
   Contract Amount: $760,925.00
   Start/End Date of Contract: 12/2021 - 6/2023
2. Company Name: City of Casselberry
   Contact Person: Tara Lamoureux.
   City, State: Casselberry, FL 32707
   Telephone Number: 407-262-7725
   Email Address: tlamoureux@casselberry.org
   Description of goods/services provided: Seminola Master Lift Station Rehabilitation
   Contract Amount: 1,203,442.65
   Start/End Date of Contract: 9/2020 to 5/2021
3. Company Name: St Johns County
   Contact Person: Teri Pinson - PE
   City, State: St Johns County
   Telephone Number: 904-209-2604
   Email Address: tpinson@sjcfl.us
   Description of goods/services provided: Lift Stations Rehabilitation Corpus Cristi, Mayo Clinic and I-95 Rest Area
   Contract Amount: $1,004,847.00
   Start/End Date of Contract: 10/2020 - 4/2021

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: Owen Callard
   Phone: 321-633-2089
   Current Client: ☑Yes ☐ No
   Number of years of service provided: 14 Years
   Description of service: Multiple Lift Station and Sewer System Rehabilitations

2. Contact Name: Ron Burk
   Phone: 386-676-3368
   Current Client: ☑Yes ☐ No
   Number of years of service provided: 14 Years
   Description of service: Multiple Lift Station and Sewer System Rehabilitations

3. Contact Name: Jeff Elder
   Phone: 386-575-6800
   Current Client: ☑Yes ☐ No
   Number of years of service provided: 14 Years
   Description of service: Multiple Lift Station and Sewer System Rehabilitations

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: Chinchor Electric, Inc.

Description of Work: Electrical

Percent of Contract Price: 11%

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, Daniel J Pardus, on behalf
(Print Name and Title)

of Danus Utilities, Inc. ("Company"), certify that Danus Utilities, 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.

Danus Utilities, Inc.
COMPANY NAME

SIGNATURE

Daniel J Pardus
PRINT NAME

President
TITLE

FORM 7.10 SCRUTINIZED COMPANIES CERTIFICATION (page 2)

STATE OF FLORIDA

COUNTY OF: SEMINOLE

The foregoing instrument was acknowledged before me by means of ☑physical presence or ☐online notarization, this 5 day of July, 2024, by Daniel J Pardus and who:

☑Is personally known to me; or ☐ has produced PK as identification.

Notary Public, State of Florida

Printed, typed or stamped name, commission and expiration: Robert H Brown - 10/23/2025

ROBERT H. BROWN
MY COMMISSION EXPIRES
OCTOBER 23, 2025
#HH 145052
Bonded thru
Notary Public Underwriters
NOTARY PUBLIC, STATE OF FLORIDA

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)*: ITB #24-11

Business Name: Danus Utilities, Inc. Contact Person/Title: Daniel J Pardus - President

Mailing Address: PO Box 291671 City,State,Zip: Port Orange, FL 32129

Phone Number: 407-878-1254 Email address: danus2@cfl.rr.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): 27-0404772

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.

Danus Utilities, Inc.
Name of Business

Authorized Signature

STATE OF: FLORIDA

COUNTY OF: SEMINOLE

Daniel J Pardus - President
Printed Name and Title

The foregoing instrument was acknowledged before me by means of ☑physical presence or ☐online notarization, this 5 day of July, 2024, by Daniel J Pardus and who:

☑Is personally known to me; or ☐ has produced PK as identification.

Notary Public, State of Florida

Printed, typed or stamped name, commission and expiration: Robert H Brown - 10/23/2025

ROBERT H. BROWN MY COMMISSION EXPIRES OCTOBER 23, 2025 #HH 145052 Bonded thru Notary Public Underwriters NOTARY PUBLIC, STATE OF FLORIDA

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: CHRISTIANCY LIFT STATION (LS11) REHABILITATION

Solicitation Number: ITB #24-11

I, the undersigned hereby certify that Danus Utilities, 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 Danus Utilities, 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.

Daniel J Pardus - President
Print or Type Name, Title

Signature of Affiant

27-0404772
Federal Employer ID Number (FEIN)

961730
E-Verify Number

STATE OF FLORIDA

COUNTY OF: SEMINOLE

The foregoing instrument was acknowledged before me by means of ☑physical presence or ☐online notarization, this 5 day of July, 2024, by Daniel J Pardus and who:

☑Is personally known to me; or ☐ has produced PK as identification.

Notary Public, State of Florida

Printed, typed or stamped name, commission and expiration: Robert H Brown - 10/23/2025

ROBERT H. BROWN
MY COMMISSION EXPIRES OCTOBER 23, 2025
#HH 145052
Bonded thru Notary Public Underwriters
NOTARY PUBLIC, STATE OF FLORIDA

This document to be completed and returned with your Submittal

Company ID Number: 961730

Approved by:

Employer Danus Utilities, Inc.	
Name (Please Type or Print) Robert H Brown	Title
Signature Electronically Signed	Date 04/08/2016
Department of Homeland Security – Verification Division	
Name (Please Type or Print) USCIS Verification Division	Title
Signature Electronically Signed	Date 04/08/2016

Company ID Number: 961730

Information Required for the E-Verify Program **Information relating to your Company:**	
Company Name	Danus Utilities, Inc.
Company Facility Address	2320 Beardall Ave Sanford, FL 32771
Company Alternate Address	
County or Parish	SEMINOLE
Employer Identification Number	270404772
North American Industry Classification Systems Code	221
Parent Company	
Number of Employees	10 to 19
Number of Sites Verified for	1

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 withing a three-year period preceding this proposal bee 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.

Danus Utilities, Inc.	ITB #24-11
Organization Name	Bid Number or Project Name
Daniel J Pardus - President	7-5-2024
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 Daniel J Pardus (Title) of Danus Utilities, Inc. (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: July 5, 2024 Signed: _____

Entity: Danus Utilities, Inc. Name: Daniel J Pardus

Title: President

STATE OF: FLORIDA COUNTY OF: SEMINOLE

The foregoing instrument was acknowledged before me by means of ☑physical presence or ☐online notarization, this 5 day of July, 2024, by Daniel J Pardus and who:

☑is personally known to me; or ☐ has produced PK as identification.

_____
Notary Public, State of Florida at Large:
Printed Name/Seal of Notary, Commission and Expiration Date:

ROBERT H. BROWN
MY COMMISSION EXPIRES
OCTOBER 23, 2025
(seal)
#HH 145052
Bonded thru Notary Public Underwriters
NOTARY PUBLIC, STATE OF FLORIDA

My commission expires: October 23, 2025

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 #24-11 Christiancy Lift Station (LS11) Rehabilitation

Company Name: Danus Utilities, Inc.

Contact Person Name & Title: Daniel J Pardus - President

Address: 2320 Beardall Ave, Sanford, FL 32771

Telephone: 407-878-1254 Email Address: danus2@cfl.rr.com

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: _____

N/A

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, Danus Utilities, 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

Daniel J Pardus - President

Name & Title of Contractor's Authorized Official

Date: July 5, 2024

This document must be completed and returned with your Submittal

REVISED (ATTACHMENT 1) SCHEDULE OF UNIT PRICING

ITB #24-11

CHRISTIANCY LIFT STATION (LS11) REHABILITATION

Name of Business:	Danus Utilities, Inc.
Contact Person:	Dan Pardus
Email Address:	danus2@cfl.rr.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.

ITEM #	DESCRIPTION	UNIT OF MEASURE	ESTIMATED QUANTITY	UNIT PRICE	EXTENDED PRICE
1	Mobilization/Demobilization	LS	1	$100,000.00	$100,000.00
2	Insurance, Performance and Payment Bond	LS	1	$29,000.00	$29,000.00
3	Preconstruction Video	LS	1	$2,000.00	$2,000.00
4	Construction Restoration - (site cleanup, seed and mulch)	LS	1	$9,000.00	$9,000.00
5	Site Work Demolition - 3 suction lift pumps - Well top and internal piping - 30 LF of lift Station discharge piping to existing plug valve - Sandblast concrete lift station interior - Generator slab and generator, and surrounding wall - Roof, windows, and interior wall of electical and odor control room - Electrical, odor control unit and associated conduit/piping	LS	1	$75,000.00	$75,000.00
6	Site Work (erosion control)	LS	1	$3,500.00	$3,500.00
7	Construction Testing (Pressure, Density Testing, etc.)	LS	1	$5,500.00	$5,500.00
8	Survey Layout & Record Drawings	LS	1	$12,000.00	$12,000.00
9	Concrete Restoration - (concrete driveway)	CY	90	$300.00	$27,000.00
10	Concrete Pads	CY	8	$400.00	$3,200.00
11	Lift Station Improvements (8-ft Diameter) - Liner - Replace top and hatch - Replace interior suction and discharge piping, rails, etc. - Reduce concrete fillet at bottom of well	LS	1	$149,000.00	$149,000.00
12	Submersible Sulzer Pump (Including base elbows, anchor bolts, guide rail systems, access hatch, and startup)	EA	2	$42,000.00	$84,000.00
13	8-in Above Ground Valve Assembly (Piping, Fittings, Valves, etc.)	LS	1	$85,000.00	$85,000.00
14	8-in HDPE Force Main - Bypass Piping (Including Fittings, Restraints, Adapters, Camlocks, etc.)	LF	120	$310.00	$37,200.00
15	8-in PVC Force Main (Including Fittings, Restraints, Adapters, etc.)	LF	90	$225.00	$20,250.00
16	8" Plug Valve	EA	1	$2,500.00	$2,500.00
17	Diesel Bypass Pump (includes 4" Vacuum Assisted Centrifugal Pump, Sound Attenuated Canopy, 2- 10 m Floats, and Control Panel)	EA	1	$150,000.00	$150,000.00
18	Connection to Existing 8" Force Main Plug Valve	EA	1	$6,500.00	$6,500.00
19	6-ft Vinyl Fence	LF	150	$100.00	$15,000.00
20	CMU Wall (8-ft height)	LF	40	$750.00	$30,000.00
21	Bypass Operations	LS	1	$60,000.00	$60,000.00
22	Electrical I&C	LS	1	$175,000.00	$175,000.00
				TOTAL PRICE	$1,080,650.00

LEGEND:

LS - Lump Sum
EA - Each
LF - Linear Feet
CY - Cubic Yards

BID BOND

BID BOND

Bond No.: N/A

KNOW ALL MEN BY THESE PRESENTS that Danus Utilities, Inc., as Contractor, duly authorized to conduct business in the State of Florida, whose principal place of business is located at 2320 Beardall Avenue, Sanford, FL 32771, Tel.: (386) 233-5588, (hereinafter called "PRINCIPAL"), and Swiss Re Corporate Solutions America Insurance Corporation, as SURETY, duly authorized to conduct business in the State of Florida, whose principal place of business is located at 1200 Main Street, Suite 800, Kansas City, MO 64105-2478, Tel: 816-235-3700 (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 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 June 21, 20 24, for:

Project Name/Bid No.: ITB #24-11, CHRISTIANCY LIFT STATION (LS11) REHABILITATION

Project Address: City of Port Orange, FL

Legal Description: CHRISTIANCY LIFT STATION (LS11) REHABILITATION

Description of Work: The existing dry pit pumps will be replaced with two submersible pumps running on VFDs, and a new diesel bypass pump will be installed. Sod replacement, driveway repair, including concrete, soil, and gravel replacement in kind will be required at all disturbed areas. Existing building, generator, existing walls, electrical, odor control device will be removed.

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 21st day of June, 20 24, 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: Danus Utilities, Inc.

Signature

Daniel J Pardus - President

Corporate Officer & Title

ATTEST:

Alice M Pardus

Signature

Alice M Pardus

Corporate Secretary (Affix Corporate Seal)

WITTNESSESS:

SURETY:
Swiss Re Corporate Solutions America Insurance Corporation

Attorney-in-Fact (signature)

Jeffrey W. Reich*, Attorney-In-Fact

Name & Title

Jeffrey W. Reich*, FL Licensed Resident Agent

Name of Local Resident Agent

1200 Main Street, Suite 800, Kansas City, MO 64105-2478

City, State, Zip

816-235-3700

Telephone:

A.M. Best No.: 001866 NAIC No.: 29874

*Inquiries: 407-786-7770

ATTEST:

Susan L. Reich

Signature

Susan L. Reich

Corporate Secretary (Affix Corporate Seal)

STATE OF FLORIDA

COUNTY OF ORANGE

Before me this day personally appeared Jeffrey W. Reich (affiant), who, being duly sworn, deposes and says that he/she is the Attorney-in-Fact for the Swiss Re Corporate Solutions America Insurance Corporation (corporate surety) and that this person has been authorized by Swiss Re Corporate Solutions America Insurance Corporation (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: Jeffrey W. Reich

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 21st day of June, 2024, by Jeffrey W. Reich and who:

☒ Is personally known to me; or ☐ has produced N/A as identification.

Elizabeth Luu Karoly

Notary Public, State of FLORIDA

Printed, typed or stamped name, commission and expiration: HH 283384 07/09/2026

Notary Public State of Florida
Elizabeth Luu Karoly
My Commission HH 283384
Expires 7/9/2026

END OF BID BOND

This document must be completed and returned with your Submittal

Swiss Re
Corporate Solutions
SWISS RE CORPORATE SOLUTIONS AMERICA INSURANCE CORPORATION

1450 American Lane, Suite 1100, SCHAUMBURG, ILLINOIS 60173
800/338-0753

SWISS RE CORPORATE SOLUTIONS AMERICA INSURANCE CORPORATION
A Missouri Corporation

BALANCE SHEET AS OF DECEMBER 31, 2023
(Statutory Basis)

Valuation of securities on National Association of Insurance Commissioner Basis

ASSETS		**LIABILITIES**	
Cash	730,164,557	Reserve for Unearned Premiums	276,334,609
Bonds	1,444,904,017	Reserve for Losses and Loss Adjustment Expenses	776,256,136
Common Stock	300,203,129	Funds Withheld	150,819,630
Other Invested Assets	0	Taxes and Other Liabilities	811,407,215
Other Admitted Assets	745,946,601	Surplus	1,206,400,714
TOTAL ADMITTED ASSETS	3,221,218,304	**TOTAL LIABILITIES & POLICYHOLDERS' SURPLUS**	3,221,218,304

The undersigned, being duly sworn, says: That he is Vice President of Swiss Re Corporate Solutions America Insurance Corporation, Kansas City, Missouri that said company is a corporation duly organized, existing by virtue of the Laws of the State of Missouri and that said Company has also complied with and is duly qualified to act as Surety under the Act of Congress approved; July 1947 6 U.S.C. sec. 6-13; and that to the best of his knowledge and belief the above statement is a full, true and correct statement of the financial condition of the said Company on the 31st day of December, 2023.

Erik Janssens, Senior Vice President
Swiss Re Corporate Solutions America Insurance Corporation

Subscribed and sworn before me,
this 26th day of March, 2024

OFFICIAL SEAL
KAREN M SZWEDA
Notary Public, State of Illinois
Commission No. 978628
My Commission Expires September 26, 2027

Notary Public

SWISS RE CORPORATE SOLUTIONS

SWISS RE CORPORATE SOLUTIONS AMERICA INSURANCE CORPORATION ("SRCSAIC")
SWISS RE CORPORATE SOLUTIONS PREMIER INSURANCE CORPORATION ("SRCSPIC")
WESTPORT INSURANCE CORPORATION ("WIC")

GENERAL POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, THAT SRCSAIC, a corporation duly organized and existing under laws of the State of Missouri, and having its principal office in the City of Kansas City, Missouri, and SRCSPIC, a corporation organized and existing under the laws of the State of Missouri and having its principal office in the City of Kansas City, Missouri, and WIC, organized under the laws of the State of Missouri, and having its principal office in the City of Kansas City, Missouri, each does hereby make, constitute and appoint:

JEFFREY W. REICH, SUSAN L. REICH, KIM E. NIV, TERESA L. DURHAM, CHERYL A. FOLEY, LISA A. ROSELAND, EMILY J. GOLECKI, SONJA AMANDA FLOREE HARRIS, ROBERT P. O'LINN, NATHAN K. REICH, and SARAH K. O'LINN

JOINTLY OR SEVERALLY

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

TWO HUNDRED MILLION ($200,000,000.00) DOLLARS

This Power of Attorney is granted and is signed by facsimile under and by the authority of the following Resolutions adopted by the Boards of Directors of both SRCSAIC and SRCSPIC at meetings duly called and held on the 18th of November 2021 and WIC by written consent of its Executive Committee dated July 18, 2011.

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

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

SWISS RE CORPORATE SOLUTIONS AMERICA INSURANCE CORPORATION CORPORATE SEAL 1973 MISSOURI

SWISS RE CORPORATE SOLUTIONS PREMIER INSURANCE CORPORATION CORPORATE SEAL MISSOURI

By _____
Erik Janssens, Senior Vice President of SRCSAIC & Senior Vice President of SRCSPIC & Senior Vice President of WIC

By _____
Gerald Jagrowski, Vice President of SRCSAIC & Vice President of SRCSPIC & Vice President of WIC

WESTPORT INSURANCE CORPORATION CORPORATE SEAL MISSOURI

IN WITNESS WHEREOF, SRCSAIC, SRCSPIC, and WIC have caused their official seals to be hereunto affixed, and these presents to be signed by their authorized officers

this 10TH day of NOVEMBER, 20 23

Swiss Re Corporate Solutions America Insurance Corporation
Swiss Re Corporate Solutions Premier Insurance Corporation
Westport Insurance Corporation

State of Illinois
County of Cook ss

On this 10TH day of NOVEMBER, 20 23, before me, a Notary Public personally appeared Erik Janssens, Senior Vice President of SRCSAIC and Senior Vice President of SRCSPIC and Senior Vice President of WIC and Gerald Jagrowski, Vice President of SRCSAIC and Vice President of SPCSPIC and Vice President of WIC, personally known to me, who being by me duly sworn, acknowledged that they signed the above Power of Attorney as officers of and acknowledged said instrument to be the voluntary act and deed of their respective companies.

Karen M. Szweda, Notary

I, Jeffrey Goldberg, the duly elected Senior Vice President and Assistant Secretary of SRCSAIC and SRCSPIC and WIC, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney given by said SRCSAIC and SRCSPIC and WIC, which is still in full force and effect.
IN WITNESS WHEREOF, I have set my hand and affixed the seals of the Companies this 21st day of June, 20 24.

OFFICIAL SEAL
KAREN M SZWEDA
Notary Public, State of Illinois
Commission No. 978628
My Commission Expires September 26, 2027

Jeffrey Goldberg, Senior Vice President & Assistant Secretary of SRCSAIC and SRCSPIC and WIC

FLORIDA SURETY BONDS, INC. Phone 407-786-7770 Maitland, FL

FLORIDA SURETY BONDS, INC.

620 N. Wymore Road, Suite 200
Maitland, FL 32751
407-786-7770
Fax 407-786-7766

888-786-BOND (2663)
Fax 888-718-BOND (2663)

www. FloridaSuretyBonds.com

June 18, 2024

RE: Danus Utilities, Inc.

To Whom It May Concern,

We are pleased to be the surety agents for Danus Utilities, Inc.. Bonds are currently written through Swiss Re Corporate Solutions America Insurance Corporation which is A.M. Best Rated A+, XV and has a Treasury Listing of $ 95,035,000.00.

We have investigated the financial capabilities, performance references, and think you'll be pleased with the quality of their work.

We usually anticipate no difficulties in providing surety bonds for Danus Utilities, Inc. in the $7,000,000 single, $15,000,000 aggregate range. This letter is not a commitment to provide any bonds unless all underwriting requirements including contract, bond form and financing review are met prior to issuing any bonds. Neither our agency, nor the surety are liable for any damages relating to this letter or project.

Should you have any questions, please do not hesitate to contact us.

Sincerely,

Jeffrey W. Reich
CPCU
President

Ron DeSantis, Governor

Melanie S. Griffin, Secretary

Florida dbpr

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

CONSTRUCTION INDUSTRY LICENSING BOARD

THE UNDERGROUND UTILITY & EXCAVATION CO HEREIN IS CERTIFIED UNDER THE PROVISIONS OF CHAPTER 489, FLORIDA STATUTES

PARDUS, DANIEL J

DANUS UTILITIES INC
2320 BEARDALL AVE
SANFORD FL 32771

LICENSE NUMBER: CUC1224744

EXPIRATION DATE: AUGUST 31, 2024

Always verify licenses online at MyFloridaLicense.com

Do not alter this document in any form.

This is your license. It is unlawful for anyone other than the licensee to use this document.

State of Florida
Department of State

I certify from the records of this office that DANUS UTILITIES INC is a corporation organized under the laws of the State of Florida, filed on June 22, 2009, effective June 20, 2009.

The document number of this corporation is P09000053628.

I further certify that said corporation has paid all fees due this office through December 31, 2024, that its most recent annual report/uniform business report was filed on March 11, 2024, and that its status is active.

I further certify that said corporation has not filed Articles of Dissolution.

Given under my hand and the Great Seal of the State of Florida at Tallahassee, the Capital, this the Eleventh day of March, 2024

Secretary of State

Tracking Number: 8137870117CC

To authenticate this certificate,visit the following site,enter this number, and then follow the instructions displayed.

https://services.sunbiz.org/Filings/CertificateOfStatus/CertificateAuthentication

2024 FLORIDA PROFIT CORPORATION ANNUAL REPORT

DOCUMENT# P09000053628

Entity Name: DANUS UTILITIES INC

Current Principal Place of Business:

2320 BEARDALL AVE
SANFORD, FL 32771

Current Mailing Address:

P.O. BOX 291671
PORT ORANGE, FL 32129 US

FEI Number: 27-0404772

FILED
Mar 11, 2024
Secretary of State
8137870117CC

Certificate of Status Desired: Yes

Name and Address of Current Registered Agent:

PARDUS, DAN J
4133 SADDLE CLUB DR
NEW SMYRNA BEACH, FL 32168 US

The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida.

SIGNATURE:

Electronic Signature of Registered Agent — Date

Officer/Director Detail :

Title	PRES	Title	SECRETARY
Name	PARDUS, DAN J	Name	PARDUS, ALICE M
Address	4133 SADDLE CLUB DR	Address	4133 SADDLE CLUB DR
City-State-Zip:	NEW SMYRNA BEACH FL 32168	City-State-Zip:	NEW SMYRNA BEACH FL 32168

I hereby certify that the information indicated on this report or supplemental report is true and accurate and that my electronic signature shall have the same legal effect as if made under oath; that I am an officer or director of the corporation or the receiver or trustee empowered to execute this report as required by Chapter 607, Florida Statutes; and that my name appears above, or on an attachment with all other like empowered.

SIGNATURE: ALICE PARDUS SECTARY 03/11/2024

Electronic Signature of Signing Officer/Director Detail — Date

SEMINOLE COUNTY BUSINESS TAX RECEIPT

PO BOX 630, SANFORD, FL 32772 • 407-665-1000
WWW.SEMINOLECOUNTY.TAX

VALID THROUGH 09/30/24

DANUS UTILITIES INC
2320 BEARDALL AVE
SANFORD, FL 32771

Account #: 197339

REGULATED
License # - CUC1224744
Qualifier- PARDUS DANIEL J
**SANFORD CITY LICENSE REQUIRED **

DAN J PARDUS (OFFICER)

Receipt #: 12442023082100757 Amount Paid: $ 45.00 Date Paid: 08/21/2023

BUSINESS OWNER, PLEASE NOTE THE FOLLOWING:

• **DISPLAY THE ABOVE RECEIPT PROMINENTLY:** This Business Tax Receipt shall be displayed conspicuously at the place of business in such a manner that it can be open to the view of the public and subject to inspection by all duly authorized officers of the County. Upon failure to do so the business shall be subject to the payment of another business tax for the same business or profession.

• **RENEW THIS TAX BEFORE IT EXPIRES:** Pursuant to Florida Statutes, all Business Tax Receipts shall be issued by the Tax Collector beginning July 1st of each year, and it shall expire on September 30th of the succeeding year. Those Business Tax Receipts issued as renewal accounts beginning October 1st shall be delinquent and subject to a delinquency penalty of 10% for the month of October, plus an additional 5% penalty for each month of delinquency thereafter until paid; provided that the total penalty shall not exceed 25% of the business tax for the delinquent establishment (Florida Statute [FS] 205.053 [1]).

A 25% penalty shall be imposed on any individual engaged in any new business or profession without first obtaining a Seminole County Business Tax receipt ([FS] 205.053 [2]).

This Business Tax Receipt is only a receipt for business taxes paid. It does not permit the taxpayer to violate any existing regulatory or zoning laws of the state, county, or municipality, nor does it exempt the taxpayer from any other required licenses, registrations, certifications, or permits. Business Tax requirements are subject to legislative change.

REPORT ALL CHANGES: The holder of this Business Tax Receipt is required to report a change in the following: Ownership, Business Location, Mailing Address, or any other information that would alter the status of the current year's information. This includes, but is not limited to, the loss of or a change in a State or Regulatory License which was used to qualify for the business identified on the current County Business Tax Receipt. If you have any changes to report, contact the Business Tax Department at 407-665-7636.

DANUS UTILITIES INC
PO BOX 291671
PORT ORANGE, FL 32129

CITY OF SANFORD
FLORIDA

CITY OF SANFORD
Building Division
PO Box 1788, Sanford, FL 32772-1788

2024

LOCAL BUSINESS TAX RECEIPT

VALID THROUGH SEPTEMBER 30, 2024

DANUS UTILITIES INC
2320 BEARDALL AVE

SANFORD FL 32771

This receipt is a local business tax only. It does not permit the local business taxpayer to violate any existing zoning or regulatory laws of the state or county, nor does it exempt the business taxpayer from any other license or permits required by law.

Issue Date:	**10/01/2023**	**BTR19-031005**
Business Location:	**2320 BEARDALL AVE**	

Classification	**Amount**
Fire Inspection Fee	50.00
Contractor	200.00
TOTAL:	**250.00**

Comments: UNDERGROUND UTILITY LOCATOR/CONTRACTOR
Restrictions: SUBJECT TO MEETING P & Z CONDITIONS

SEMINOLE COUNTY TAX RECEIPT REQUIRED
ORIGINAL TAX RECEIPT MUST BE DISPLAYED ON PREMISES

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 06/20/2024

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	CONTACT NAME: Melissa Adrian, CPSR	
Caton-Hosey Insurance 3731 Nova Rd Port Orange FL 32129	PHONE (A/C, No, Ext): (386) 767-3161 FAX (A/C, No): (386) 760-1770 E-MAIL ADDRESS: melissa@catonhosey.com	
	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A : Specialty Builders Ins. Co	16826
INSURED Danus Utilities, Inc 4133 Saddle Club Dr New Smyrna Beach FL 32168	INSURER B : Auto-Owners Ins	18988
	INSURER C : Travelers Excess & Surplus Lines Co	29696
	INSURER D : National Builders Insurance Company	16632
	INSURER E : Federal Insurance Company	20281
	INSURER F :	

COVERAGES **CERTIFICATE NUMBER:** CL2462032848 **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	[X] COMMERCIAL GENERAL LIABILITY [ ] CLAIMS-MADE [X] OCCUR [X] Contractual Liability [X] XCU Included GEN'L AGGREGATE LIMIT APPLIES PER [ ] POLICY [X] PRO-JECT [ ] LOC [ ] OTHER			PKG-0351006-01	07/02/2024	07/02/2025	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG [ ]	$ 1,000,000 $ 100,000 $ 5,000 $ 1,000,000 $ 2,000,000 $ 2,000,000 $
B	AUTOMOBILE LIABILITY [X] ANY AUTO [ ] OWNED AUTOS ONLY [ ] SCHEDULED AUTOS [ ] HIRED AUTOS ONLY [ ] NON-OWNED AUTOS ONLY			4806741403	07/02/2024	07/02/2025	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident) PIP-Basic	$ 1,000,000 $ $ $ $ 10,000
C	[X] UMBRELLA LIAB [X] OCCUR EXCESS LIAB [ ] CLAIMS-MADE [ ] DED [X] RETENTION $ 10,000			CUP-8W978480-24-NF	07/02/2024	07/02/2025	EACH OCCURRENCE AGGREGATE [ ]	$ 4,000,000 $ 4,000,000 $
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N [N] If yes, describe under DESCRIPTION OF OPERATIONS below	N/A		WCV 0264441 08	07/02/2024	07/02/2025	[X] PER STATUTE [ ] OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	 $ 1,000,000 $ 1,000,000 $ 1,000,000
E	Rented & Leased Equipment			45471710	06/24/2024	06/24/2025	Limit Deductible	$350,000 $1,000

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

CERTIFICATE HOLDER

Proof of Coverage

CANCELLATION

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

AUTHORIZED REPRESENTATIVE

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NOTICE OF INTENT TO AWARD

July 15, 2024

ITB #24-11

CHRISTIANCY LIFT STATION (LS11) REHABILITATION

On July 5, 2024 the City of Port Orange received two (2) responsive submittals for ITB #24-11 Christiancy Lift Station (LS11) Rehabilitation.

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

DANUS UTILITIES, 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 July 18, 2024 at 4:00 PM EST.

ITB #24-11
CHRISTIANCY LIFT STATION (LS11) REHABILITATION
BID TABULATION

				DANUS UTILITIES, INC.		US WATER SERVICES		NON-RESPONSIVE CLEARWATER SOLUTIONS, LLC	
ITEM #	DESCRIPTION	UNIT OF MEASURE	ESTIMATED QUANTITY	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE
1	Mobilization/Demobilization	LS	1	$ 100,000.00	$100,000.00	$56,169.00	$56,169.00		
2	Insurance, Performance and Payment Bond	LS	1	$ 29,000.00	$29,000.00	$28,796.00	$28,796.00		
3	Preconstruction Video	LS	1	$ 2,000.00	$2,000.00	$1,188.00	$1,188.00		
4	Construction Restoration - (site cleanup, seed and mulch)	LS	1	$ 9,000.00	$9,000.00	$43,938.00	$43,938.00		
5	Site Work Demolition - 3 suction lift pumps - Well top and internal piping - 30 LF of lift Station discharge piping to existing plug valve - Sandblast concrete lift station interior - Generator slab and generator, and surrounding wall - Roof, windows, and interior wall of electical and odor control - Electrical, odor control unit and associated conduit/piping	LS	1	$ 75,000.00	$75,000.00	$56,185.00	$56,185.00		
6	Site Work (erosion control)	LS	1	$ 3,500.00	$3,500.00	$32,719.00	$32,719.00		
7	Construction Testing (Pressure, Density Testing, etc.)	LS	1	$ 5,500.00	$5,500.00	$10,862.00	$10,862.00		
8	Survey Layout & Record Drawings	LS	1	$ 12,000.00	$12,000.00	$19,688.00	$19,688.00		
9	Concrete Restoration - (concrete driveway)	CY	90	$ 300.00	$27,000.00	$215.00	$19,350.00		
10	Concrete Pads	CY	8	$ 400.00	$3,200.00	$459.00	$3,672.00		
11	Lift Station Improvements (8-ft Diameter) - Liner - Replace top and hatch - Replace interior suction and discharge piping, rails, etc. - Reduce concrete fillet at bottom of well	LS	1	$ 149,000.00	$149,000.00	$124,991.00	$124,991.00		
12	Submersible Sulzer Pump (Including base elbows, anchor bolts, guide	EA	2	$ 42,000.00	$84,000.00	$132,192.00	$264,384.00		
13	8-in Above Ground Valve Assembly (Piping, Fittings, Valves, etc.)	LS	1	$ 85,000.00	$85,000.00	$75,416.00	$75,416.00		
14	8-in HDPE Force Main - Bypass Piping (Including Fittings, Restraints,	LF	120	$ 310.00	$37,200.00	$548.10	$65,772.00		
15	8-in PVC Force Main (Including Fittings, Restraints, Adapters, etc.)	LF	90	$ 225.00	$20,250.00	$507.30	$45,657.00		
16	8" Plug Valve	EA	1	$ 2,500.00	$2,500.00	$33,717.00	$33,717.00		
17	Diesel Bypass Pump (includes 4" Vacuum Assisted Centrifugal Pump,	EA	1	$ 150,000.00	$150,000.00	$111,532.00	$111,532.00		
18	Connection to Existing 8" Force Main Plug Valve	EA	1	$ 6,500.00	$6,500.00	$31,047.00	$31,047.00		
19	6-ft Vinyl Fence	LF	150	$ 100.00	$15,000.00	$109.20	$16,380.00		
20	CMU Wall (8-ft height)	LF	40	$ 750.00	$30,000.00	$951.80	$38,072.00		
21	Bypass Operations	LS	1	$ 60,000.00	$60,000.00	$50,763.00	$50,763.00		
22	Electrical I&C	LS	1	$ 175,000.00	$175,000.00	$283,396.00	$283,396.00		
				TOTAL PRICE:	$ 1,080,650.00	TOTAL PRICE:	$ 1,413,694.00		

LEGEND:
LS - Lump Sum
EA - Each
LF - Linear Feet
CY - Cubic Yards

Joseph Castro
Buyer

Witness

(ATTACHMENT 1) SCHEDULE OF UNIT PRICING
ITB #24-11
CHRISTIANCY LIFT STATION (LS11) REHABILITATION

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.

ITEM #	DESCRIPTION	UNIT OF MEASURE	ESTIMATED QUANTITY	UNIT PRICE	EXTENDED PRICE
1	Mobilization/Demobilization	LS	1	$	$
2	Insurance, Performance and Payment Bond	LS	1	$	$
3	Preconstruction Video	LS	1	$	$
4	Construction Restoration - (site cleanup, seed and mulch)	LS	1	$	$
5	Site Work Demolition - 3 suction lift pumps - Well top and internal piping - 30 LF of lift Station discharge piping to existing plug valve - Sandblast concrete lift station interior - Generator slab and generator, and surrounding wall - Roof, windows, and interior wall of electical and odor control room - Electrical, odor control unit and associated conduit/piping	LS	1	$	$
6	Site Work (erosion control)	LS	1	$	$
7	Construction Testing (Pressure, Density Testing, etc.)	LS	1	$	$
8	Survey Layout & Record Drawings	LS	1	$	$
9	Concrete Restoration - (concrete driveway)	CY	90	$	$
10	Concrete Pads	CY	8	$	$
11	Lift Station Improvements (8-ft Diameter) - Liner - Replace top and hatch - Replace interior suction and discharge piping, rails, etc. - Reduce concrete fillet at bottom of well	LS	1	$	$
12	Submersible Sulzer Pump (Including base elbows, anchor bolts, guide rail systems, access hatch, and startup)	EA	2	$	$
13	8-in Above Ground Valve Assembly (Piping, Fittings, Valves, etc.)	LS	1	$	$
14	6-in HDPE Force Main - Bypass Piping (Including Fittings, Restraints, Adapters, Camlocks, etc.)	LF	120	$	$
15	8-in PVC Force Main (Including Fittings, Restraints, Adapters, etc.)	LF	90	$	$
16	6" Plug Valve	EA	1	$	$
17	Diesel Bypass Pump (includes 4" Vacuum Assisted Centrifugal Pump, Sound Attenuated Canopy, 2- 10 m Floats, and Control Panel)	EA	1	$	$
18	Connection to Existing 8" Force Main Plug Valve	EA	1	$	$
19	6-ft Vinyl Fence	LF	150	$	$
20	CMU Wall (8-ft height)	LF	40	$	$
21	Bypass Operations	LS	1	$	$
22	Electrical I&C	LS	1	$	$
				TOTAL PRICE	$

LEGEND:

LS - Lump Sum
EA - Each
LF - Linear Feet
CY - Cubic Yards

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

ADDENDUM # 1
June 14, 2024

ITB #24-11 CHRISTIANCY LIFT STATION (LS11) REHABILITATION

To All Bidders:
The following changes, clarifications and additions are hereby made part of the bidding and specifications for the above referenced project dated May 24, 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.

The due date for Bid Submittals is hereby changed to June 28, 2024, at 2:30 PM (EST).

The final addendum will be posted on or about June 18, 2024 and will include all other questions asked to date.

A. REVISIONS:
None

B. CHANGES TO THE ITB:
None

C. CLARIFICATIONS:
None

D. QUESTIONS AND ANSWERS

Question #1: Are there liquidated damages and what is the amount?
ANSWER: There are no liquidated damages on this project.

Question #2: What is the Engineer's Estimate/Budget?
ANSWER: Engineers Opinion of Probable Construction Costs is $1,063,000.

Question #3: What is the Substantial & Final Completion time?
ANSWER: 330 Days for Final Completion.

In all other respects, except as specifically stated herein, the subject ITB #24-11 CHRISTIANCY LIFT STATION (LS11) REHABILITATION remains the same.

END OF ADDENDUM #1

Joseph Castro
Buyer
jcastro@port-orange.org

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

ADDENDUM # 2
June 20, 2024

ITB #24-11 CHRISTIANCY LIFT STATION (LS11) REHABILITATION

To All Bidders:

The following changes, clarifications and additions are hereby made part of the bidding and specifications for the above referenced project dated May 24, 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:

1. **Pg. 01025 – 3 & pg. 01025 – 4: 1.16 6-IN HDPE FORCE MAIN - BYPASS PIPING** currently reads:

B. Payment for materials and installation of the 6-inch HDPE force main including restrained joints, fittings, camlocks, materials, equipment, and labor necessary to complete the installation will be made at the linear foot price named in the Bid Schedule under Item No. 14, which price shall constitute full compensation for all such work performed in accordance with the requirements of these Contract Documents.

Pg. 01025 – 3, pg. 01025 – 4: 1.16 8-IN HDPE FORCE MAIN - BYPASS PIPING is hereby changed to read:

B. Payment for materials and installation of the 8-inch HDPE force main including restrained joints, fittings, camlocks, materials, equipment, and labor necessary to complete the installation will be made at the linear foot price named in the Bid Schedule under Item No. 14, which price shall constitute full compensation for all such work performed in accordance with the requirements of these Contract Documents.

2. **Pg.01025 – 4: 1.18 6-IN PLUG VALVE** currently reads:

B. Payment for materials and installation of the 6-inch plug valve including materials, equipment, and labor necessary to complete the installation will be made at the unit price named in the Bid Schedule under Item No. 16, which price shall constitute full compensation for all such work performed in accordance with the requirements of these Contract Documents.

PG. 1.18 01025 – 4: 8-IN PLUG VALVE is hereby changed to read:

B. Payment for materials and installation of the 8-inch plug valve including materials, equipment, and labor necessary to complete the installation will be made at the unit price named in the Bid Schedule under Item No. 16, which price shall constitute full compensation for all such work performed in accordance with the requirements of these Contract Documents.

3. Pg. 15905-5, Item 2.06 currently reads:

2.06 PUMP DATA TABLE

Service	Raw Sewage
Number of Pumps Required	2
Motor Rating	28.2 HP, 3/230v
Maximum Nominal Speed	1800 RPM
Minimum Motor Efficiency at Full Load	93.5%
Minimum Shutoff Head	122 Feet
Flow Rate at Primary Duty Point	1025 GPM
TDH at Primary Duty Point	56.5 Feet
Min Hydraulic Efficiency at Primary Duty Point	72%
Flow Rate at Secondary Duty Point	390 GPM
TDH at Secondary Duty Point	50.8 Feet
Min Hydraulic Efficiency at Secondary Duty Point	58%
Flow Rate at Runout Condition	885 GPM
TDH at Runout Condition	12.2 Feet
Maximum NPSHR at Runout Condition	22 Feet
Minimum Pump Discharge Size	6 inches ANSI

Pg. 15905-5, Item 2.06 is hereby changed to read:

2.06 PUMP DATA TABLE

Service	Raw Sewage
Number of Pumps Required	2
Motor Rating	28.2 HP, 3/230v
Maximum Nominal Speed	1800 RPM
Minimum Motor Efficiency at Full Load	93.5%
Minimum Shutoff Head	109 Feet
Flow Rate at Primary Duty Point	1025 GPM
TDH at Primary Duty Point	56.5 Feet
Min Hydraulic Efficiency at Primary Duty Point	67%
Flow Rate at Secondary Duty Point	390 GPM
TDH at Secondary Duty Point	50.8 Feet
Min Hydraulic Efficiency at Secondary Duty Point	58%
Flow Rate at Runout Condition	1500 GPM
TDH at Runout Condition	21 Feet
Maximum NPSHR at Runout Condition	25 Feet
Minimum Pump Discharge Size	6 inches ANSI

4. CHANGES TO ELECTRICAL SHEET E1 THROUGH E18:

Original Sheet Number E1 through E18 are hereby removed from the ITB. Bidders must use

REVISED SHEET Number E1 through E18 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.This change is also referenced on the Memorandum which is also posted as a separate document on DemandStar and the City Web page.

5. **2.6 Variable Frequency Drive (VFD) Output Power Cable** is hereby added to pg.16120- 2 of the ITB as referenced in the document titled **"Memorandum**" that 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.

C. CLARIFICATIONS:

None

D. QUESTIONS AND ANSWERS

Question #1: Will the City approve additional System Suppliers that meet the qualifications listed in Section 13300: Process Instrumentation and Control System - General Requirements? If yes, can General Control Systems be added to the approved System Supplier list? GCS meets all the qualifications listed in Section 13300.

ANSWER: General Control Systems is added to the approved System Supplier list.

Question #2: Sheet M-1 calls for a 258mm impeller to be provided. Please note that a smaller impeller can be used to satisfy the specified duty point of 1025 GPM at 56.5' TDH. Can you please clarify what is to be supplied?

ANSWER: The 258mm impeller is hereby removed from Sheet M-1. A 250 mm impeller, model number XFP150G-CB1.6-PE210_4 is hereby added to Sheet M-1.

Question #3: The runout criteria (flow, TDH, NPSHR) specified in section 15905, paragraph 2.6, are not consistent with the pump curve specified. Please verify/confirm.

ANSWER: Please refer to **Changes To the ITB**, **Number 3** of this addendum.

Question#4: Sheet M-1 depicts a VEGA radar level transmitter as well as a Blue Ribbon transmitter. I believe only one of these would be required, not both, and I believe the city is current using the VEGA unit. Please confirm.

ANSWER: The Blue Ribbon transmitter is hereby removed from Sheet Number M-1. The VEGA radar level transmitter remains on Sheet Number M-1.

Question #5 and #6: The bid form Item #14 calls out 6" HDPE Force Main Bypass but the drawings C1 and C4 show 8" HDPE Force Main Bypass? Bid form Item #16 is 6" Plug Valve, but the drawing C4 calls out for 8" Plug Valve?

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

1) Item #14: 6 -In HDPE Force Main is now changed to 8-In HDPE Force Main Drawing.
2) Item #16: 6" Plug Valve is now changed to 8" Plug Valve.

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 #7: What size line is the gravity line going into lift station?

ANSWER: The size of the existing influent line going into the lift station is 8"PVC.

Question #8: Bid Item 12 calls for Submersible Sulzer Pumps, per section 15905 2.02A calls for 3" solids size. On drawing M1 it calls for ABS manufacturer with a min solid size of 4". Which do we bid?
ANSWER: The pump is to be per Specification Section 15905 with a minimum solids passage size of 3 inches.

Question #9: Bid Item 21 calls for Bypass operations. What is the connection to existing details, flow rates for sizing, is there redundancy, will auto dialers be required and is there a preferred area to put the pumps since site is small?
ANSWER: The Bypass pumping shall connect to the existing force main at the existing 8" plug valve just down stream of the force main being removed between the wet well and plug valve. The location of this valve is shown on sheets C2 and C4 of the drawings. The flow rates for sizing the bypass pumps shall be the flow rates listed on Sheet M1 note 10. 1,025 GPM at 56.5 feet TDH for peak flow and 390 GPM at 50.8 feet TDH for average flow. It will be the contractors responsibility to maintain the bypass pumping operation at all times during construction 24 hours a day 7 days a week. Therefore redundant pumps with auto dialers shall be required. The city will coordinate with the contractor for placement of the bypass operations.

In all other respects, except as specifically stated herein, the subject ITB #24-11 CHRISTIANCY LIFT STATION (LS11) REHABILITATION remains the same.

END OF ADDENDUM #2

Joseph Castro
Buyer
jcastro@port-orange.org

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

ADDENDUM # 3
June 26, 2024

ITB #24-11 CHRISTIANCY LIFT STATION (LS11) REHABILITATION

To All Bidders:
The following changes, clarifications and additions are hereby made part of the bidding and specifications for the above referenced project dated May 24, 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.

The due date for Bid Submittals is hereby changed to July 5, 2024, at 2:30 PM (EST).

A. REVISIONS:
None

B. CHANGES TO THE ITB:
None

C. CLARIFICATIONS:
None

D. QUESTIONS AND ANSWERS
None

In all other respects, except as specifically stated herein, the subject ITB #24-11 CHRISTIANCY LIFT STATION (LS11) REHABILITATION remains the same.

END OF ADDENDUM #3

Joseph Castro
Buyer
jcastro@port-orange.org

CITY OF PORT ORANGE, FLORIDA

INVITATION TO BID
ITB #24-11
CHRISTIANCY LIFT STATION (LS11) REHABILITATION

City of Port Orange Purchasing Division
Prepared by: Joseph Castro
Release Date: May 24, 2024

Bid Due Date & Time: June 21, 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 #24-11
CHRISTIANCY LIFT STATION (LS11) REHABILITATION

Notice is hereby given that the City of Port Orange is soliciting bids for ITB #24-11 Christiancy Lift Station (LS11) Rehabilitation. 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 June 21, 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 31, 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: *The existing dry pit pumps will be replaced with two submersible pumps running on VFDs, and a new diesel bypass pump will be installed. Sod replacement, driveway repair, including concrete, soil, and gravel replacement in kind will be required at all disturbed areas. Existing building, generator, existing walls, electrical, and odor control device will be removed.*

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.

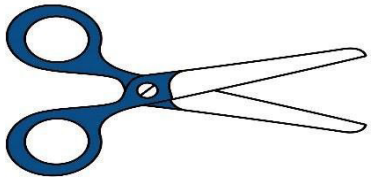
All bids are solicited and shall be made pursuant to the Code of Ordinances, City of Port Orange, Chapter 2, Article VI, Division 2, Section 2-263, and all bids will be evaluated in accordance with the provisions thereof. Code of Ordinances, City of Port Orange is on file in the Office of the City Clerk, 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 #24-11 Christiancy Lift Station (LS11) Rehabilitation**" in the subject line. Last day for questions will be **June 7, 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 #24-11**

BID TITLE: **Christiancy Lift Station (LS11) Rehabilitation**

DUE DATE/TIME: **June 21, 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) to perform full mechanical & electrical upgrades to the Christiancy sanitary lift Station 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	May 24, 2024
Non-Mandatory Pre-Bid Conference	May 31, 2024 10:00AM
Deadline for Questions	June 7, 2024 5:00PM
Addendum Posting (If needed)	June 14, 2024 5:00PM
Bids Due	June 21, 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:

a. Invitation to Bid (ITB) Number and Title
b. Date of Opening
c. Name of Bidder
d. 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 #24-11 Christiancy Lift Station (LS11) Rehabilitation" 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

The existing dry pit pumps will be replaced with two submersible pumps running on VFDs, and a new diesel bypass pump will be installed. Sod replacement, driveway repair, including concrete, soil, and gravel replacement in kind will be required at all disturbed areas. Existing building, generator, existing walls, electrical, odor control device will be removed.

Please refer to Attachment No.2 Christiancy Lift Station Rehabilitation Technical Specifications and Attachment No.3 Christiancy Lift Station Rehabilitation Plans 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 fora 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 employ mentor 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 s1324a(e). Such employment deprives legal workers of job opportunities. Violation of section 274A(e) shall be grounds for unilateral cancellation of the contract, proposal or quote for purchase of services and goods by the City of Port Orange.

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 protester.

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**
☒	Workers' Compensation 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.	Contract Amount — Limits Up to $10 million — Statutory/$500,000 $10 - $20 million — Statutory/$1,000,000 Contracts over $20 million to be determined by the City	• If contract requires work on or about navigable waters, Longshoreman's and Harbor Workers' coverage required. • If vessels involved, Jones Act coverage with limits of $500,000 required
☒	Comprehensive General Liability (including completed operations and contractual liability)	Limits: 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	Limits: Auto Liability Bodily Injury and Property Damage: $1,000,000 each occurrence $1,000,000 aggregate	
Additional Insurance Requirements			
☐	Property Insurance Builders Risk Additional Coverage:	Limits: 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)	Limits: Coverage – To Be Determined	
☐	Contractor Pollution Liability	Limits: Coverage - $1,000,000	
☐	Professional Liability/Errors and Omissions	Limits: Coverage - $1,000,000	
☐	Umbrella Policy	Limits: Coverage – To Be Determined	
☐	Payment and Performance Bond required	Limits: 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 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.

ADDITIONAL INSURANCE REQUIREMENTS
In addition to the insurance requirements outlined on page 24 of this ITB, the awarded Contractor is required to provide **Property Insurance Builder's Risk** and **Contractor Pollution Liability** insurance. The Limits for Property Insurance Builder's Risk and Contractor Pollution Liability are outlined on page 24.

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.

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 F.S. 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:

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

_____
Notary Public, State of _____

Printed, typed or stamped name, commission and expiration:

This document must be completed and returned with your Submittal

FORM 7.5 – SWORN STATEMENT 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

_____
Authorized Signature

STATE OF:_____

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 compromising the Statement of Bidder's Qualifications.

_____
Name of Business

_____
Authorized Signature

STATE OF:_____

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

_____
Authorized Signature

STATE OF:_____

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 withing a three-year period preceding this proposal bee 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 #24-11 Christiancy Lift Station (LS11) Rehabilitation

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
ITB #24-11
CHRISTIANCY LIFT STATION (LS11) REHABILITATION

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.

ITEM #	DESCRIPTION	UNIT OF MEASURE	ESTIMATED QUANTITY	UNIT PRICE	EXTENDED PRICE
1	Mobilization/Demobilization	LS	1	$	$
2	Insurance, Performance and Payment Bond	LS	1	$	$
3	Preconstruction Video	LS	1	$	$
4	Construction Restoration - (site cleanup, seed and mulch)	LS	1	$	$
5	Site Work Demolition - 3 suction lift pumps - Well top and internal piping - 30 LF of lift Station discharge piping to existing plug valve - Sandblast concrete lift station interior - Generator slab and generator, and surrounding wall - Roof, windows, and interior wall of electical and odor control room - Electrical, odor control unit and associated conduit/piping	LS	1	$	$
6	Site Work (erosion control)	LS	1	$	$
7	Construction Testing (Pressure, Density Testing, etc.)	LS	1	$	$
8	Survey Layout & Record Drawings	LS	1	$	$
9	Concrete Restoration - (concrete driveway)	CY	90	$	$
10	Concrete Pads	CY	8	$	$
11	Lift Station Improvements (8-ft Diameter) - Liner - Replace top and hatch - Replace interior suction and discharge piping, rails, etc. - Reduce concrete fillet at bottom of well	LS	1	$	$
12	Submersible Sulzer Pump (Including base elbows, anchor bolts, guide rail systems, access hatch, and startup)	EA	2	$	$
13	8-in Above Ground Valve Assembly (Piping, Fittings, Valves, etc.)	LS	1	$	$
14	6-in HDPE Force Main - Bypass Piping (Including Fittings, Restraints, Adapters, Camlocks, etc.)	LF	120	$	$
15	8-in PVC Force Main (Including Fittings, Restraints, Adapters, etc.)	LF	90	$	$
16	6" Plug Valve	EA	1	$	$
17	Diesel Bypass Pump (includes 4" Vacuum Assisted Centrifugal Pump, Sound Attenuated Canopy, 2- 10 m Floats, and Control Panel)	EA	1	$	$
18	Connection to Existing 8" Force Main Plug Valve	EA	1	$	$
19	6-ft Vinyl Fence	LF	150	$	$
20	CMU Wall (8-ft height)	LF	40	$	$
21	Bypass Operations	LS	1	$	$
22	Electrical I&C	LS	1	$	$
				TOTAL PRICE	$

LEGEND:

LS - Lump Sum
EA - Each
LF - Linear Feet
CY - Cubic Yards

BID BOND

BID BOND

Bond No.:

KNOW ALL MEN BY THESE PRESENTS that _____, as Contractor, duly authorized to conduct business in the State of Florida, whose principal place of business is located at_____ , Tel.:_____, (hereinafter called "PRINCIPAL"), and_____, as SURETY, duly authorized to conduct business in the State of Florida, whose principal place of business is located at _____ _____, Tel:_____(hereinafter called "SURETY"), are held and firmly bound unto the City of Port Orange, Florida, as CITY, a Florida municipal corporation, whose address is City of Port Orange, 1000 City Center Circle, Port Orange, Florida 32129, Tel: (386) 506-5501, (hereinafter called "OBLIGEE" or CITY", in the penal sum of_____dollars and (_____)/100 ($_____), lawful money of the United States, for the payment of which sum shall and truly be made, whereof PRINCIPAL and SURETY bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that, whereas the Principal has submitted the accompanying bid, dated_____, 20_____ , for:

Project Name/Bid No.:

Project Address:

Legal Description:

Description of Work:

NOW, THEREFORE,

A. If the Principal shall not withdraw said bid 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 _____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

ATTEST:

_____
Signature

_____
Corporate Secretary (Affix Corporate Seal)

WITTNESSESS:

_____

_____

ATTEST:

_____
Signature

_____
Corporate Secretary (Affix Corporate Seal)

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

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

PAYMENT AND PERFORMANCE BOND

(Public Works)

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

BOND NO. _____

PRINCIPAL:
Developer or Contractor: _____
Principal Business Address: _____
_____
Contact Person: _____
Phone Number: _____

SURETY: _____
Address: _____
_____
Contact Person: _____
Phone Number: _____

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

Amount: $_____ **City 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.

DRAFT

[MTR/sal 2015-02-10]

[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)

_____ By:_____
(As to Corporate Principal) Secretary Name, Title

_____ *(Corporate Seal)*
(Witness to Principal)

_____
(Surety)

_____ By:_____
(Witness to Surety) 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.

DRAFT

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 sail Laws with the _____ Company, under the terms of Policy Number _____ for a period from _____, 20____ to _____, 20____.

WITNESS:

By:_____

Name:_____

CONTRACTOR:

Company:_____

By:_____

Name/Title: _____

Sworn to/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 **[name of contracting entity]** ("Owner") and City of Port Orange, 1000 City Center Circle, Port Orange, Florida 32129 ("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:

_____.

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ARTICLE 2—THE PROJECT

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

_____.

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ARTICLE 3—ENGINEER

3.01 ~~The Owner has retained~~The part of the project that pertains to the Work has been designed by the Project Engineer, _____("Engineer")_____., and shall ~~to~~ act as Owner's representative, assume all duties and responsibilities ~~of Engineer~~, 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.

3.02 ~~The part of the Project that pertains to the Work has been designed by~~

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. The Work will be substantially complete on or before **[date]**, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before **[date]**.

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4.03 *Contract Times: Days*

A. The Work will be substantially complete within **[number]** 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 within **[number]** days after the date when the Contract Times commence to run.

~~4.04 *Milestones*~~

~~A. Parts of the Work must be substantially completed on or before the following Milestone(s):~~

~~1. Milestone 1~~

~~2. Milestone 2~~

~~3. Milestone 3~~

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. *Milestones:* Contractor shall pay Owner $_____ for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for achievement of Milestone 1, until Milestone 1 is achieved, or until the time specified for Substantial Completion is reached, at which time the rate indicated in Paragraph 4.05.A.1 will apply, rather than the Milestone rate.~~

~~4. Liquidated damages for failing to timely attain Milestones, Substantial Completion, and final completion are not additive, and will not be imposed concurrently.~~

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. *Bonus:* Contractor and Owner further recognize the Owner will realize financial and other benefits if the Work is completed prior to the time specified for Substantial Completion. Accordingly, Owner and Contractor agree that as a bonus for early completion, Owner shall~~

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~~pay Contractor $_____ for each day prior to the time specified above for Substantial Completion (as duly adjusted pursuant to the Contract) that the Work is substantially complete. The maximum value of the bonus will be limited to $_____.~~

~~4.06 *Special Damages*~~

~~A. Contractor shall reimburse Owner (1) for any fines or penalties imposed on Owner as a direct result of the Contractor's failure to attain Substantial Completion according to the Contract Times, and (2) for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete.~~

~~B. After Contractor achieves Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, Contractor shall reimburse Owner for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Work to be completed and ready for final payment (as duly adjusted pursuant to the Contract), until the Work is completed and ready for final payment.~~

~~C. The special damages imposed in this paragraph are supplemental to any liquidated damages for delayed completion established in this Agreement.~~

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. For all Work other than Unit Price Work, a lump sum of $_____.

All specific cash allowances are included in the above price in accordance with Paragraph 13.02 of the General Conditions.

B. For all Unit Price Work, an amount equal to the sum of the extended prices (established for each separately identified item of Unit Price Work by multiplying the unit price times the actual quantity of that item).

Unit Price Work					
Item No.	**Description**	**Unit**	**Estimated Quantity**	**Unit Price**	**Extended Price**
				$	$
				$	$
				$	$
				$	$
				$	$
Total of all Extended Prices for Unit Price Work (subject to final adjustment based on actual quantities)					$

The extended prices for Unit Price Work set forth as of the Effective Date of the Contract are based on estimated quantities. As provided in Paragraph 13.03 of the General Conditions,

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estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer.

C. Total of Lump Sum Amount and Unit Price Work (subject to final Unit Price adjustment) $_____.

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 **[ordinal number, such as 5th]** 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. _____% percent of the value of the Work completed (with the balance being retainage).

1) If 50 percent or more of the Work has been completed, as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage; and

b. _____% percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).

B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to _____% percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less _____% percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

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.

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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*

A. All amounts not paid when due will bear interest at the rate of _____ % percent per annum.

ARTICLE 7—CONTRACT DOCUMENTS

7.01 *Contents*

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

1. This Agreement (pages __ to __, inclusive).
2. Bonds:
   a. Combination Payment and Performance bond, ~~(~~together with power of attorney~~)~~, (pages __ to __, inclusive).
   ~~b. Payment bond (together with power of attorney).~~
3. General Conditions (pages __ to __, inclusive).
~~4. Supplementary Conditions.~~
5. Specifications as listed in the table of contents of the project manual (copy of list attached).
6. Drawings (not attached but incorporated by reference) consisting of _____ sheets with each sheet bearing the following general title: **[title on Drawings]**.
7. Drawings listed on the attached sheet index.
8. Addendum No. __ ~~a~~ (pages __ to __, inclusive).
9. Exhibits to this Agreement (enumerated as follows):
   a. **[list exhibits]** (pages __ to __, 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.

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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.

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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

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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 irs Work.

9.05 *No intended Third-Party Beneficiaries*

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

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

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

~~Owner:~~	Contractor:
_____	_____
~~*(typed or printed name of organization)*~~	*(typed or printed name of organization)*
~~By:~~ _____	By: _____
~~*(individual's signature)*~~	*(individual's signature)*
~~Date:~~ _____	Date: _____
~~*(date signed)*~~	*(date signed)*
~~Name:~~ _____	Name: _____
~~*(typed or printed)*~~	*(typed or printed)*
~~Title:~~ _____	Title: _____
~~*(typed or printed)*~~	*(typed or printed)*
	*(If **[Type of Entity]** is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)*
~~Attest:~~ _____	Attest: _____
~~*(individual's signature)*~~	*(individual's signature)*
~~Title:~~ _____	Title: _____
~~*(typed or printed)*~~	*(typed or printed)*
~~Address for giving notices:~~	Address for giving notices:
_____	_____
_____	_____
_____	_____
~~Designated Representative:~~	Designated Representative:
~~Name:~~ _____	Name: _____
~~*(typed or printed)*~~	*(typed or printed)*
~~Title:~~ _____	Title: _____
~~*(typed or printed)*~~	*(typed or printed)*
~~Address:~~	Address:
_____	_____
_____	_____
_____	_____
~~Phone:~~ _____	Phone: _____
~~Email:~~ _____	Email: _____
~~*(If **[Type of Entity]** is a corporation, attach evidence of authority to sign. If **[Type of Entity]** is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)*~~	License No.: _____ *(where applicable)*
	State: _____

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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

(individual's signature)

Title: City Clerk

(typed or printed)

Address for giving notices:

1000 City Center Circle

Port Orange, Florida 32129

(386) 506-5500

Designated Representative:

Name: _____

(typed or printed)

Title: _____

(typed or printed)

Address:

1000 City Center Circle

Port Orange, Florida 32129

Phone: (___) -

Email: _____

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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

EJCDC®
ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

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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.

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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.

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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.

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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.

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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*

    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.

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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.

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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

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

C. ~~*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~~s~~;

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.

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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 ~~dlay~~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 Wok 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 ~~tht~~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.

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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

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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,

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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 ~~C~~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. ~~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. ~~The impact on Contract Price, in accordance with the provisions of Paragraph 11.07.~~

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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. ~~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

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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~~ ~~floors~~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;

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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

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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.

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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.

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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

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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

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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)

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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. ~~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. ~~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. ~~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.~~

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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, ~~I~~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.

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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~~ry~~ 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. ~~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 policies, if any, operate separately and independently from policies required to be provided

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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 Contactor~~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.

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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.

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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.

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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. ~~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. ~~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. ~~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.

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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, ~~exclsuing~~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 ~~o~~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 ~~constitue~~constitute a material breach of the Contract. If O~~o~~wner 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.

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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 ~~canying~~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 ~~sanitaiy~~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.

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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

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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

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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

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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.

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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. ~~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. ~~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.

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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.

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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).

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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

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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

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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.

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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;

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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

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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.

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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.

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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

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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.

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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. ~~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

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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

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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

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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.

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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

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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.

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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

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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**~~

~~12.01 *Claims*~~

~~A. *Claims Process*: The following disputes between Owner and Contractor are subject to the Claims process set forth in this article:~~

~~1. Appeals by Owner or Contractor of Engineer's decisions regarding Change Proposals;~~

~~2. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents;~~

~~3. 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. 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. *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~~

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and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.

C. *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. *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. 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. Owner and Contractor shall each pay one-half of the mediator's fees and costs.

E. *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. *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. *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.

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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.

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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.

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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, expediters, 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.

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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.

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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.

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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.

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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.

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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.

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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

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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

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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~~.

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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.

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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 Ppunch 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 pPunch 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 Ppunch 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 pPunch 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,

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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 Ppunch Llist of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed ppunch llist 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 Ppunch llist.

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.

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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) ~~insruance~~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.

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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

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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

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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~~.~~;

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~~

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~~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,

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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 ~~*Methods and Procedures*~~

~~*A. Disputes Subject to Final Resolution: The following disputed matters are subject to final resolution under the provisions of this article:*~~

~~*1. 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. Disputes between Owner and Contractor concerning the Work, or obligations under the Contract Documents, that arise after final payment has been made.*~~

~~*B. Final Resolution of Disputes: For any dispute subject to resolution under this article, Owner or Contractor may:*~~

~~*1. elect in writing to invoke the dispute resolution process provided for in the Supplementary Conditions;*~~

~~*2. agree with the other party to submit the dispute to another dispute resolution process; or*~~

~~*3. 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*

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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.

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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 Floridain ~~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.

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End of Solicitation Documents

NON MANDATORY PRE-BID CONFERENCE

5/31/2024 @ 10:00:00 AM

City of Port Orange
1000 City Center Circle
Port Orange, FL 32129
Purchasing Division
purchdiv@port-orange.org

ITB #24-11 Christiancy Lift Station (LS11) Rehabilitation

PLEASE WRITE CLEARLY

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2	Chip Kent		Purchasing Agent	City of Port Orange	386-506-5740	ckent@port-orange.org
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9	Cody Mills		APM	Sawcross inc	8503403698	Bids@Sawcross.com
10	Marcus McConnell		Estimator	U.S. Water Services	352-281-1207	MMcconnell@uswaterCorp.net
11	Colten Brickler		Engineer	Kimley Horn Assoc	407 440 1598	colten.brickler@kimley-horn.com
12	REED CARTER		PROJECT MANAGER [redacted]	FLORIDA DESIGN CONTRACTORS	941-448-1046	RCARTER@FLORIDADESIGNCONTRACTORS.COM
13	Raymond Rogers		Estimator	Danus Utilities	386 882-6200	raymond@danusutilities.com
14						
15						
16						

MEMORANDUM

BAILEY ENGINEERING CONSULTANTS, INC.
10620 Griffin Road, SUITE 202
Cooper City, FL 33328
TEL (954) 448-7930
FAX (954) 713-9959

To: Kimley-Horn & Associates, Inc.

From: Bailey Engineering Consultants, Inc.

Date: June 18, 2024

Project: Lift Station at Christiancy Avenue

Subject: Electrical Changes

The Contract Documents, Specifications and Drawings are hereby amended as follows:

A. **CHANGES TO SPECIFICATIONS:**

1. **Insert** the following into spec section 16120:

"**2.6 Variable Frequency Drive (VFD) Output Power Cable**

A. Section applies to power cables routed between the output of VFD's and motor terminals.

B. Cable shall be rated for 2000 volts and shall meet the requirements below:

1. Conductors shall be stranded Class B bare copper.
2. All wire shall be brought to the job in unbroken packages and shall bear the data of manufacturing; not older than 12 months.
3. Type of wire shall be XLPE RHH/RHW-2 rated 90 degrees C suitable for wet locations.
4. Provide overall 5 millimeter metallic shield (copper tape shield) overlapped 50%.
5. No wire smaller than No. 12 gauge shall be used unless specifically indicated.
6. Cable construction shall consist of three insulated current-carrying phase conductors and three bare ground conductors, symmetrically placed between the phase conductors, and twisted beneath a continuous overall PVC polymeric jacket.

C. Each ground conductor size (circular mil area) shall be one-third (1/3) of the NEC required size (circular mil area) for a single ground conductor. If one third of the required circular mil area does not correspond to a standard size (circular mil area) of construction, the next largest size of standard construction shall be used. All conductors shall be megger tested after installation and insulation must be in compliance with the Insulated Power Cable Engineers Association Minimum Values of Insulation Resistance.

D. Manufacturers:

1. Belden

2. Flex
3. Lutze”

B. **CHANGES TO DRAWINGS:**

1. **Delete** the following drawings in their entirety:
   E1 through E18

2. **Insert** the following revised drawings in their place:
   E1 through E18

END OF SECTION

REVISED (ATTACHMENT 1) SCHEDULE OF UNIT PRICING
ITB #24-11
CHRISTIANCY LIFT STATION (LS11) REHABILITATION

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.

ITEM #	DESCRIPTION	UNIT OF MEASURE	ESTIMATED QUANTITY	UNIT PRICE	EXTENDED PRICE
1	Mobilization/Demobilization	LS	1	$	$
2	Insurance, Performance and Payment Bond	LS	1	$	$
3	Preconstruction Video	LS	1	$	$
4	Construction Restoration - (site cleanup, seed and mulch)	LS	1	$	$
5	Site Work Demolition - 3 suction lift pumps - Well top and internal piping - 30 LF of lift Station discharge piping to existing plug valve - Sandblast concrete lift station interior - Generator slab and generator, and surrounding wall - Roof, windows, and interior wall of electical and odor control room - Electrical, odor control unit and associated conduit/piping	LS	1	$	$
6	Site Work (erosion control)	LS	1	$	$
7	Construction Testing (Pressure, Density Testing, etc.)	LS	1	$	$
8	Survey Layout & Record Drawings	LS	1	$	$
9	Concrete Restoration - (concrete driveway)	CY	90	$	$
10	Concrete Pads	CY	8	$	$
11	Lift Station Improvements (8-ft Diameter) - Liner - Replace top and hatch - Replace interior suction and discharge piping, rails, etc. - Reduce concrete fillet at bottom of well	LS	1	$	$
12	Submersible Sulzer Pump (Including base elbows, anchor bolts, guide rail systems, access hatch, and startup)	EA	2	$	$
13	8-in Above Ground Valve Assembly (Piping, Fittings, Valves, etc.)	LS	1	$	$
14	8-in HDPE Force Main - Bypass Piping (Including Fittings, Restraints, Adapters, Camlocks, etc.)	LF	120	$	$
15	8-in PVC Force Main (Including Fittings, Restraints, Adapters, etc.)	LF	90	$	$
16	8" Plug Valve	EA	1	$	$
17	Diesel Bypass Pump (includes 4" Vacuum Assisted Centrifugal Pump, Sound Attenuated Canopy, 2- 10 m Floats, and Control Panel)	EA	1	$	$
18	Connection to Existing 8" Force Main Plug Valve	EA	1	$	$
19	6-ft Vinyl Fence	LF	150	$	$
20	CMU Wall (8-ft height)	LF	40	$	$
21	Bypass Operations	LS	1	$	$
22	Electrical I&C	LS	1	$	$
				TOTAL PRICE	$

LEGEND:

LS - Lump Sum
EA - Each
LF - Linear Feet
CY - Cubic Yards

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PLAN SYMBOLS

	HOME RUN TO PANELBOARD. NO. OF ARROWS INDICATE NO. OF CIRCUITS, HASH MARKS INDICATE NO. OF #12 AWG. CONDUCTORS. NO HASH MARKS INDICATE 2 #12 CONDUCTORS.
	CONDUIT CONCEALED IN WALL, IN SLAB ABOVE, OR ABOVE CEILING
	CONDUIT CONCEALED IN OR BELOW FLOOR OR UNDERGROUND.
	CONDUIT RUN EXPOSED. RUN PARALLEL OR PERPENDICULAR TO STRUCTURE OR WALL.
	FLEXIBLE CONDUIT WITH EQUIPMENT CONNECTION.
	CONCRETE ENCASED DUCTBANK.
	EXTERIOR LED LUMINAIRE AND MOUNTING STANDARD.
J	JUNCTION BOX N.E.C. SURFACE MOUNTED UNLESS INDICATED OTHERWISE.
J	JUNCTION BOX PER N.E.C., FLUSH MOUNTED UNLESS INDICATED OTHERWISE.
	FLUSH OR SURFACE MOUNTED LIGHTING PANELBOARD.
	FLUSH OR SURFACE MOUNTED POWER PANELBOARD.
30	DRY TYPE TRANSFORMER. NO. INDICATES KVA RATING.
	LIQUID FILLED TYPE TRANSFORMER
	20A, 125V, 3W DUPLEX RECEPTACLE IN FLUSH OUTLET BOX, 18" ABOVE FINISHED FLOOR.
	20A, 125V, 3W DUPLEX GFI RECEPTACLE IN FLUSH OUTLET BOX MOUNTED 18" ABOVE FINISHED FLOOR
	20A, 125V, 3W DUPLEX RECEPTACLE, SURFACE MOUNTED.
WP	SURFACE MOUNTED GROUND FAULT DUPLEX WEATHERPROOF RECEPTACLE WITH COVER RATED NEMA 4 WHILE IN USE 20A, 125V, 3W – MOUNTED 18" ABOVE FINISHED FLOOR.
WP	FLUSH MOUNTED GROUND FAULT DUPLEX WEATHERPROOF RECEPTACLE WITH WP COVER RATED NEMA 4 WHILE IN USE MOUNTED 18" ABOVE FINISHED FLOOR
S	SINGLE POLE SWITCH WITH PILOT LIGHT IN FLUSH OUTLET BOX, 48" ABOVE FINISHED FLOOR, UNLESS OTHERWISE NOTED (TYPICAL).
S_P	SINGLE POLE SWITCH, WITH PILOT LIGHT SURFACE MOUNTED.
S_3	THREE–WAY SWITCH IN FLUSH OUTLET BOX.
	NON–FUSIBLE DISCONNECT SWITCH, 30A,3P UNLESS OTHERWISE INDICATED.
	NON–FUSIBLE DISCONNECT SWITCH, 30A,3P UNLESS OTHERWISE INDICATED, WITH REMOTE CONTROL STATION AS REQUIRED BY ELEMENTARY DIAGRAMS OR SPECS.
75	ELECTRIC A.C. MOTOR, NO. INDICATES HORSEPOWER.
P	POWER PULLBOX, SEE DETAIL
C	CONTROL PULLBOX. SEE DETAIL
VFD	VARIABLE FREQUENCY DRIVE
T	THERMOSTAT
TW	ELECTRIC HEATER
	GROUND TEST WELL
	GROUND ROD
O/R	OFF/REMOTE
FS	FLOW SWITCH
LE	LEVEL ELEMENT
LIT	LEVEL INDICATING TRANSMITTER
TS	TEMPERATURE SWITCH
SF	SEAL FAIL
TE	TEMPERATURE ELEMENT
PS	PRESSURE SWITCH
FE	FLOW ELEMENT
FIT	FLOW INDICATING TRANSMITTER
TC	TERMINATION CABINET WITH COPPER LUGS IN NEMA 4X 316 SS ENCLOSURE
SH	SPACE HEATER
LLS	LIQUID LEVEL SWITCH
S_M	MOTOR STARTER.

SINGLE LINE DIAGRAM SYMBOLS

	COMBINATION MOTOR STARTER
ST	SHUNT TRIP
	FUSE
	CAPACITOR
	MOLDED CASE CIRCUIT BREAKER
	TYPICAL SELECTOR SWITCH AND CONTROL. SEE ELEMENTARY DIAGRAMS FOR EXACT TYPE.
75	ELECTRIC A.C. MOTOR, NO. INDICATES HORSEPOWER.
	SERVICE OR EQUIPMENT GROUND.
	NON–FUSIBLE DISCONNECT SWITCH, 30A,3P UNLESS OTHERWISE INDICATED.
	NON–FUSIBLE DISCONNECT SWITCH, 30A,3P UNLESS OTHERWISE INDICATED, WITH REMOTE CONTROL STATION AS REQUIRED BY ELEMENTARY DIAGRAMS OR SPECS.
	120/208V PANELBOARD
	480V PANELBOARD.
	CURRENT TRANSFORMERS
	POTENTIAL TRANSFORMERS.
SH	SPACE HEATER
TS	TEMPERATURE
	CROUSE HINDS ES FITTING. SEALING HUB WITH CHICO CEMENT
	CROUSE HINDS EYS FITTING. FILLED WITH CHICO CEMENT
K	KIRK KEY INTERLOCK
FS	FLOW SWITCH
TC	NEMA 4X 316SS TERMINATION CABINET

CONTROL DIAGRAM SYMBOLS

	NORMALLY OPEN CONTACT
	NORMALLY CLOSED CONTACT
	LIMIT SWITCH, NORMALLY OPEN
	LIMIT SWITCH, NORMALLY CLOSED
	PRESSURE SWITCH, NORMALLY OPEN
	PRESSURE SWITCH, NORMALLY CLOSED
	FLOAT SWITCH, NORMALLY OPEN
	FLOAT SWITCH, NORMALLY CLOSED
	FLOW SWITCH, NORMALLY OPEN
	FLOW SWITCH, NORMALLY CLOSED
	TEMPERATURE SWITCH, NORMALLY OPEN
	TEMPERATURE SWITCH, NORMALLY CLOSED
	NORMALLY OPEN, TIMED TO CLOSE CONTACT
	NORMALLY CLOSED, TIMED TO OPEN CONTACT
	NORMALLY CLOSED, TIMED TO CLOSE CONTACT
	NORMALLY OPEN, TIMED TO OPEN CONTACT
AR	ALARM RELAY
AT	ALARM TIMER
CR	CONTROL RELAY
M	MOTOR STARTER
MC	MOTOR CALL
TR	TIMING RELAY
A	ALARM INDICATING LIGHT
R	RUN INDICATING LIGHT
	MOMENTARY CONTACT PUSHBUTTON
	MOMENTARY BREAK PUSHBUTTON OR RESET
K	KEYED SWITCH
	MAINTAINED CONTACT ON–OFF SWITCH
	START/STOP(S/S) CONTROL SWITCH MAINTAINED CONTACT
	THREE POSITION MAINTAINED CONTACT SELECTOR SWITCH
	FUSE
	MOLDED CASE CIRCUIT BREAKER
	CONTROL POWER TRANSFORMER
	REMOTE TERMINAL BLOCK POINT

ABBREVIATIONS

A	AMPERES
AIC	AMPS INTERRUPTING CURRENT
ATS	AUTOMATIC TRANSFER SWITCH
BKR	BREAKER
BLDG	BUILDING
CPCP	CHEMICAL FEED CONTROL PANEL
CPT	CONTROL POWER TRANSFORMER
CU	COPPER
CT	CURRENT TRANSFORMER
DH	DATA HIGHWAY
DISC	DISCONNECT
DSB	DISTRIBUTION SWITCHBOARD
EAP	EYEWASH ALARM PANEL
ELEC	ELECTRICAL
ENCL	ENCLOSURE
EF	EXHAUST FAN
EQ	EQUALIZATION
ETM	ELAPSED TIME METER
EXH	EXHAUST
EXIST	EXISTING
FBC	FLORIDA BUILDING CODE
FPL	FLORIDA POWER & LIGHT
FPP	FIBER PATCH PANEL
FVNR	FULL VOLTAGE NON–REVERSING
GCP	GENERATOR CONTROL PANEL
GEN	GENERATOR
GFR	GROUND FAULT RECEPTACLE
GFI	GROUND FAULT INTERRUPTER
GND	GROUND
GRS	GALVANIZED RIGID STEEL
GST	GROUND STORAGE TANK
HMI	HUMAN MACHINE INTERFACE
HP	HORSEPOWER
KVA	KILO VOLT–AMPERES
KW	KILOWATT
LP	LOOP
LSCP	LIFT STATION CONTROL PANEL
LTG	LIGHTING
MAX	MAXIMUM
MCB	MAIN CIRCUIT BREAKER
MCC	MOTOR CONTROL CENTER
MIN	MINIMUM
MLO	MAIN LUGS ONLY
MPZ	MINI POWER ZONE
MTD	MOUNTED
MTS	MANUAL TRANSFER SWITCH
NEC	NATIONAL ELECTRICAL CODE
N	NEUTRAL
NIP	NETWORK INTERFACE PANEL
NSR	NETWORK SERVER RACK
NTS	NOT TO SCALE
OH	OVERHEAD
P	POLE
PCP	PUMP CONTROL PANEL
PM	PHASE MONITOR
PVC	POLYVINYL CHLORIDE
RECPT	RECEPTACLE
RCP	REMOTE I/O CONTROL PANEL
RIO	REMOTE I/O
RPVP	RAS PUMP VFD PANEL
RTO	RETURNED TO OWNER
RTU	RADIO TELEMETRY UNITY
SH	SHIELDED
SLD	SINGLE LINE DIAGRAM
SPD	SURGE PROTECTION DEVICE
SS	STAINLESS STEEL
SSS	SOLID STATE STARTER
STR	STARTER
TC	TERMINATION CABINET
TYP	TYPICAL
TBR	TO BE REMOVED
UPS	UNINTERRUPTIBLE POWER SUPPLY
V	VOLT
VFD	VARIABLE FREQUENCY DRIVE
W	WATT
w/	WITH
WP	WEATHERPROOF
WTP	WATER TREATMENT PLANT
WWTP	WASTEWATER TREATMENT PLANT
XFMR	TRANSFORMER
ø	PHASE

NOTES

1. ALL WORK SHALL BE DONE IN ACCORDANCE WITH THE 2020 7TH EDITION FLORIDA BUILDING CODE SCC CHAPTER 40, APPENDIX A, 106.3.5, THE 2020 NATIONAL ELECTRICAL CODE, (REF: SCCC CHAPTER 40, APPENDIX A, 106.3.5) NFPA 1, NFPA 70 AND NFPA 101 2020 AND SHALL COMPLY WITH ALL LOCAL RULES.
2. THE PLANS REFLECT SYSTEM VOLTAGE DROPS AS PER F.B.C. ENERGY CONSERVATION 2020, C405.6.3 FEEDER CONDUCTORS ARE SIZED FOR A MAXIMUM VOLTAGE DROP OF 2 PERCENT AT DESIGN LOAD. BRANCH CIRCUIT CONDUCTORS ARE SIZED FOR A MAXIMUM VOLTAGE DROP OF 3 PERCENT AT DESIGN LOAD.
3. ELECTRICAL CONTRACTOR SHALL SUPPLY AND INSTALL ALL NEW ELECTRICAL WORK INDICATED.
4. ELECTRICAL CONTRACTOR SHALL VISIT JOB SITE AND FAMILIARIZE HIMSELF WITH ALL CONDITIONS AFFECTING ELECTRICAL INSTALLATION AND MAKE PROVISIONS AS TO THE COST THEREOF. EXISTING CONDITIONS OF ELECTRICAL EQUIPMENT, LIGHT FIXTURES, ETC... THAT ARE PART OF THE FINAL SYSTEM SHALL BE VERIFIED BY THE CONTRACTOR PRIOR TO SUBMITTING HIS BID.
5. MINIMUM WIRE SIZE SHALL BE #12 A.W.G. EXCLUDING CONTROL WIRING, UNLESS OTHERWISE NOTED.
6. IT IS NOT THE INTENT OF THESE PLANS TO SHOW EVERY MINOR DETAIL OF CONSTRUCTION. THE CONTRACTOR IS EXPECTED TO FURNISH AND INSTALL ALL ITEMS FOR A COMPLETE ELECTRICAL SYSTEM AND PROVIDE ALL REQUIREMENTS NECESSARY FOR THE EQUIPMENT TO BE PLACED IN PROPER WORKING ORDER.
7. ELECTRICAL SYSTEM SHALL BE COMPLETE AND EFFECTIVELY GROUNDED AS REQUIRED BY THE N.E.C. 2020 EDITION OR LOCAL CODES. ALL CONDUITS SHALL HAVE A BOND WIRE SIZED PER TABLE 250–122 OF THE 2020 NATIONAL ELECTRICAL CODE.
8. ALL MATERIALS SHALL BE NEW AND BEAR UNDERWRITERS' LABELS WHERE APPLICABLE.
9. ALL WORK SHALL BE PERFORMED BY A LICENSED ELECTRICAL CONTRACTOR IN A FIRST CLASS WORKMANLIKE MANNER. THE COMPLETED SYSTEM SHALL BE FULLY OPERATIVE AND ACCEPTED BY ENGINEER/OWNER.
10. CONTRACTOR SHALL GUARANTEE ALL MATERIALS AND WORKMANSHIP FREE FROM DEFECTS FOR A PERIOD OF NOT LESS THAN TWO YEARS FROM DATE OF ACCEPTANCE.
11. CORRECTION OF ANY DEFECTS SHALL BE COMPLETED WITHOUT ADDITIONAL CHARGE AND SHALL INCLUDE REPLACEMENT OR REPAIR OF ANY OTHER PHASE OF THE INSTALLATION WHICH MAY HAVE BEEN DAMAGED.
12. CONTRACTOR SHALL BE RESPONSIBLE FOR ALL CUTTING AND PATCHING REQUIRED OF HIS WORK.
13. ELECTRICAL CONTRACTOR SHALL LABEL ALL PANELS W/ TYPED WRITTEN DIRECTORIES (NEW & EXISTING).
14. ALL ELECTRICAL WIRING SHALL BE THE RESPONSIBILITY OF THE ELECTRICAL CONTRACTOR.
15. DO NOT SCALE THE ELECTRICAL DRAWINGS. REFER TO THE MECHANICAL DRAWINGS & THE APPROVED MANUFACTURER'S SHOP DRAWINGS FOR THE EXACT LOCATION OF ALL EQUIPMENT.
16. NON–SHADED TEXT DENOTES NEW EQUIPMENT, STRUCTURES AND WORK. *SHADED AND SLANTED* TEXT DENOTES EXISTING EQUIPMENT OR STRUCTURES.
17. ALL CONTROL PANELS SHALL BE UL LISTED AND SHALL COMPLY WITH ARTICLE 409 OF THE NEC.
18. ALL EMPTY CONDUITS SHALL BE INSTALLED WITH PULLSTRING.
19. PER THE FBC–ENERGY CONSERVATION, WITHIN 30 DAYS AFTER THE DATE OF ACCEPTANCE, RECORD DRAWINGS OF THE ACTUAL INSTALLATION SHALL BE PROVIDED TO THE BUILDING OWNER, INCLUDING THE FOLLOWING:
    a. SINGLE LINE DIAGRAM OF THE BUILDING ELECTRICAL DISTRIBUTION SYSTEM.
    b. FLOOR PLANS INDICATING LOCATION AND AREA SERVED FOR ALL DISTRIBUTION (REF: FBC–ECC405.5.4.1–7TH EDITION).
20. PER THE FBC–ENERGY CONSERVATION, WITHIN 30 DAYS AFTER THE DATE OF ACCEPTANCE, AN OPERATING MANUAL MAINTENANCE MANUAL BE PROVIDED TO THE BUILDING OWNER. THE MANUALS SHALL INCLUDE, AT A MINIMUM, THE FOLLOWING:
    a. SUBMITTAL DATA STATING EQUIPMENT RATING AND SELECTED OPTIONS FOR EACH PIECE OF EQUIPMENT REQUIRING MAINTENANCE.
    b. OPERATION MANUALS AND MAINTENANCE FOR EACH PIECE OF EQUIPMENT REQUIRING MAINTENANCE. REQUIRED ROUTINE MAINTENANCE ACTIONS SHALL BE CLEARLY IDENTIFIED.
    c. NAMES AND ADDRESSES OF AT LEAST ONE QUALIFIED SERVICE AGENCY. (REF:FBC–EC 405.5.4.2 – 7TH EDITION).

10620 GRIFFIN ROAD, SUITE 202
COOPER CITY, FLORIDA 33328
PHONE: (954) 448–7930
C.O.A. NO. 6783
Stephen E. Bailey, P.E.
Florida P.E. No. 42461

100% SUBMITTAL

No.	REVISIONS	DATE	BY
1	ADDENDUM NO. 1	06/11/24	JPL

Kimley»Horn
© 2022 KIMLEY-HORN AND ASSOCIATES, INC.
189 S. ORANGE AVENUE, SUITE 1000, ORLANDO, FL 32801
PHONE: 407-898-1511
WWW.KIMLEY-HORN.COM CA 00035160

KHA PROJECT	142325019
DATE	06/11/2024
SCALE	AS SHOWN
DESIGNED BY	DRM
DRAWN BY	FAD
CHECKED BY	SEB

LIFT STATION
AT CHRISTIANCY AVENUE

PREPARED FOR
CITY OF PORT ORANGE

LICENSED PROFESSIONAL
STEPHEN E. BAILEY, P.E.
FL LICENSE NUMBER
42461
DATE:

LIFT STATION
ELECTRICAL NOTES, SYMBOLS & ABBREVIATIONS

SHEET NUMBER
E1

J:\Active Projects\Kimley-Horn\Port Orange\Christiancy Lift Station\06_Addendum 1\Dwg\E1 NOTES.dwg 6/12/2024 4:04:28 PM bgrant

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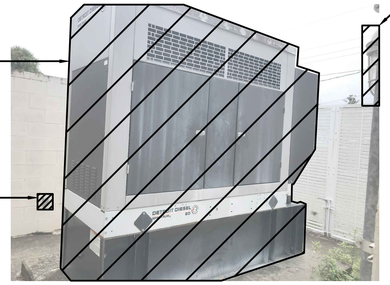
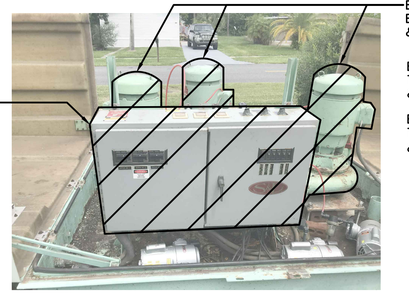


PICTURE DETAIL 1



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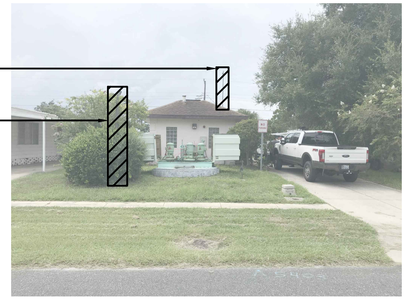

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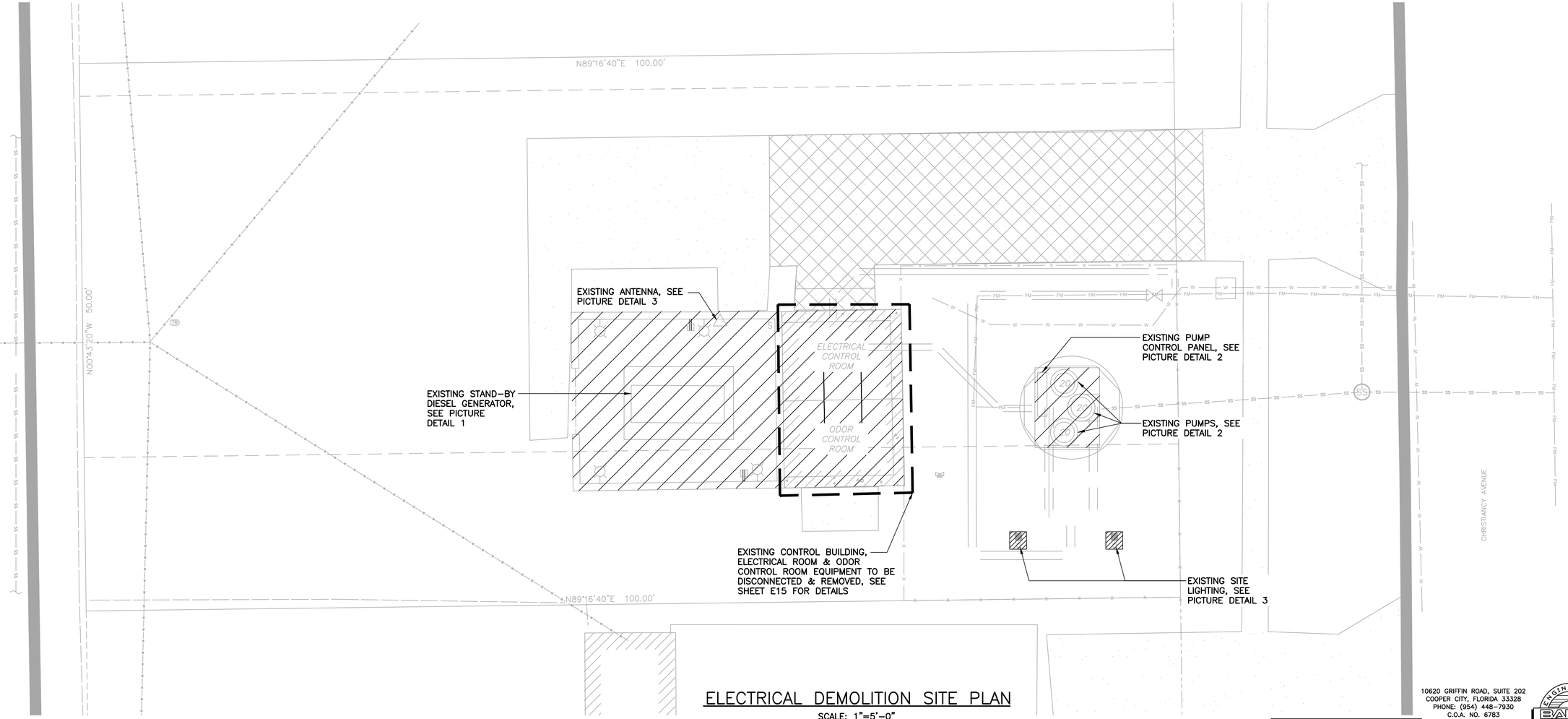

ELECTRICAL DEMOLITION SITE PLAN

SCALE: 1"=5'-0"

5 2.5 0 5'

100% SUBMITTAL

10620 GRIFFIN ROAD, SUITE 202
COOPER CITY, FLORIDA 33328
PHONE: (954) 448-7930
C.O.A. NO. 6783
Stephen E. Bailey, P.E.
Florida P.E. No. 42461

No.	REVISIONS	DATE	BY
1	ADDENDUM NO. 1	06/11/24	JPL

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KHA PROJECT	142325019
DATE	06/11/2024
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DESIGNED BY	DRM
DRAWN BY	FAD
CHECKED BY	SEB

LIFT STATION AT CHRISTIANCY AVENUE

PREPARED FOR

CITY OF PORT ORANGE

LICENSED PROFESSIONAL

STEPHEN E. BAILEY, P.E.

FL LICENSE NUMBER

42461

DATE:

LIFT STATION

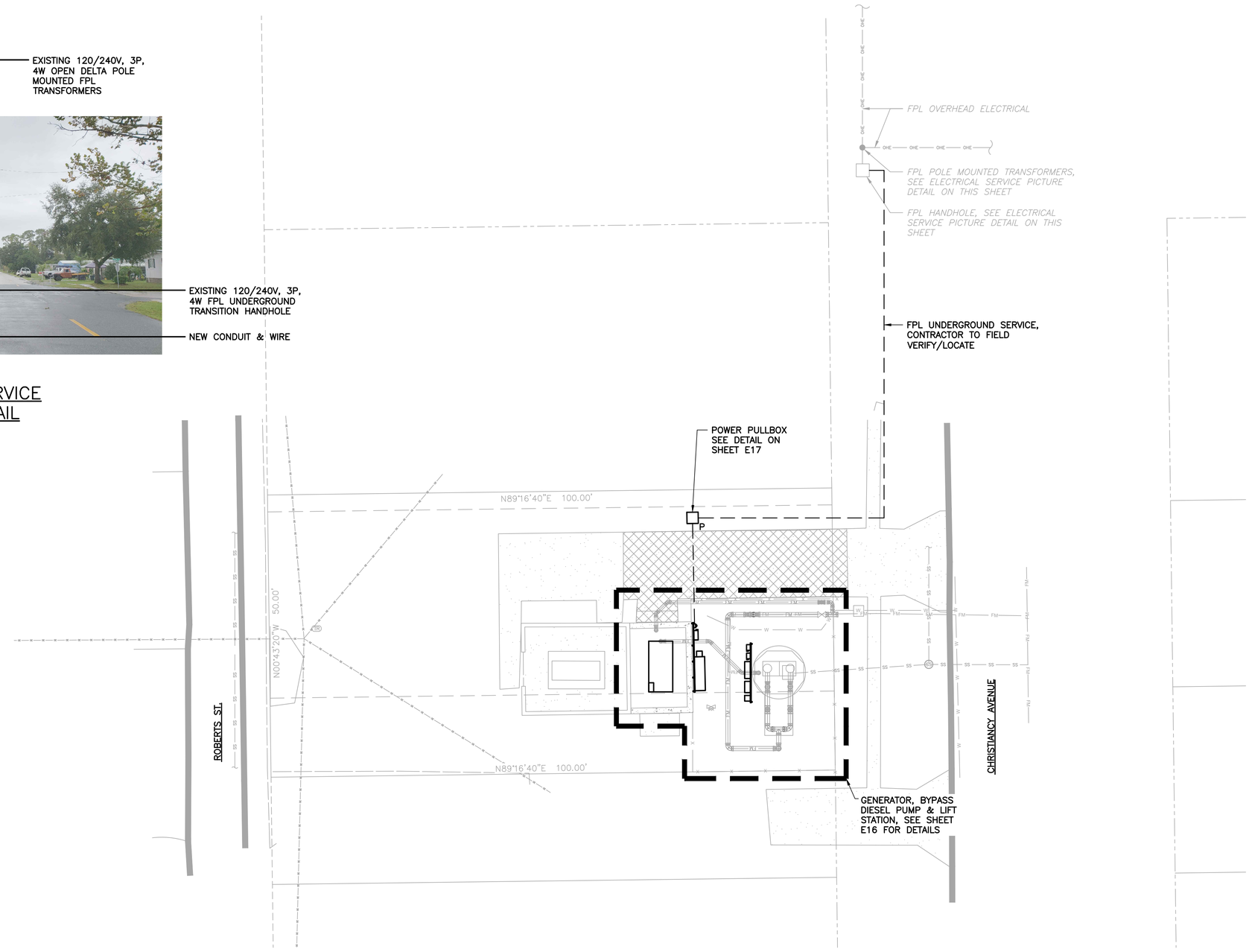
ELECTRICAL DEMOLITION SITE PLAN

SHEET NUMBER

E2

K:\Kim-Proj\Kimley-Horn\Port Orange\Christiancy Lift Station\06_Addendum 1\Dwg\E2 DEMO SITE.dwg, 6/7/2024 4:04:13 PM, kgrant

EXISTING ELECTRICAL SERVICE PICTURE DETAIL



ELECTRICAL SITE PLAN

SCALE: 1"=10'-0"

10 5 0 10'

SITE ADDRESS:
5403 CHRISTIANCY AVE,
PORT ORANGE, FL 32127

100% SUBMITTAL

10620 GRIFFIN ROAD, SUITE 202
COOPER CITY, FLORIDA 33328
PHONE: (954) 448-7930
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KHA PROJECT	142325019
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LIFT STATION AT CHRISTIANCY AVENUE

PREPARED FOR
CITY OF PORT ORANGE

LICENSED PROFESSIONAL

STEPHEN E. BAILEY, P.E.

FL LICENSE NUMBER
42461

DATE:

LIFT STATION

ELECTRICAL SITE PLAN

SHEET NUMBER
E3

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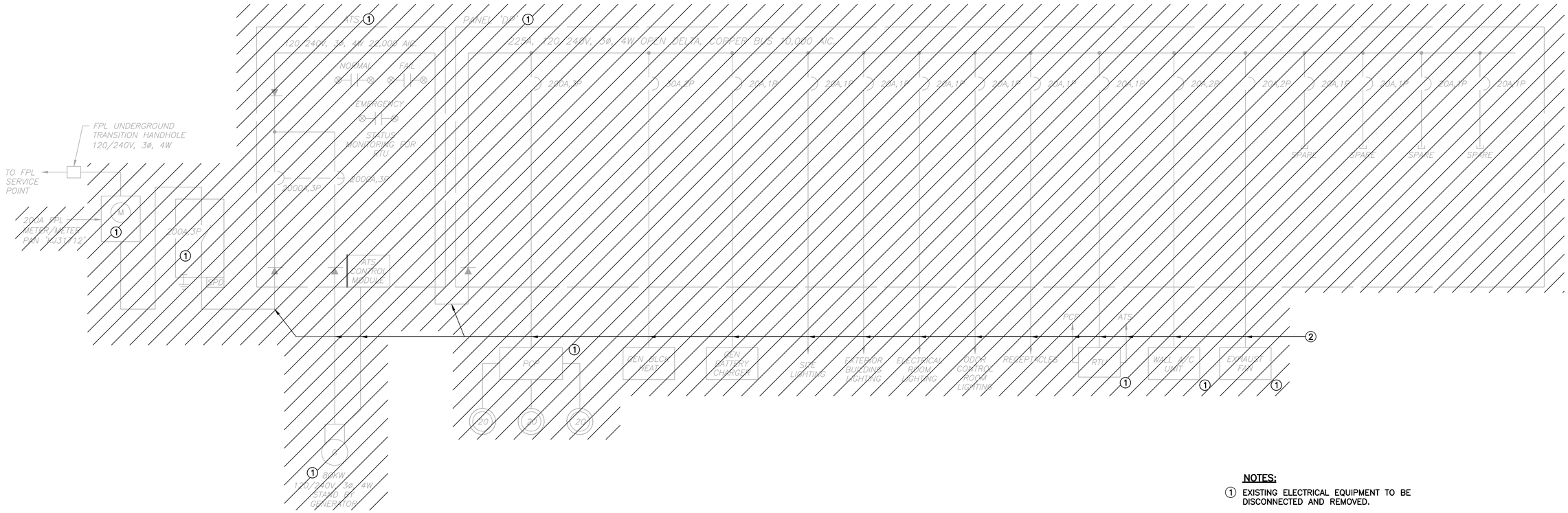

NOTES:

1. EXISTING ELECTRICAL EQUIPMENT TO BE DISCONNECTED AND REMOVED.
2. EXISTING CABLE TO BE DISCONNECTED & REMOVED, EXISTING CONDUIT TO BE ABANDONED IN PLACE.

EXISTING SINGLE LINE DIAGRAM

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Florida P.E. No. 42461

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KHA PROJECT	142325019
DATE	06/11/2024
SCALE	AS SHOWN
DESIGNED BY	DRM
DRAWN BY	FAD
CHECKED BY	SEB

LIFT STATION
AT CHRISTIANCY AVENUE

PREPARED FOR
CITY OF PORT ORANGE

LICENSED PROFESSIONAL

STEPHEN E. BAILEY, P.E.

FL LICENSE NUMBER
42461

DATE:

LIFT STATION

EXISTING SINGLE LINE DIAGRAM

SHEET NUMBER
E4

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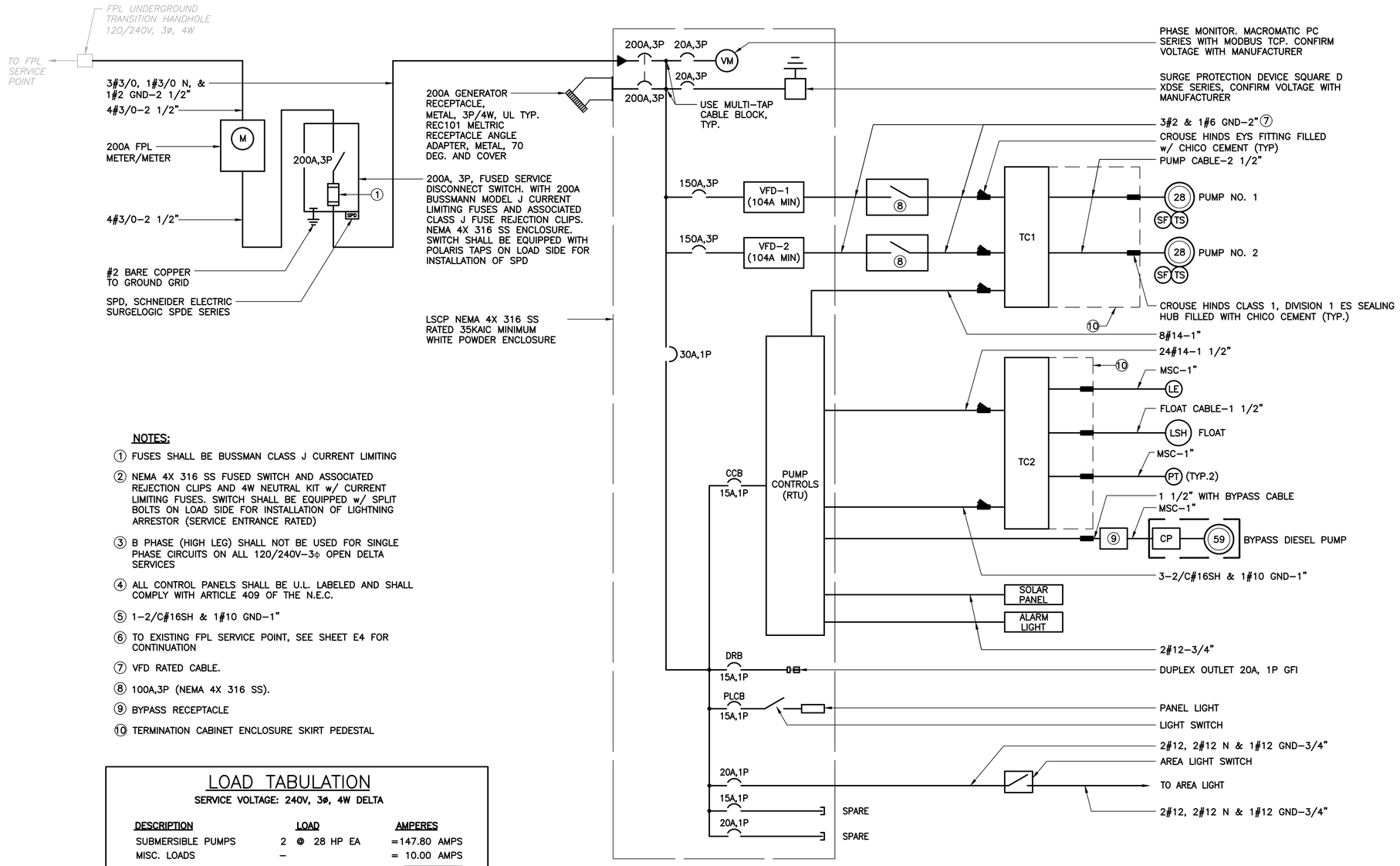

LIFT STATION CONTROL PANEL (LSCP) SINGLE LINE DIAGRAM

NOTES:

① FUSES SHALL BE BUSSMAN CLASS J CURRENT LIMITING

② NEMA 4X 316 SS FUSED SWITCH AND ASSOCIATED REJECTION CLIPS AND 4W NEUTRAL KIT w/ CURRENT LIMITING FUSES. SWITCH SHALL BE EQUIPPED w/ SPLIT BOLTS ON LOAD SIDE FOR INSTALLATION OF LIGHTNING ARRESTOR (SERVICE ENTRANCE RATED)

③ B PHASE (HIGH LEG) SHALL NOT BE USED FOR SINGLE PHASE CIRCUITS ON ALL 120/240V–3φ OPEN DELTA SERVICES

④ ALL CONTROL PANELS SHALL BE U.L. LABELED AND SHALL COMPLY WITH ARTICLE 409 OF THE N.E.C.

⑤ 1–2/C#16SH & 1#10 GND–1"

⑥ TO EXISTING FPL SERVICE POINT, SEE SHEET E4 FOR CONTINUATION

⑦ VFD RATED CABLE.

⑧ 100A,3P (NEMA 4X 316 SS).

⑨ BYPASS RECEPTACLE

⑩ TERMINATION CABINET ENCLOSURE SKIRT PEDESTAL

LOAD TABULATION

SERVICE VOLTAGE: 240V, 3ø, 4W DELTA

DESCRIPTION	LOAD	AMPERES
SUBMERSIBLE PUMPS	2 @ 28 HP EA	=147.80 AMPS
MISC. LOADS	–	= 10.00 AMPS
CONNECTED LOAD		=157.80 AMPS
②SERVICE ENTRANCE = 157.80 AMPS + (.25)(73.90A)		= 176.28 AMPS

NOTES:

① AMPACITIES PER TABLE 430–250 OF THE NATIONAL ELECTRIC CODE.

② MINIMUM SERVICE ENTRANCE SIZE AS PER ARTICLE 230 OF THE NATIONAL ELECTRIC CODE.

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LIFT STATION AT CHRISTIANCY AVENUE

PREPARED FOR
CITY OF PORT ORANGE

LICENSED PROFESSIONAL
STEPHEN E. BAILEY, P.E.
FL LICENSE NUMBER
42461
DATE:

LIFT STATION
SINGLE LINE DIAGRAM

SHEET NUMBER
E5

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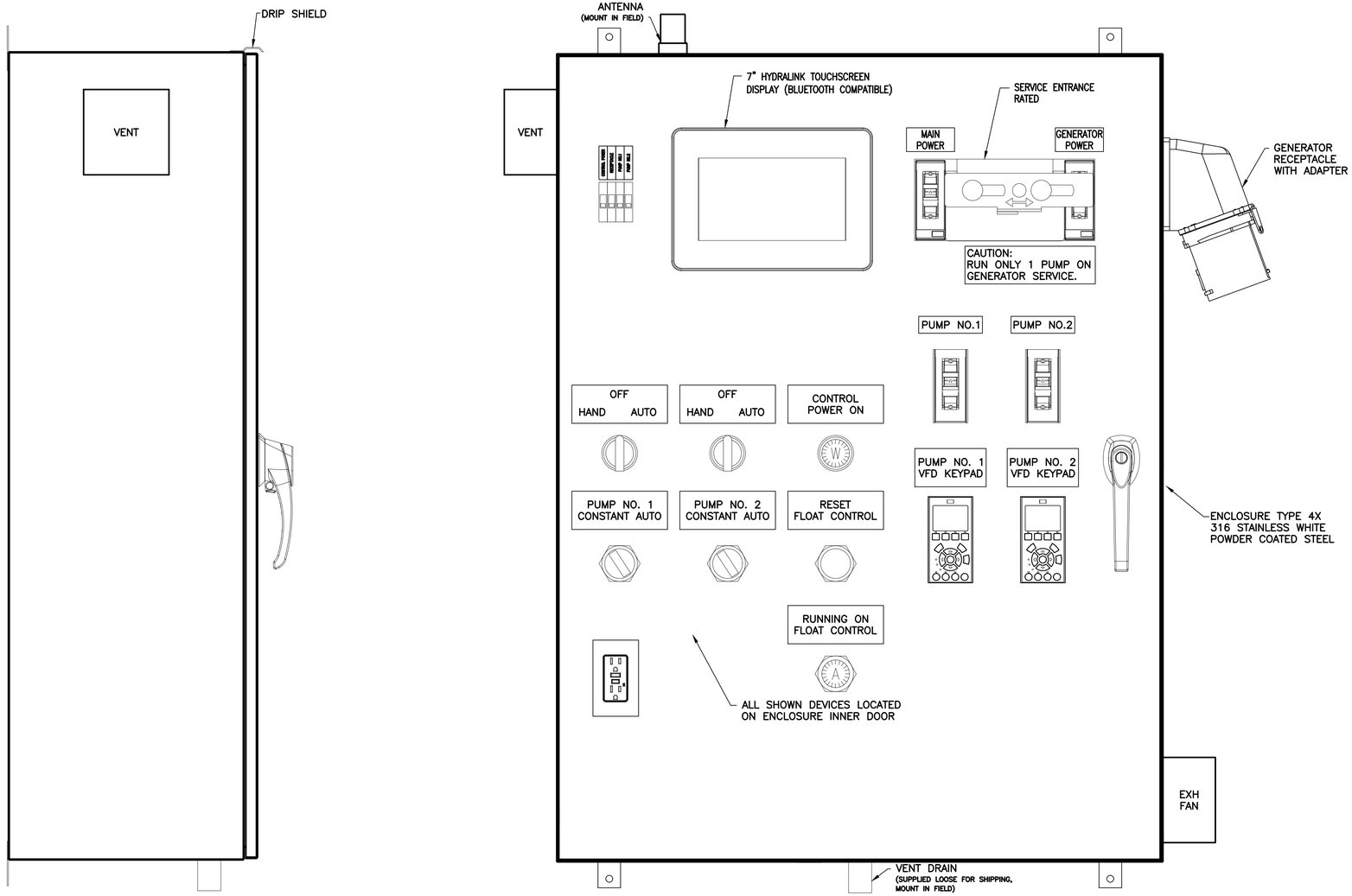

ENCLOSURE DETAIL

SCALE: N.T.S.

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DATE:

LIFT STATION

ENCLOSURE DETAIL

SHEET NUMBER
E6

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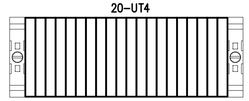
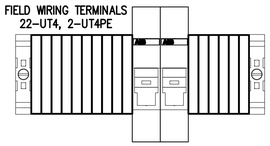
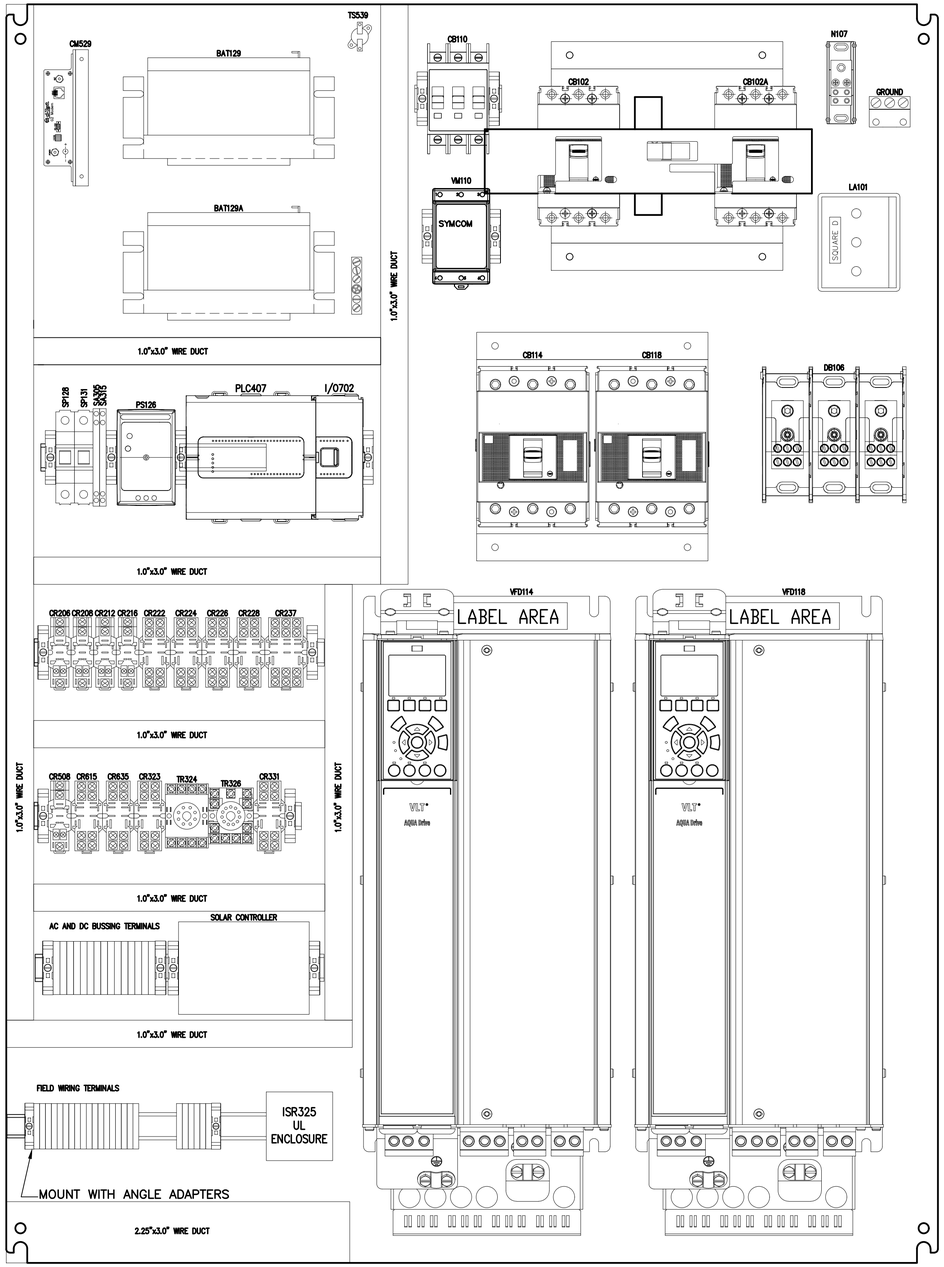
TERMINAL BLOCK DETAIL

BUSSING TERMINALS
20-UT4



FIELD WIRING TERMINALS
22-UT4, 2-UT4PE





SUB PANEL LAYOUT

SCALE: N.T.S.

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CHECKED BY SEB

LIFT STATION
AT CHRISTIANCY AVENUE

PREPARED FOR
CITY OF PORT ORANGE

LICENSED PROFESSIONAL
STEPHEN E. BAILEY, P.E.
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LIFT STATION
SUB PANEL LAYOUT

SHEET NUMBER
E7

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SEE E5 FOR ADDITIONAL REQUIREMENTS

INCOMING POWER

L1 L2 L3 N GND

HIGH LEG USE ONLY

SUITABLE FOR USE AS SERVICE EQUIPMENT. BOND NEUTRAL TO GROUND PER THE N.E.C.

6 AWG GND

REC101 GENERATOR RECEPTACLE AND ANGLE ADAPTER

3 AWG

MECHANICAL INTERLOCK

CB102

L102A L102B L102C

L101A L101B L101C CB102A

LA101 (XDSE SERIES) SQUARE D SPD

L102A L102B L102C N

DB106 TOUCH SAFE

N L102C L102B L102A

N TO LINE 539

12 AWG CB110

L102A 110 L102B 111 L102C 112

VM110 MACROMATIC PC SERIES

16 18 20 8 9 10

123 237 VOLTAGE MONITOR CONTACT ON LINE 237

SET VM110 DIALS AS FOLLOWS:
VOLTAGE: 240/480 VAC
RESTART: 20 SEC
TRIP: 20 SEC
UNBALANCE: 5%

ETHERNET CABLE MODBUS TO PLC

VFD

4 AWG CB114

L102A 114 L102B 115 L102C 116

CT115

24VDC 712 TO LINE 711 CBL712

1/L1 3/L2 5/L3 2/T1 4/T2 6/T3 G

VFD114 CONTINUED ON LINE 601

① M PUMP NO.1

4 AWG CB118

L102A 118 L102B 119 L102C 120

CT119

24VDC 616 TO LINE 715 CBL716

VFD118 CONTINUED ON LINE 621

① M PUMP NO.2

L102A TO LINES 121

L102C TO LINES 121, 539

NOTES:
① FIELD MOUNTED DISCONNECT.

FROM LINE 120 L102A L102C 14 AWG

FU121 5A

122 122A

230V 120V 7.5KVA TRANSFORMER XFMR122

123A N123 N123

HTR125

CB122 15A

123 TO LINE 201,321

CR

PS126

POWER SUPPLY/UPS CHARGER DRC-100B 24VDC 100W

TO LINE 138

TB1 TB2

SP128 0.5A 128A 128

12VDC 7.0 AH BATTERY WITH 3/16" TAB(TYP)

BAT129 BAT129A 129 129A

BATTERY CH2, 1.25A

AC OK 24VDC 416 AC OK TO PLC407 LINE 416

BAT. LOW

128A 129A TO LINE 209

TO LINE 211

24VDC SP131 1.0A 131

OUTPUT CH1, 2.25A +V −V 24COM

SOLAR PANEL SP133 133 133A 134 5.0A

CR 136 136A 136B 140

SOLAR CONTROLLER TO LINE 128

24COM TO LINE 301,401,501,527,536,701

N123 TO LINE 201,321

24VDC TO LINE 301,401,501,527,534,701

ELEMENTARY DIAGRAM – 1

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LIFT STATION AT CHRISTIANCY AVENUE

PREPARED FOR CITY OF PORT ORANGE

LICENSED PROFESSIONAL

STEPHEN E. BAILEY, P.E.

FL LICENSE NUMBER 42461

DATE:

LIFT STATION

ELEMENTARY DIAGRAM - 1

SHEET NUMBER E8

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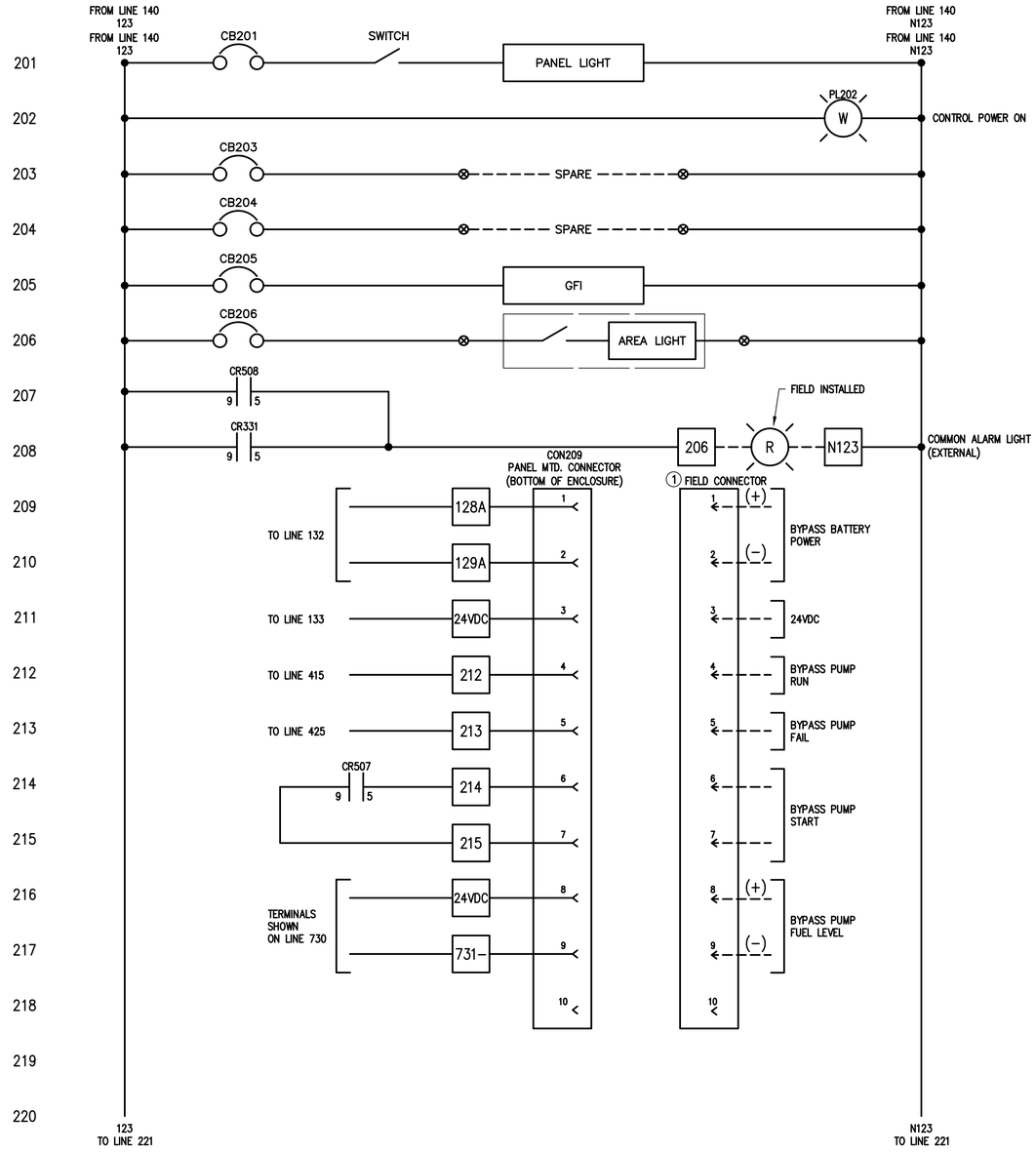

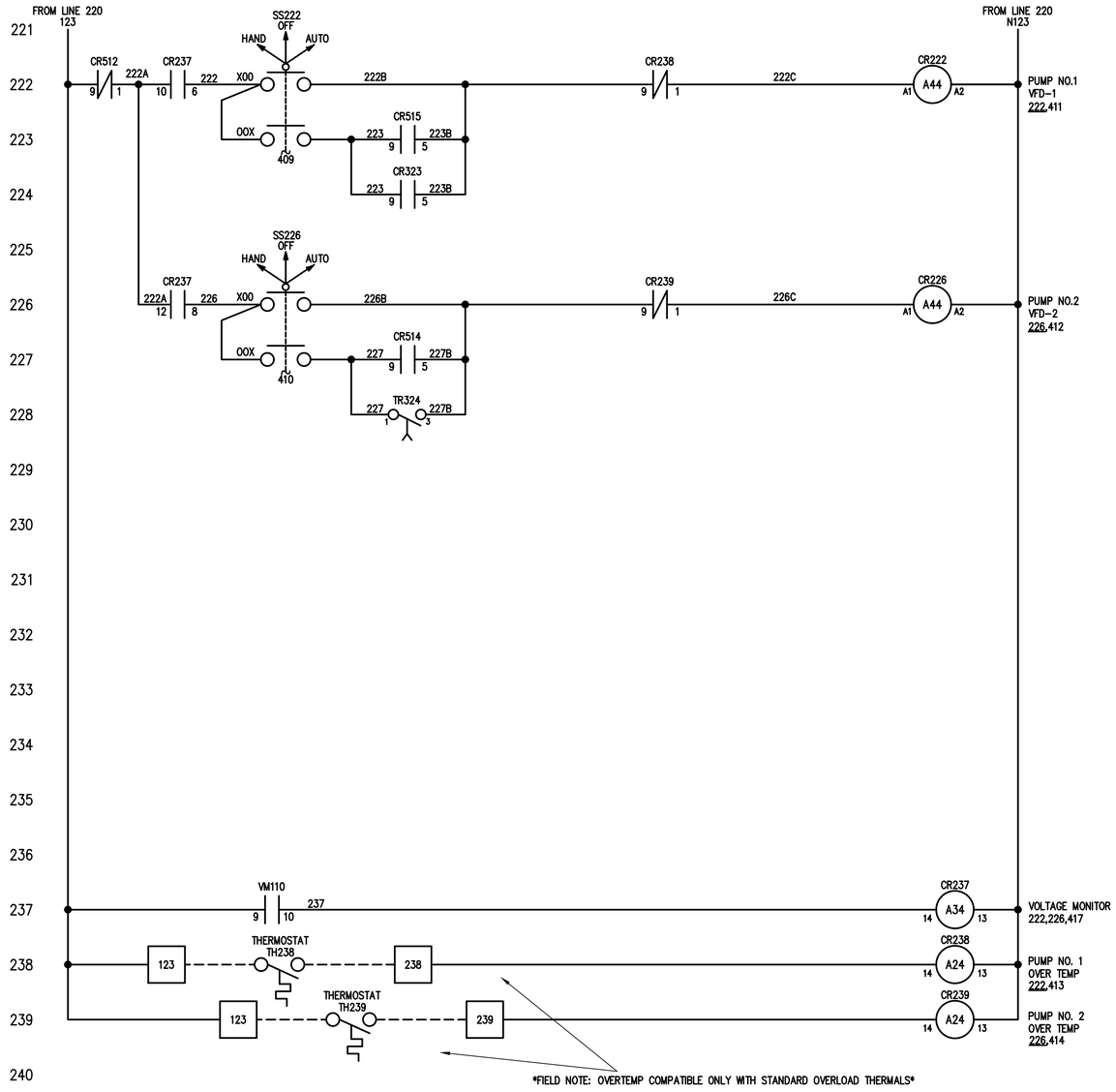

NOTES:

① FROM BYPASS PUMP TRAILER.

ELEMENTARY DIAGRAM – 2

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AT CHRISTIANCY AVENUE

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LIFT STATION

ELEMENTARY DIAGRAM - 2

SHEET NUMBER
E9

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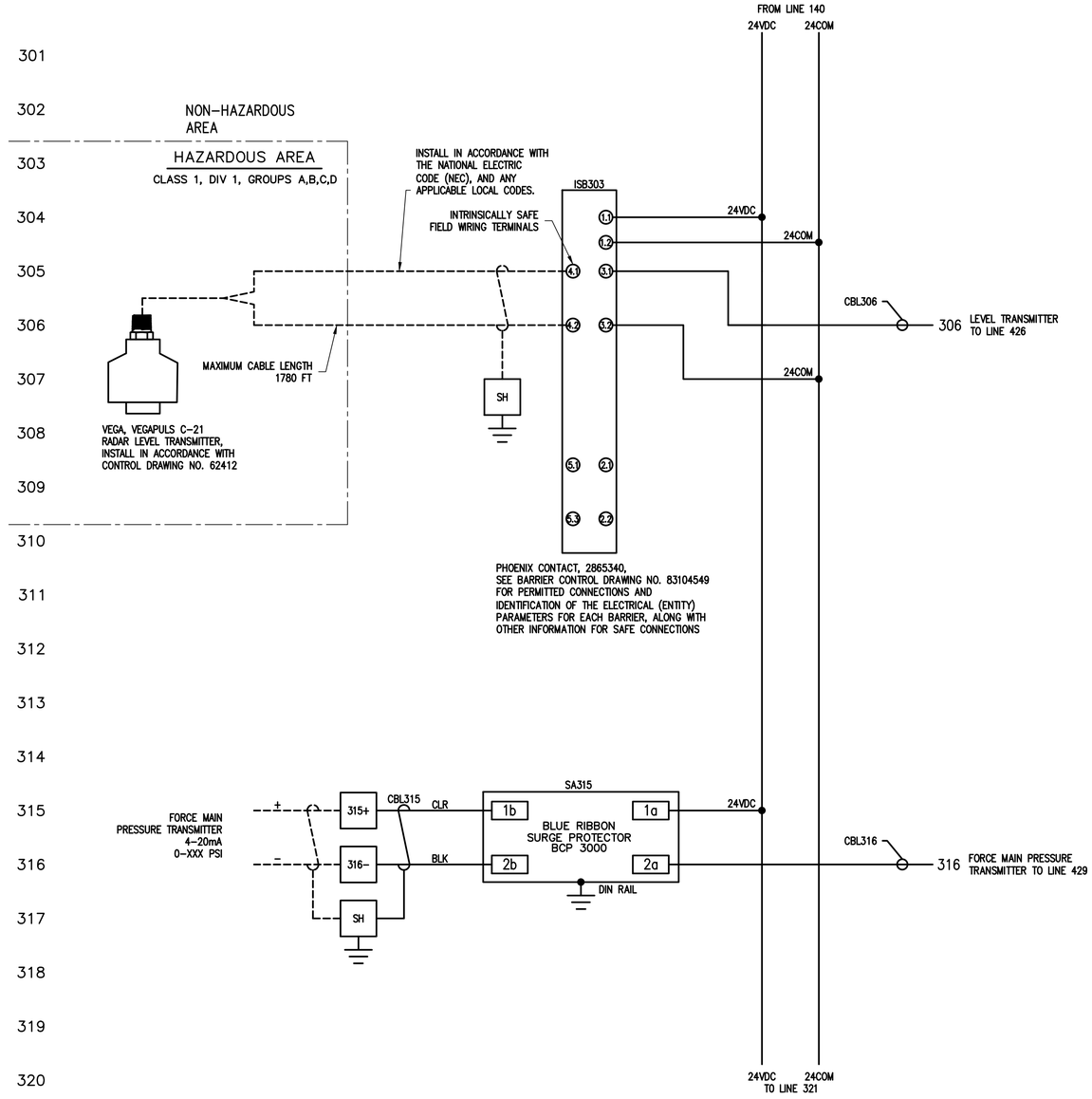

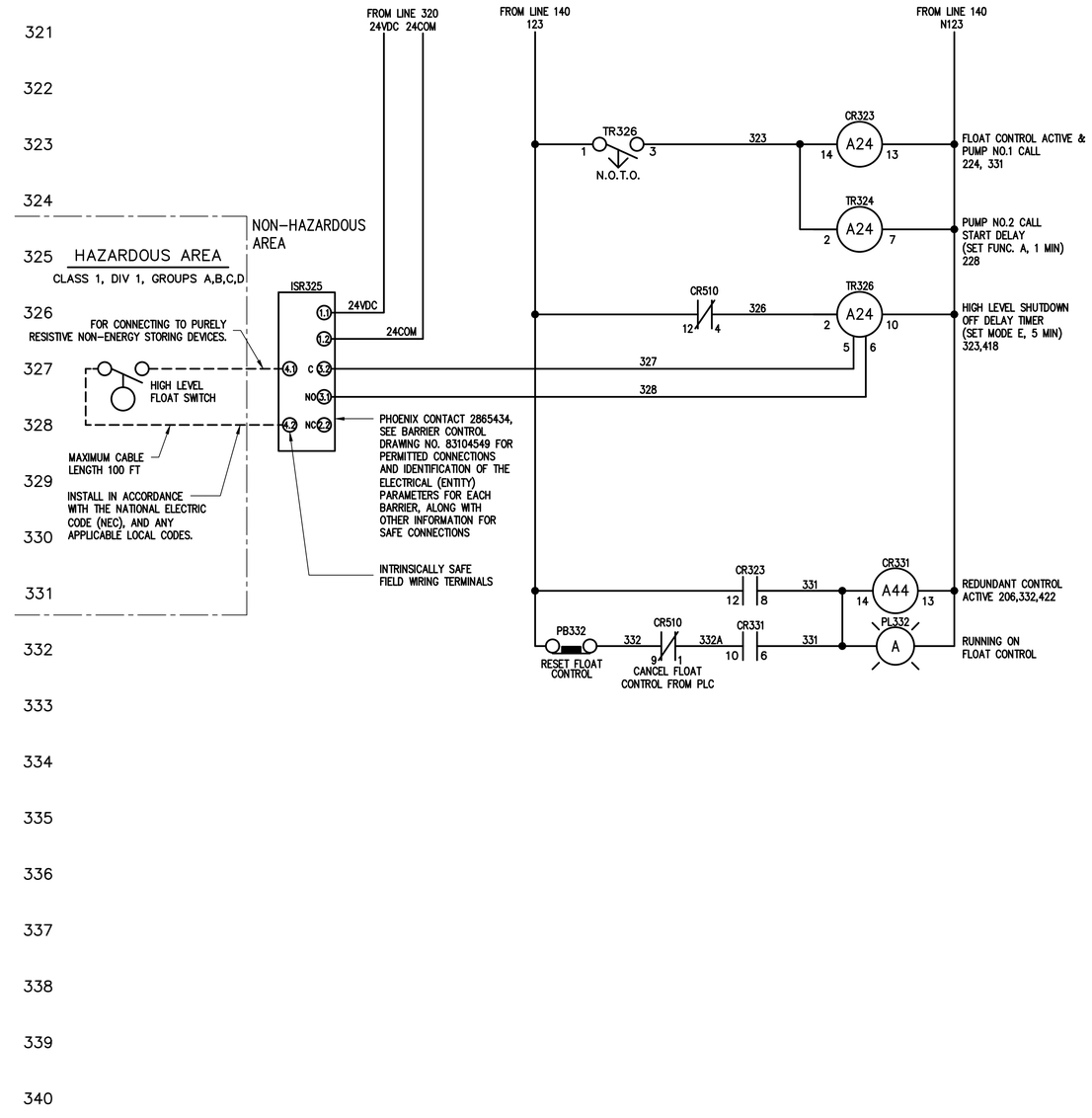

ELEMENTARY DIAGRAM – 3

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LIFT STATION
ELEMENTARY DIAGRAM - 3

SHEET NUMBER
E10

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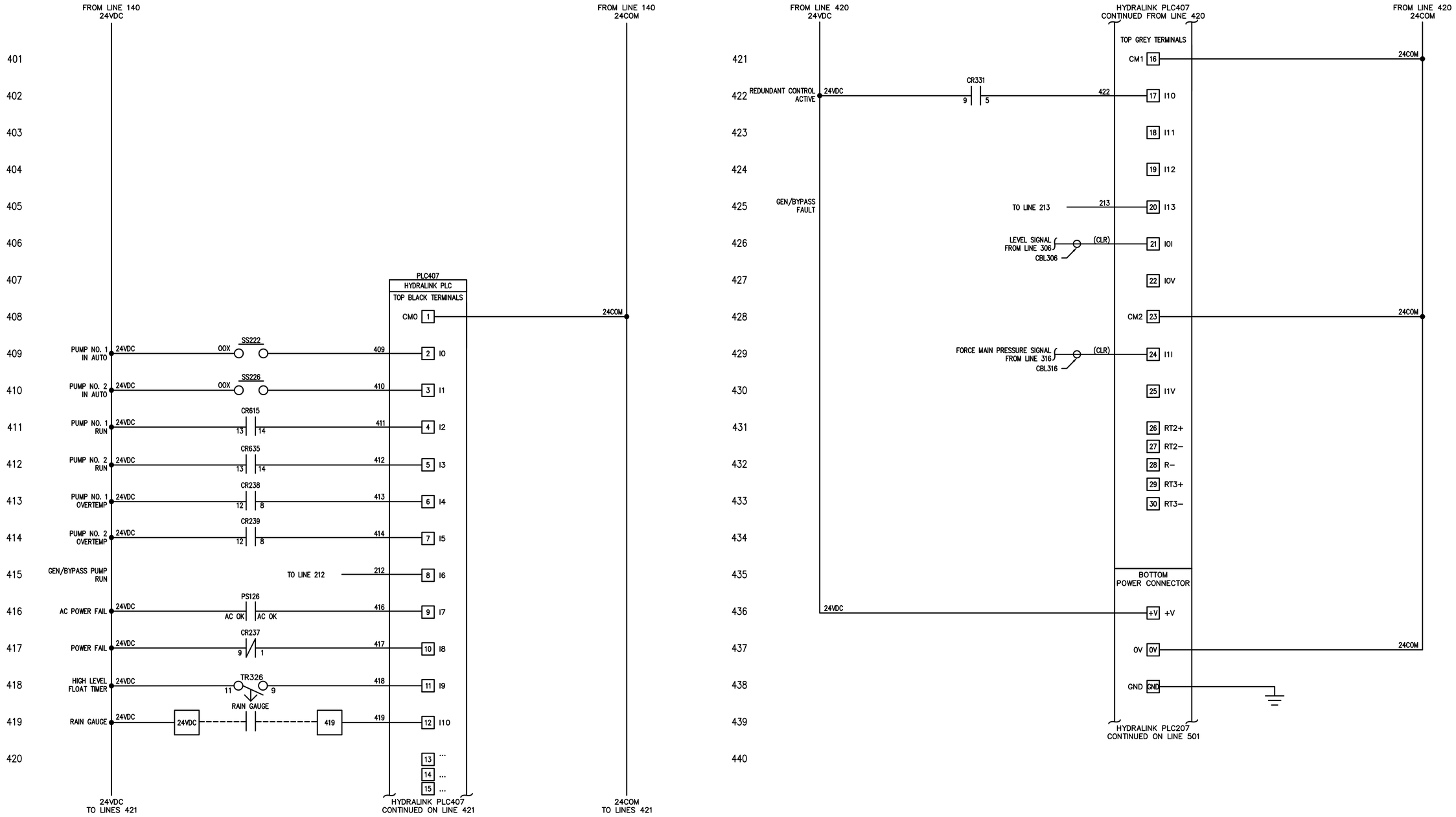

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PLC I/O DIAGRAM

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LIFT STATION
PLC I/O DIAGRAM

SHEET NUMBER
E11

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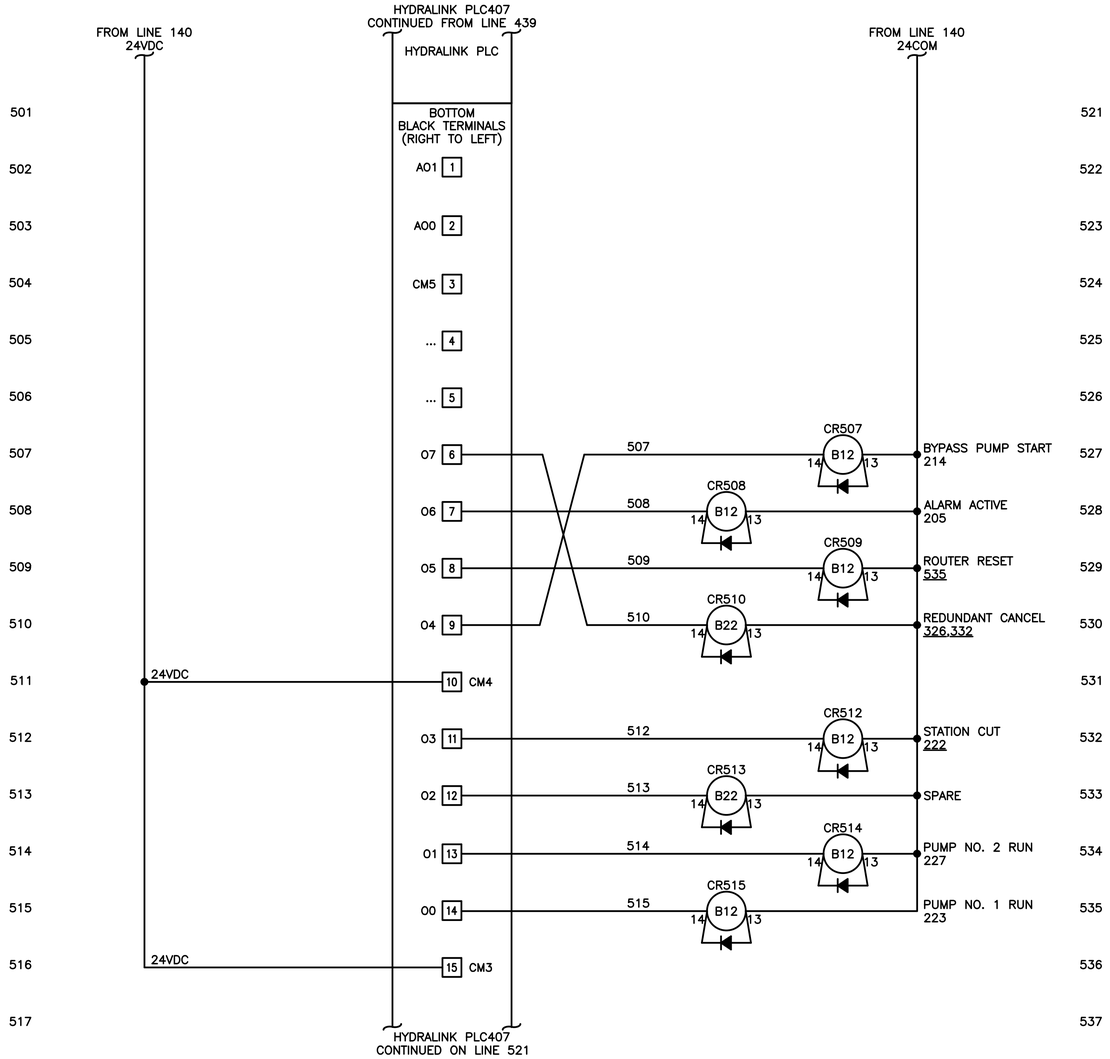

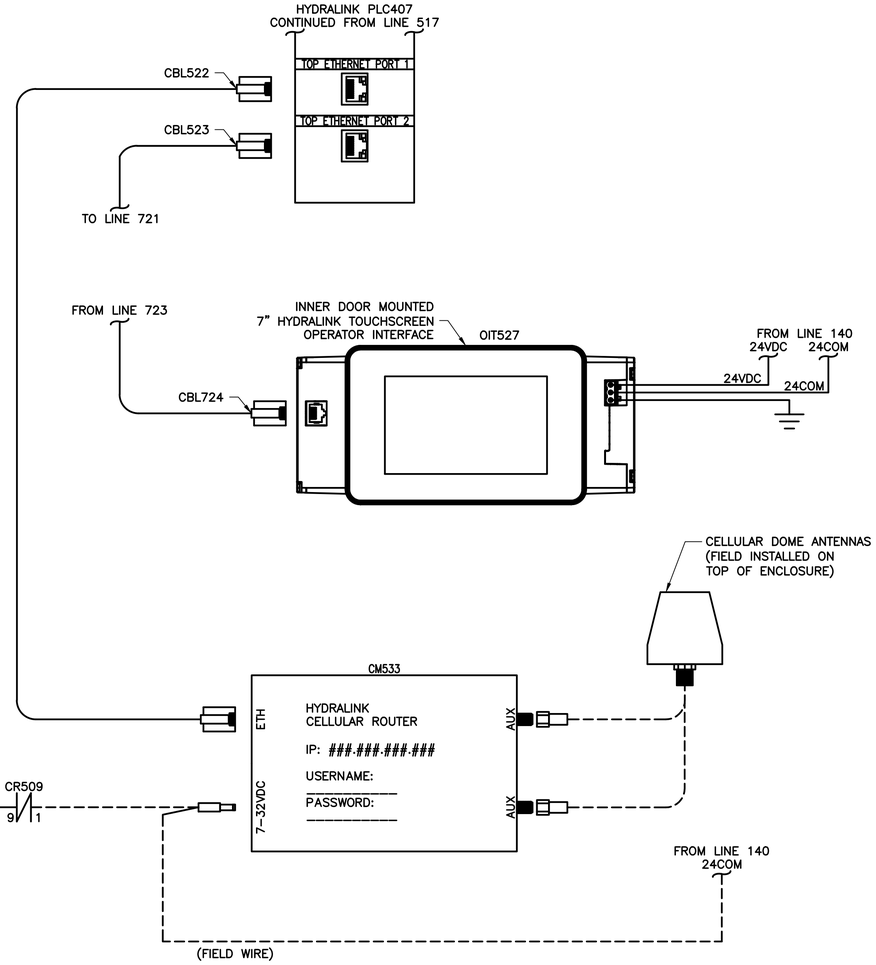

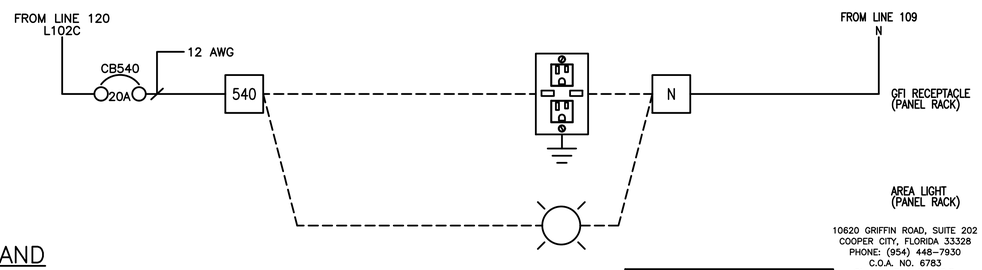

HYDRALINK PLC I/O AND HYDRALINK MODEM DIAGRAM

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LIFT STATION
HYDRALINK PLC I/O AND HYDRALINK MODEM DIAGRAM

SHEET NUMBER
E12

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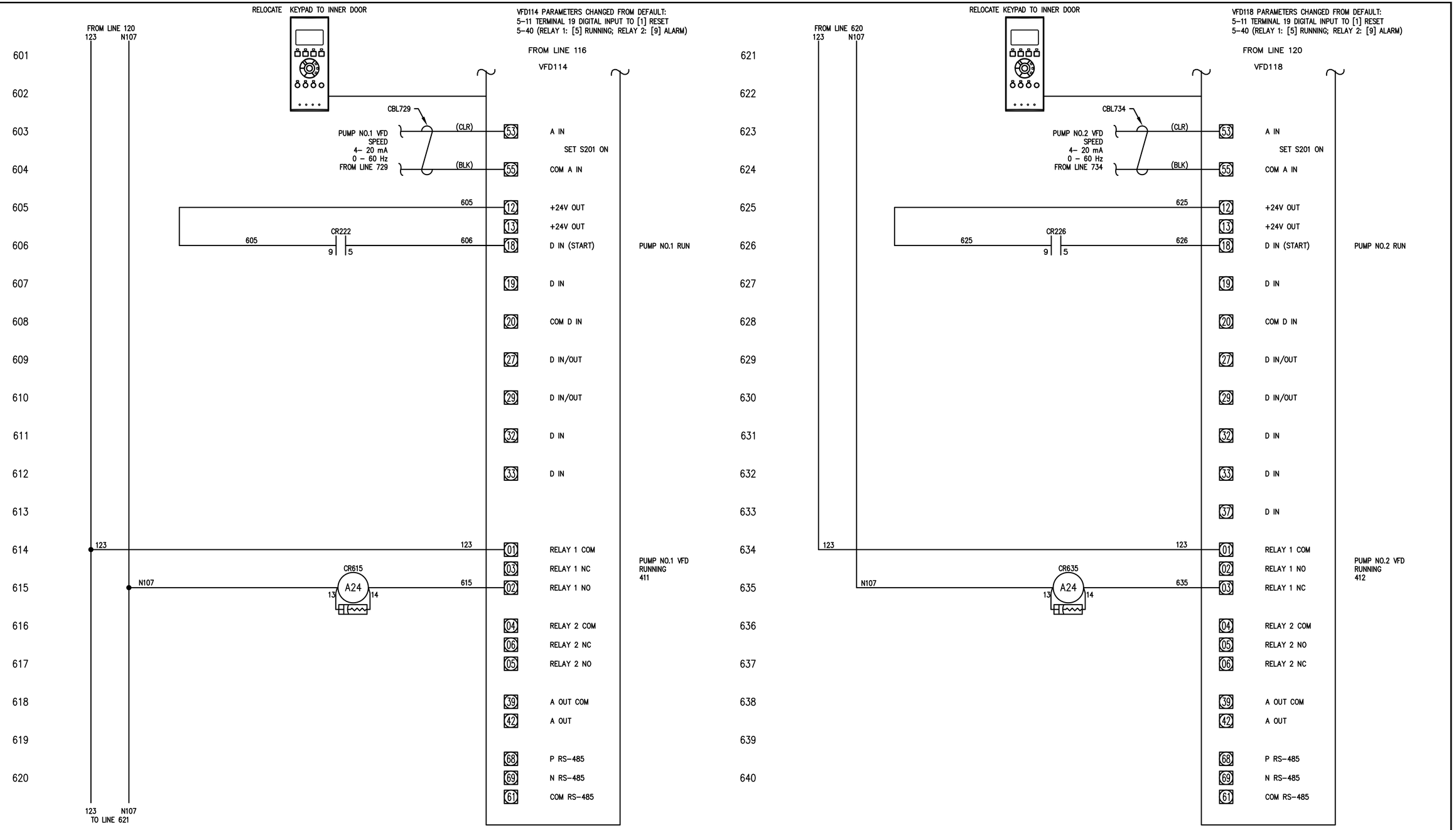

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AT CHRISTIANCY AVENUE

PREPARED FOR
CITY OF PORT ORANGE

LICENSED PROFESSIONAL
STEPHEN E. BAILEY, P.E.
FL LICENSE NUMBER
42461
DATE:

LIFT STATION

VFD ELEMENTARY DIAGRAM

SHEET NUMBER
E13

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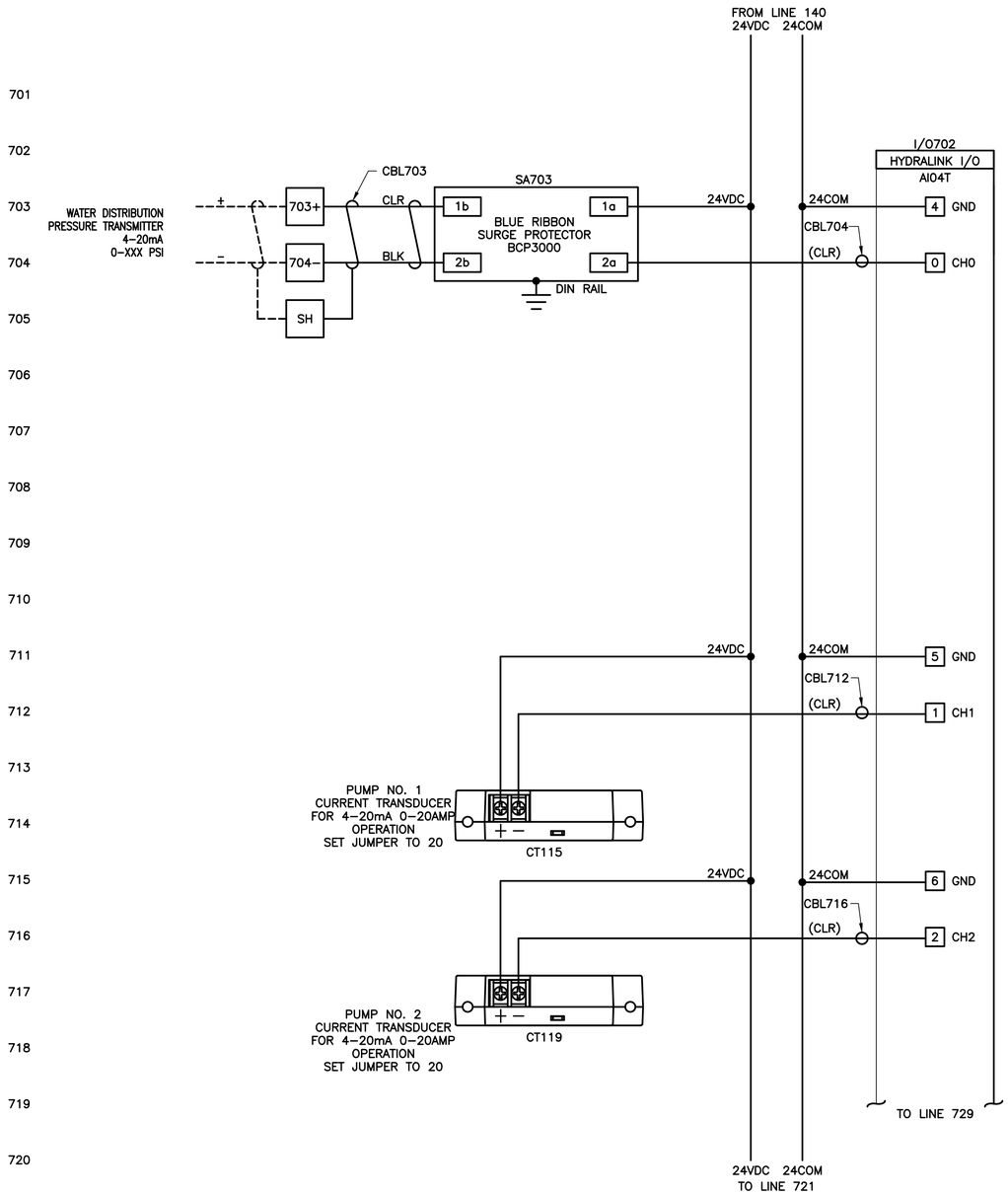

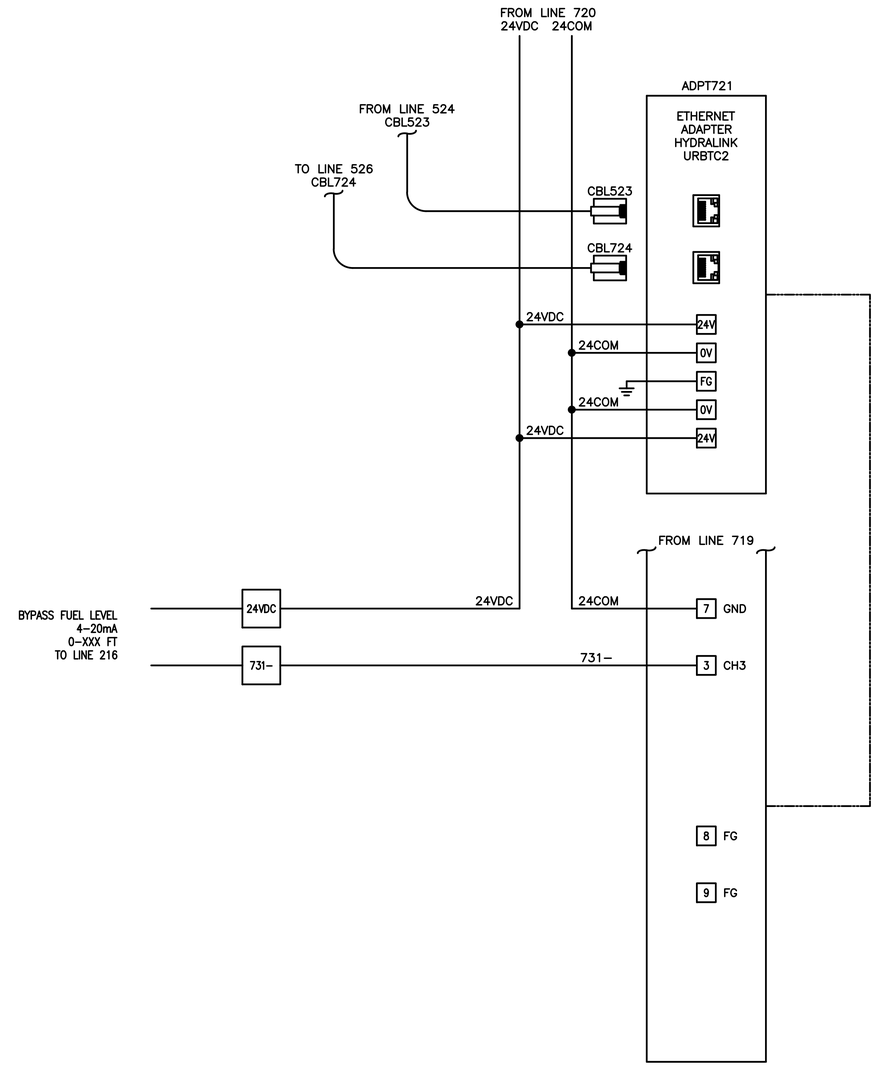

HYDRALINK ANALOG INPUT/OUTPUT MODULE

100% SUBMITTAL

10620 GRIFFIN ROAD, SUITE 202
COOPER CITY, FLORIDA 33328
PHONE: (954) 448-7930
C.O.A. NO. 6783
Stephen E. Bailey, P.E.
Florida P.E. No. 42461

No.	REVISIONS	DATE	BY
1	ADDENDUM NO. 1	06/11/24	JPL

Kimley»Horn
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189 S. ORANGE AVENUE, SUITE 1000, ORLANDO, FL 32801
PHONE: 407-898-1511
WWW.KIMLEY-HORN.COM CA 00035160

KHA PROJECT	142325019
DATE	06/11/2024
SCALE	AS SHOWN
DESIGNED BY	DRM
DRAWN BY	FAD
CHECKED BY	SEB

LIFT STATION
AT CHRISTIANCY AVENUE

PREPARED FOR
CITY OF PORT ORANGE

LICENSED PROFESSIONAL

STEPHEN E. BAILEY, P.E.

FL LICENSE NUMBER
42461

DATE:

LIFT STATION

HYDRALINK ANALOG INPUT/OUTPUT MODULE

SHEET NUMBER
E14

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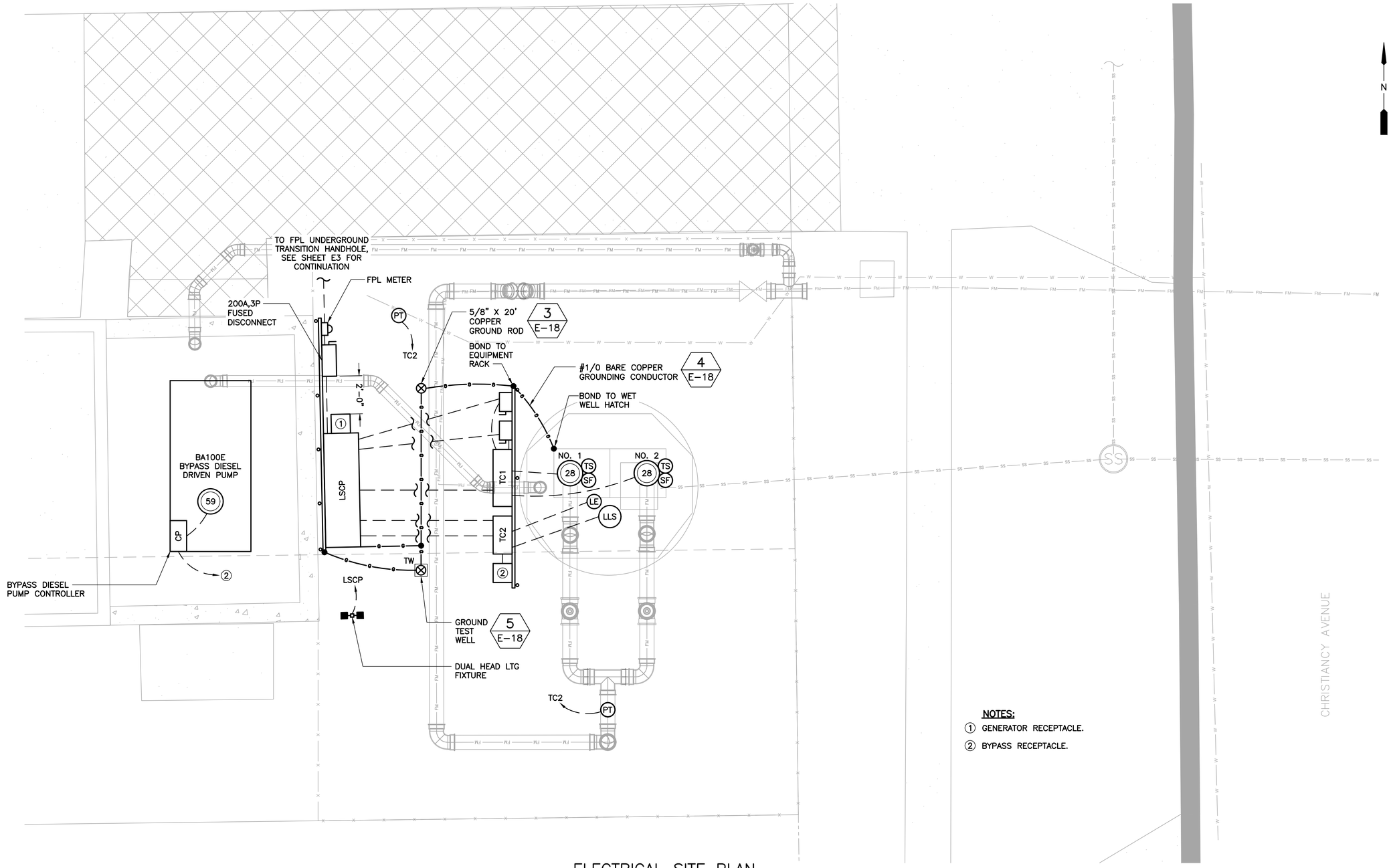

NOTES:

1. GENERATOR RECEPTACLE.
2. BYPASS RECEPTACLE.

ELECTRICAL SITE PLAN

SCALE: 3/8"=1'-0"

12" 0 1 2 4'

100% SUBMITTAL

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CITY OF PORT ORANGE 1867 FLORIDA

LIFT STATION
AT CHRISTIANCY AVENUE

PREPARED FOR
CITY OF PORT ORANGE

LICENSED PROFESSIONAL

STEPHEN E. BAILEY, P.E.

FL LICENSE NUMBER
42461

DATE:

LIFT STATION

BYPASS PUMP & LIFT STATION
ELECTRICAL PLAN

SHEET NUMBER
E15

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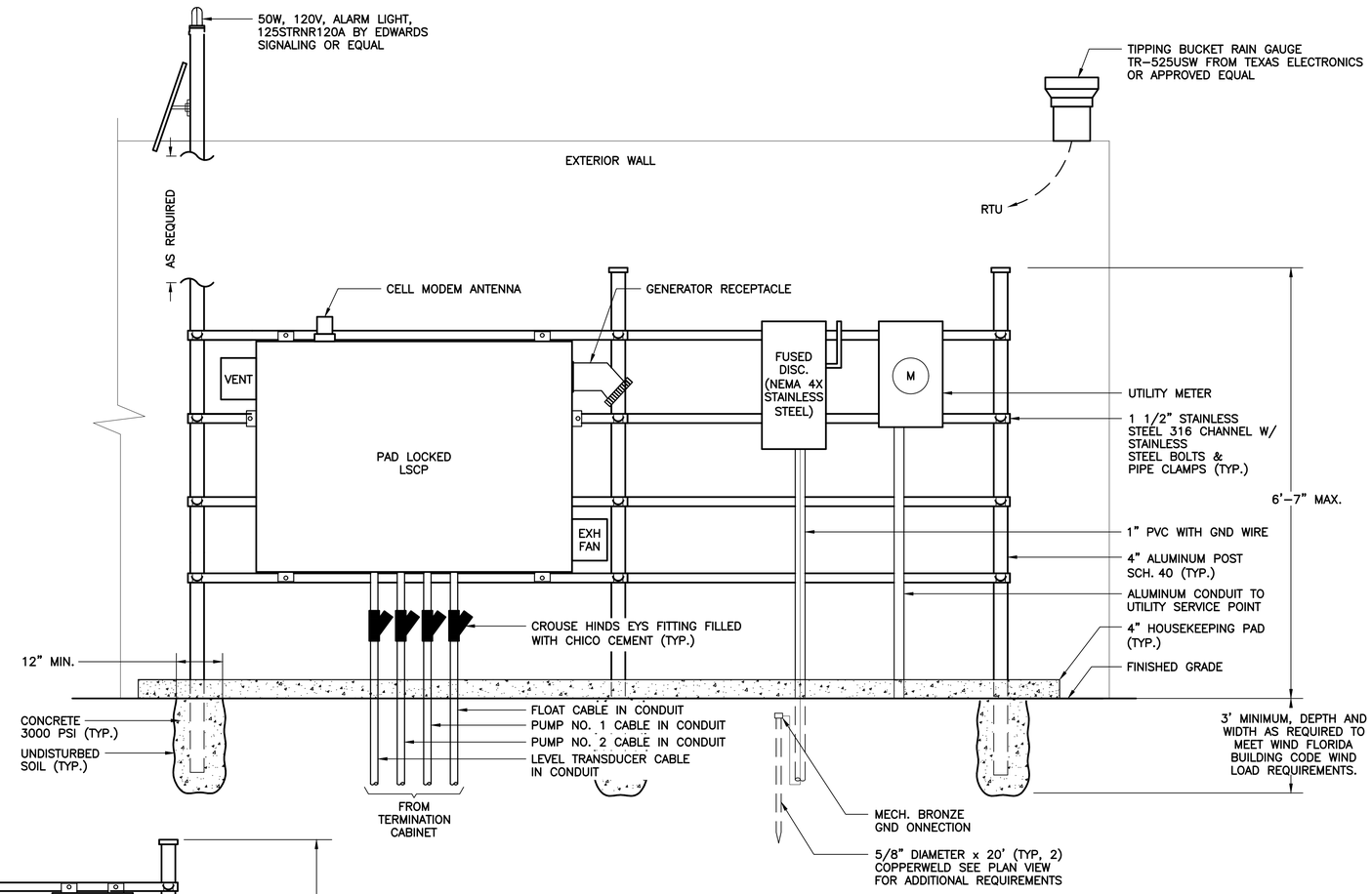
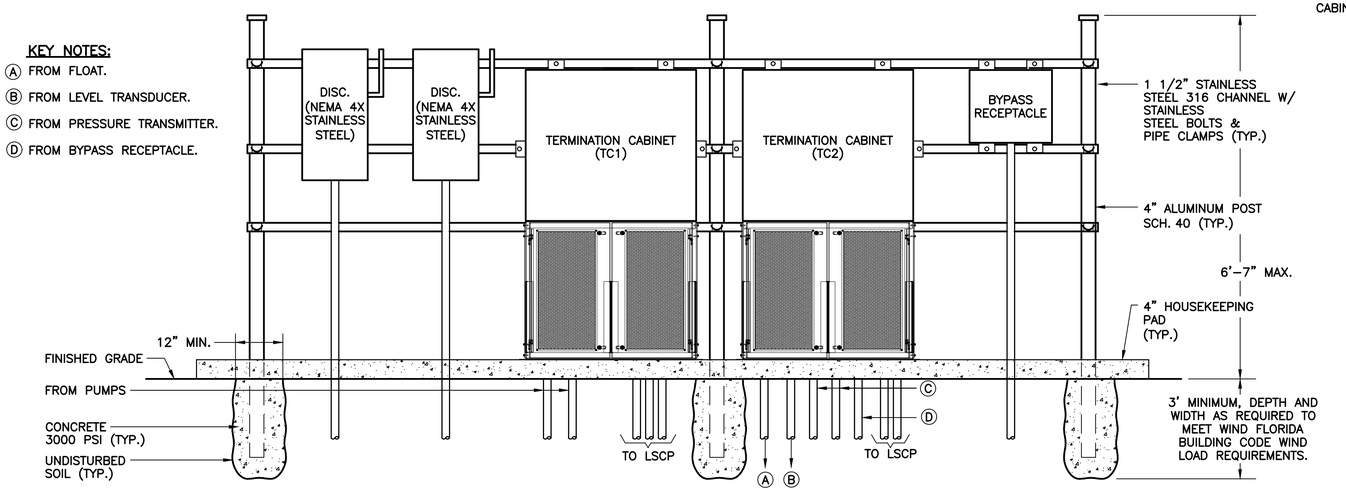


2 TYP. SERVICE RACK DETAILS
N.T.S.

KEY NOTES:

(A) FROM FLOAT.
(B) FROM LEVEL TRANSDUCER.
(C) FROM PRESSURE TRANSMITTER.
(D) FROM BYPASS RECEPTACLE.



1 TYP. TERMINATION CABINET RACK DETAILS
N.T.S.

NOTES:

1. ALL MOUNTING HARDWARE SHALL BE OF 316 STAINLESS STEEL, UNLESS OTHERWISE NOTED.
2. CONTRACTOR SHALL SUBMIT SIGNED AND SEALED WIND LOAD CALCULATIONS FROM A STRUCTURAL ENGINEER LICENSED IN THE STATE OF FLORIDA. ELECTRICAL EQUIPMENT SERVICE RACK TO BE CERTIFIED PER FLORIDA BUILDING CODE.

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KHA PROJECT	142325019
DATE	06/11/2024
SCALE	AS SHOWN
DESIGNED BY	DRM
DRAWN BY	FAD
CHECKED BY	SEB

LIFT STATION AT CHRISTIANCY AVENUE

PREPARED FOR
CITY OF PORT ORANGE

LICENSED PROFESSIONAL
STEPHEN E. BAILEY, P.E.
FL LICENSE NUMBER
42461
DATE:

LIFT STATION

EQUIPMENT RACK DETAILS

SHEET NUMBER
E16

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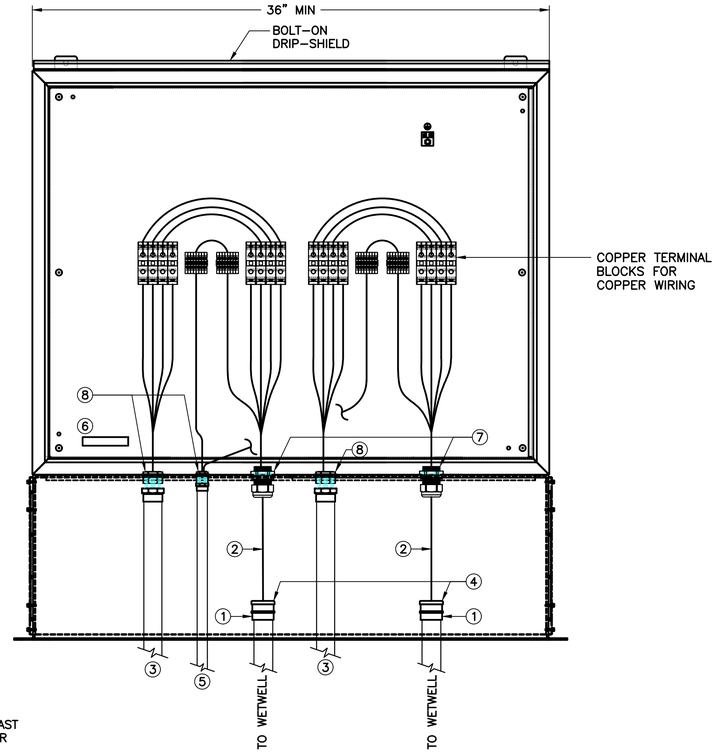
JBOX ENCLOSURE:
NEMA 4X RATED, W/DRIP SHIELD. FABRICATED FROM TYPE 316 STAINLESS STEEL, POLISHED FINISH. OUTER DOOR HAS 3-POINT PAD-LOCKABLE HANDLE.

BACK PANEL:
FABRICATED FROM 12ga. STEEL WITH WHITE POLYESTER POWDER COAT FINISH.

NOTES:
1. CLASS 1, DIVISION 1 CROUSE HINDS ES SEALING HUB FILLED WITH CHICO CEMENT.
2. PUMP CABLE.
3. PUMP POWER TO LSCP.
4. PVC THREADED CONDUIT BUSHING.
5. PUMP CONTROL TO LSCP.
6. TERMINAL BOX GROUND BAR.
7. MYERS HUB AND LIQUID TIGHT CORD GRIPS FOR PUMP CABLES. EATON CROUSE HINDS STAG SERIES AND HUBBELL SHC SERIES WITH CROUSE HINDS EATON REDUCER BUSHINGS.
8. MYERS HUB STAG SERIES WITH ALUMINUM MALE ADAPTER ABD ALUMINUM CONDUIT.

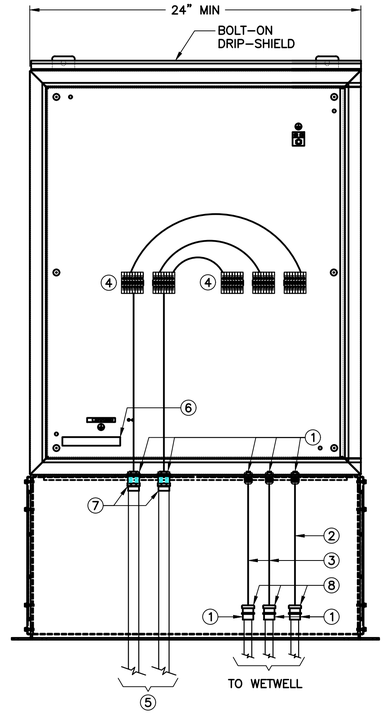


1 TYP. TC1 DETAIL
N.T.S.

JBOX ENCLOSURE:
NEMA 4X RATED, W/DRIP SHIELD. FABRICATED FROM TYPE 316 STAINLESS STEEL, POLISHED FINISH. OUTER DOOR HAS 3-POINT PAD-LOCKABLE HANDLE.

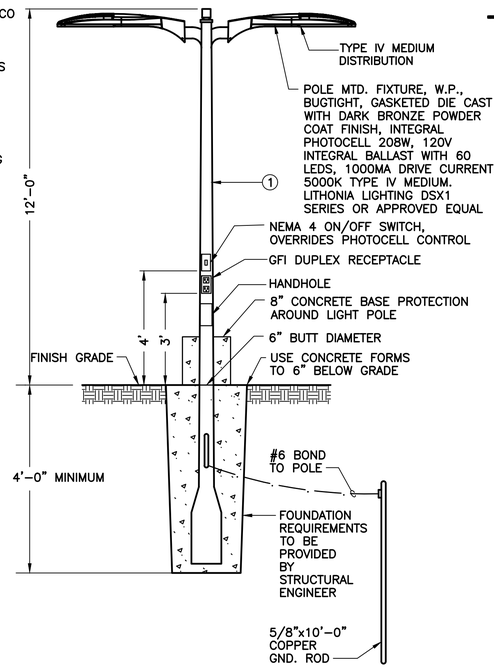
BACK PANEL:
FABRICATED FROM 12ga. STEEL WITH WHITE POLYESTER POWDER COAT FINISH.

NOTES:
1. CLASS 1, DIVISION 1 CROUSE HINDS ES SEALING HUB FILLED WITH CHICO CEMENT.
2. FLOAT CABLE
3. TRANSDUCER CABLE.
4. 24V AC CONTROL TERMINAL BLOCK
5. CONDUIT TO LSCP
6. PUMP CONTROL.
7. TERMINAL BOX GROUND BAR.
8. PVC THREADED CONDUIT BUSHING.

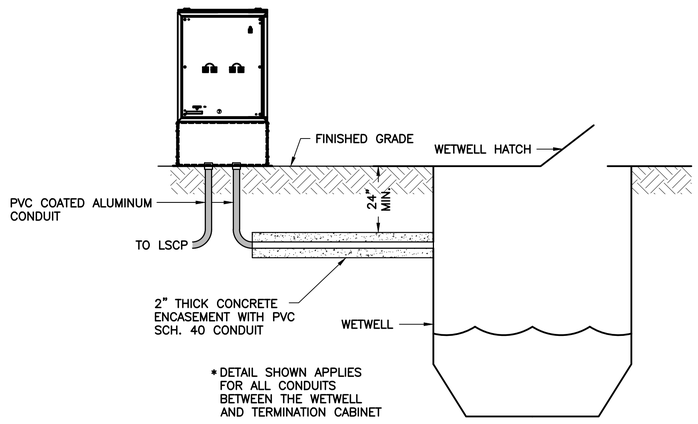


2 TYP. TC2 DETAIL
N.T.S.

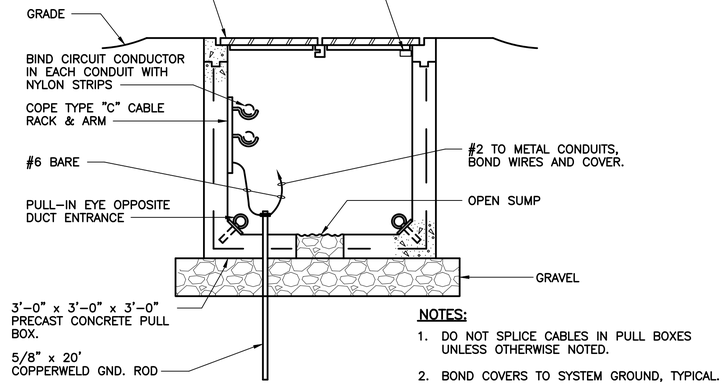
NOTES:
1. ROUND TAPERED ALUMINUM POLE. ALLOY 6063-T6 HAPCO RTA SERIES, OR EQUAL. CONTRACTOR TO PROVIDE STRUCTURAL POLE AND FOOTING DETAILED DRAWINGS INCLUDING WIND LOAD CALCULATIONS SIGNED AND SEALED BY A STATE OF FLORIDA STRUCTURAL ENGINEER. CALCULATIONS SHALL BE IN ACCORDANCE WITH THE FLORIDA BUILDING CODE.



3 TYP. POLE MOUNTED TYPE FIXTURE DETAIL
N.T.S.



4 TYP. CONDUIT INSTALLATION DETAIL
N.T.S.



NOTES:
1. DO NOT SPLICE CABLES IN PULL BOXES UNLESS OTHERWISE NOTED.
2. BOND COVERS TO SYSTEM GROUND, TYPICAL.
3. PROVIDE OPEN SUMP ON 6" CRUSHED ROCK.

5 E-14 PULL BOX DETAIL
N.T.S.

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KHA PROJECT	142325019
DATE	06/11/2024
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DESIGNED BY	DRM
DRAWN BY	FAD
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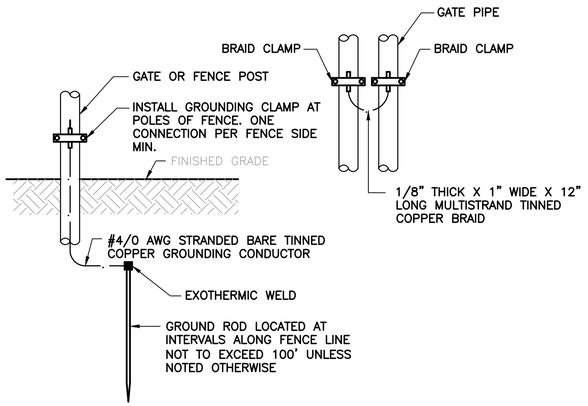
LIFT STATION
AT CHRISTIANCY AVENUE

PREPARED FOR
CITY OF PORT ORANGE

LICENSED PROFESSIONAL
STEPHEN E. BAILEY, P.E.
FL LICENSE NUMBER
42461
DATE:

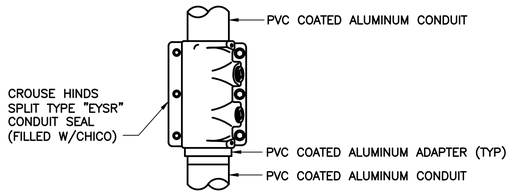
LIFT STATION
TERMINATION CABINET DETAILS

SHEET NUMBER
E17



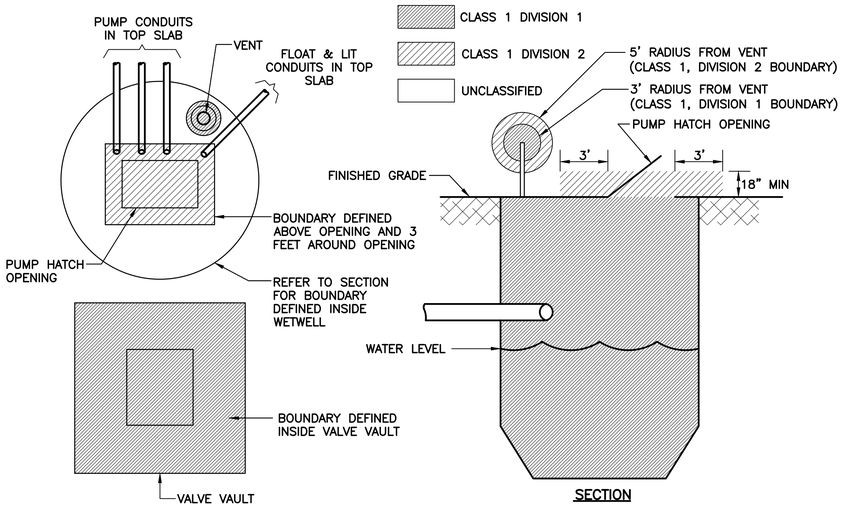
1 TYP. **TYPICAL GATE/FENCE POST GROUNDING DETAIL**

NOT TO SCALE



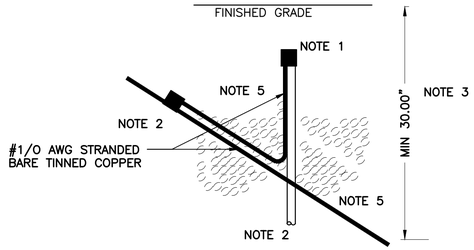
2 TYP. **SEAL–OFF FITTING DETAIL**

N.T.S.



6 TYP. **BOUNDARY CLASSIFICATION**

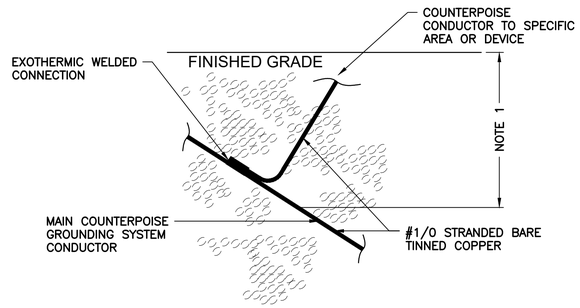
N.T.S.



1. GROUND ROD TO COUNTERPOISE CONDUCTOR SHALL BE CONNECTED BY MEANS OF A EXOTHERMIC WELD. GROUND ROD SHALL BE 5/8 INCH IN DIAMETER AND 20 FOOT LENGTH MINIMUM.
2. COUNTERPOISE CONDUCTOR TO CONDUCTOR CONNECTION SHALL BE CONNECTED BY MEANS OF EXOTHERMIC WELD AND THE CONDUCTOR FROM COUNTERPOISE LENGTH TO GROUND ROD SHALL HAVE A MINIMUM OF 36 INCHES.
3. UNDERGROUND INSTALLATION OF COUNTERPOISE SYSTEM SHALL BE BURIED AT A MINIMUM DEPTH OF 30 INCHES.
4. ALL COMPONENTS USED IN INSTALLATION WITHIN SHALL COMPLY WITH SPECIFICATION 16450.
5. #1/0 AWG STRANDED BARE TINNED COPPER CONDUCTOR

3 TYP. **COUNTERPOISE GROUND ROD CONNECTION DETAIL**

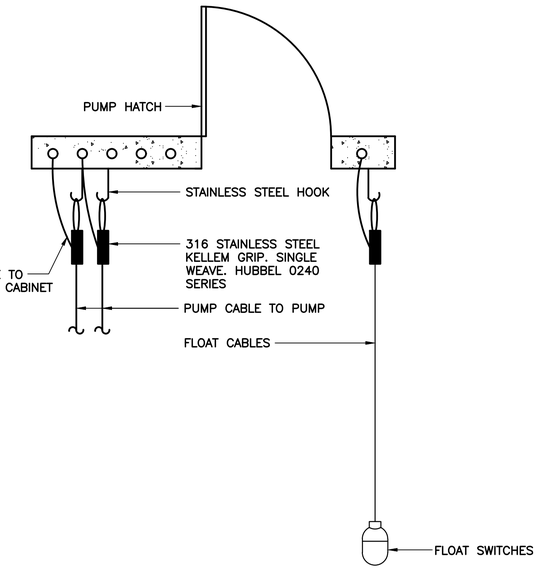
N.T.S.



1. UNDERGROUND INSTALLATION OF COUNTERPOISE SYSTEM SHALL BE BURIED AT A MINIMUM DEPTH OF 30 INCHES.
2. ALL COMPONENTS USED IN INSTALLATION WITHIN SHALL COMPLY WITH SPECIFICATION 16450.

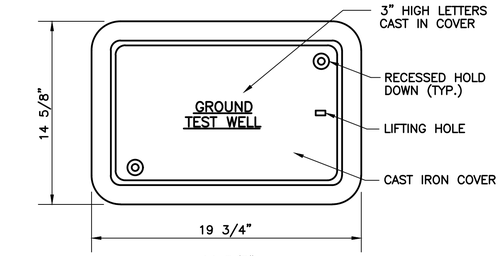
4 TYP. **COUNTERPOISE CONDUCTOR CONNECTION DETAIL**

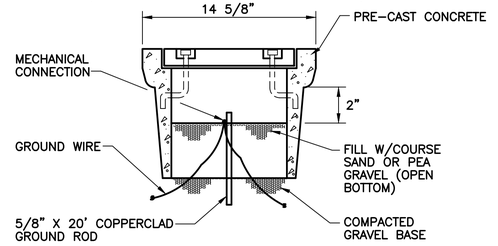
N.T.S.



7 TYP. **PUMP CABLE MOUNTING DETAIL**

N.T.S.





5 TYP. **GROUND TEST WELL**

N.T.S.

NOTES:

① THE C21 RADAR SENSOR SHALL BE MOUNTED PER MANUFACTURER'S REQUIREMENTS, IN AN AREA FREE FROM OBSTRUCTION AND AWAY FROM THE INFLOW PIPING

8 TYP. **VEGAPULS C21 MOUNTING DETAIL**

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LIFT STATION
AT CHRISTIANCY AVENUE

PREPARED FOR
CITY OF PORT ORANGE

LICENSED PROFESSIONAL
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DATE:

LIFT STATION

ELECTRICAL DETAILS - 1

SHEET NUMBER
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100% SUBMITTAL

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PHONE: (954) 448-7930
C.O.A. NO. 6783
Stephen E. Bailey, P.E.
Florida P.E. No. 42461

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 # ITB #24-11

☑ **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: Danus Utilities, Inc.

Signature of Owner/Officer: _____

Title: President Date: 7/17/24

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 Seminole

I, Daniel J Pardus, 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 National Builders Insurance Company Company, under the terms of Policy Number WCV 0264441 08 for a period from July 2, 2024 to July 2, 2025.

WITNESS:

By: _____

Name: Preston Pardus

CONTRACTOR:

Company: Danus Utilities, Inc.

By: _____

Name/Title: Daniel J Pardus - President

Sworn to/Affirmed and subscribed before me this 17 day of July, 2024, by Daniel J Pardus, who is personally known to me or who produced PK as identification.

_____

NOTARY PUBLIC – STATE OF FLORIDA

Type or Print Name: Robert H Brown

Commission No.: HH 145052

Commission Expires: October 23, 2025

(Seal)

ROBERT H. BROWN
MY COMMISSION EXPIRES
OCTOBER 23, 2025
#HH 145052
Bonded thru
Notary Public Underwriters
NOTARY PUBLIC, STATE OF FLORIDA

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 08/06/2024

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	CONTACT NAME: Melissa Adrian, CPSR	
Caton-Hosey Insurance 3731 Nova Rd. Port Orange FL 32129	PHONE (A/C, No, Ext): (386) 767-3161	FAX (A/C, No): (386) 760-1770
	E-MAIL ADDRESS: melissa@catonhosey.com	

INSURED	INSURER(S) AFFORDING COVERAGE	NAIC #
Danus Utilities, Inc 4133 Saddle Club Dr New Smyrna Beach FL 32168	INSURER A : Specialty Builders Ins. Co.	16826
	INSURER B : Auto-Owners Ins	18988
	INSURER C : Travelers Excess & Surplus Lines Co	29696
	INSURER D : National Builders Insurance Company	16632
	INSURER E : Federal Insurance Company	20281
	INSURER F : Westchester Surplus Lines	10172

COVERAGES **CERTIFICATE NUMBER:** CL2462032848 **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	[X] COMMERCIAL GENERAL LIABILITY [ ] CLAIMS-MADE [X] OCCUR [X] Contractual Liability [X] XCU Included GEN'L AGGREGATE LIMIT APPLIES PER: [ ] POLICY [X] PRO-JECT [ ] LOC [ ] OTHER:	Y		PKG-0351006-01	07/02/2024	07/02/2025	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG [ ]	$ 1,000,000 $ 100,000 $ 5,000 $ 1,000,000 $ 2,000,000 $ 2,000,000 $
B	AUTOMOBILE LIABILITY [X] ANY AUTO [ ] OWNED AUTOS ONLY [ ] SCHEDULED AUTOS [ ] HIRED AUTOS ONLY [ ] NON-OWNED AUTOS ONLY	Y		4806741403	07/02/2024	07/02/2025	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident) PIP-Basic	$ 1,000,000 $ $ $ $ 10,000
C	[X] UMBRELLA LIAB [X] OCCUR [ ] EXCESS LIAB [ ] CLAIMS-MADE [ ] DED [X] RETENTION $ 10,000			CUP-8W978480-24-NF	07/02/2024	07/02/2025	EACH OCCURRENCE AGGREGATE [ ]	$ 1,000,000 $ 1,000,000 $
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N: N If yes, describe under DESCRIPTION OF OPERATIONS below	N/A	Y	WCV 0264441 08	07/02/2024	07/02/2025	[X] PER STATUTE [ ] OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	 $ 1,000,000 $ 1,000,000 $ 1,000,000
E	Rented & Leased Equipment			45471710	06/24/2024	06/24/2025	Limit Deductible	$350,000 $1,000

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

F- Pollution Liability- Policy # CPL00285001 7/2/2024-7/2/2025 Limit $1,000,000
A-Installation Floater-Policy: PKG-0351006-01 7/2/24-7/2/25 Limit $1,080,650.00 Deductible: $1000

Re: ITB#24-11 Christiancy Lift Station(LS11) Rehabilitation
The City of Port Orange is included as an Additional Insured for General Liability with respect to operations of the Named Insured where required by written contract. Coverage is primary and non-contributory. A Waiver of Subrogation applies with respect to General Liability where required by written contract.

CERTIFICATE HOLDER

City of Port Orange
1000 City Center Circle
Port Orange FL 32129

CANCELLATION

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

AUTHORIZED REPRESENTATIVE

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

GENERAL LIABILITY EXTRA COVERAGE ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

TABLE OF CONTENTS

Additions to SECTION I – COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Non-Owned Watercraft

2. Fire, Lightning, Explosion, Smoke, or Leakage from an Automatic Fire Protection System

Additions to SECTION I - SUPPLEMENTARY PAYMENTS - COVERAGES A AND B

1. Increased Limits for Bail Bonds

2. Increased Limit of Loss of Earnings

Additions to SECTION II – WHO IS AN INSURED

1. Additional Insured Status for Persons or Organizations Required by Written Contract or Agreement

2. Incidental Medical Malpractice

3. Newly Acquired or Formed Organizations

4. Additional Insured Lessor of Leased Equipment Automatic Status When Required in Lease Agreement With You

Additions to SECTION III – LIMITS OF INSURANCE

1. Damage to Premises Rented To You

2. Increased Medical Payments Limit

3. Additional Insured- Persons or Organizations Required by Written Contract or Agreement

Additions to SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS

1. Knowledge of Occurrence

2. Primary and Noncontributory

3. Transfer of Rights of Recovery

4. Liberalization

5. Unintentional Failure to Disclose

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SECTION I – COVERAGES

COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY is revised as follows:

1. **Non-Owned Watercraft**. Paragraph 2. **Exclusions, g. Aircraft, Auto Or Watercraft** item (2) is deleted and replaced with the following:

(2) A watercraft you do not own that is:
(a) Less than 51 feet long; and
(b) Not being used to carry persons or property for a charge;

2. **Property Damage Exclusion**. Paragraph 2. **Exclusions, j. Damage to Property** is revised by deleting the clause that states:

Paragraphs **(1)**, **(3)** and **(4)** of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of 7 or fewer consecutive days. A separate limit of insurance applies to DamageTo Premises Rented To You as described in Section III - Limits Of Insurance.

and replacing it with:

Paragraphs **(1)**, **(3)** and **(4)** of this exclusion do not apply to "property damage" (other than damage by fire, lightning, explosion, smoke or leakage from an automatic fire protection system) to premises, including the contents of such premises, rented to you for a period of 7 or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in Section III - Limits Of Insurance.

SUPPLEMENTARY PAYMENTS - COVERAGES A AND B is revised as follows:

3. **Increased Limits.** Paragraph **1.b.** is deleted and replaced by the following, to provide that we will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend:

b. Up to $2,500 for cost of bail bonds required because of motor vehicle accidents or traffic law violations arising out of the use of any motor vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

4. **Increased Limits.** Paragraph **1.d.** is deleted and replaced by the following, to provide that we will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend:

d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to $350 a day because of time off from work.

SECTION II -WHO IS AN INSURED - is revised as follows:

1. **Additional Insureds.**

A. Section II – Who Is An Insured is amended to include as an additional insured:

1. Any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy; and
2. Any other person or organization you are required to add as an additional insured under the contract or agreement described in Paragraph **1.** above.

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Such person(s) or organization(s) is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

(a) Your acts or omissions; or
(b) The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured.

However, the insurance afforded to such additional insured described above:

(a) Only applies to the extent permitted by law; and
(b) Will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

A person's or organization's status as an additional insured under this endorsement ends when your operations for the person or organization described in Paragraph **1.** above are completed.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

1. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:
(a) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
(b) Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of, or the failure to render, any professional architectural, engineering or surveying services.

2. "Bodily injury" or "property damage" occurring after:
(a) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
(b) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

C. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

The most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement described in Paragraph **A.1.;** or
2. Available under the applicable Limits of Insurance shown in the Declarations; whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations..

2. **Incidental Medical Malpractice**. The following exception is added:

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Paragraph **2.a.(1)(d)** does not apply to your "employees" or "volunteer workers" who provide professional health care services on your behalf as a duly licensed:

(i) Emergency Medical Technician; or

(ii) Paramedic.

This exception does not apply if you are in the business or occupation of providing emergency medical or paramedic services.

3. **Newly Acquired or Formed Organizations.**

Paragraph **3.a.** is deleted and replaced with the following:

(a) Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier;

Paragraph **3.b.** is deleted and replaced with the following:

(b) Coverage A does not apply to "bodily injury" or "property damage" to "your product" that occurred before you acquired or formed the organization; and

4. Additional Insured Lessor of Leased Equipment Automatic Status When Required In Lease Agreement With You

A. Section II – Who Is An Insured is amended to include as an additional insured any person(s) or organization(s) from whom you lease equipment when you and such person(s) or organization(s) have agreed in writing in a contract or agreement that such person(s) or organization(s) be added as an additional insured on your policy. Such person(s) or organization(s) is an insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s).

However, the insurance afforded to such additional insured:

1. Only applies to the extent permitted by law; and

2. Will not be broader than that which you are required by the contract or agreement to provide for such additional insured. A person's or organization's status as an additional insured under this endorsement ends when their contract or agreement with you for such leased equipment ends.

B. With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.

C. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:

The most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement you have entered into with the additional insured; or

2. Available under the applicable Limits of Insurance shown in the Declarations; whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

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SECTION III - LIMITS OF INSURANCE - The following is added for the purpose of this Endorsement:

The Limits of Insurance shown in the Declarations apply to the insurance provided by this endorsement, except the following limits, which are amended:

1. **Damage To Premises Rented To You.**

The limit for Damage to Premises Rented to You is amended to be the lesser of:
(a) The Each Occurrence Limit shown in the Declarations; or
(b) $300,000.

2. **Increased Medical Payments Limit.**

Without increasing any applicable General Aggregate Limit or per occurrence Limit, the Medical Expense Limit in Coverage C is $10,000 per person unless a greater amount is shown in the Declarations.

SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS - is revised as follows:

1. **Knowledge of Occurrence.** The following is added to Paragraph **2. Duties In The Event Of Occurrence, Offense, Claim Or Suit.**

When you or any other insured know or should know that there has been an "occurrence" or offense which may result in a claim or "suit" to which this insurance may apply, you must notify us as soon as practicable, and such duty to give us notice shall be deemed to have been triggered when facts sufficient to believe an "occurrence" or offense has occurred becomes known to:
(1) You, if you are an individual;
(2) A member or partner, if you are a partnership or joint venture;
(3) A member or manager, if you are a limited liability company;
(4) An "executive officer" or director, if you are an organization other than a partnership, joint venture or limited liability company;
(5) A trustee, if you are a trust;
(6) Your insurance manager;
(7) Your legal representative if you die or dissolve;
(8) Any person claiming coverage or seeking benefits under the policy; or
(9) Any member, partner, manager, "executive officer", director, or trustee of any organization, limited liability company, corporation, partnership, joint venture or trust claiming coverage or seeking benefits under the policy.

2. **Primary and Noncontributory.** The following is added to the **Other Insurance** Condition and supersedes any provision to the contrary:

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

(1) The additional insured is a Named Insured under such other insurance; and
(2) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

3. **Transfer Of Rights Of Recovery.** The following is added to Paragraph **8. Transfer Of Rights Of Recovery Against Others To Us.**

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We waive the rights of recovery we may have because of payments we make for injury or damages arising out of:
(a) Your ongoing operations or "your work" done under a contract with a person or organization and included in the "products-completed operations hazard"; or
(b) The ownership, maintenance or use of that part of a premise leased to you.

Our rights may not be waived except if waived in writing by us prior to the "occurrence" giving rise to the injury or damage for which we make payments under this Coverage. The insured must do nothing after the loss to impair or prejudice our rights and must do whatever we deem necessary to enable us to exercise our rights. At our request, the insured shall bring "suit "against liable parties or transfer those rights to us.

4. **Liberalization**. The following is added:

If we revise this version of this General Liability Extra Coverage Endorsement to provide more coverage without additional premium charges, this endorsement will automatically provide the revised coverage as of the day the revision is effective in the state in which you reside.

5. **Unintentional Failure to Disclose**. The following is added:

An unintentional failure to completely describe or unintentional error or omission in the description of any premises or operations intended by you to be covered by this Commercial General Liability Coverage Form will not invalidate coverage for those premises or operations. An unintentional error, omission or failure must be reported to us as soon as practical after it is discovered.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY AND ENDORSEMENTS REMAIN UNCHANGED.

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58504 (1-15)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED INSURED FOR COVERED AUTOS LIABILITY COVERAGE - BLANKET COVERAGE

This endorsement modifies insurance provided under the following:

COMMERCIAL AUTO POLICY

SECTION II - COVERED AUTOS LIABILITY COVERAGE is amended. The following provision is added. Any person or organization is an **insured** for Covered Autos Liability Coverage, but only to the extent that person or organization qualifies as an **insured** under **SECTION II - COVERED AUTOS LIABILITY COVERAGE, A. COVERAGE, 1. Who Is An Insured**.

All other policy terms and conditions apply.

58583 (1-15)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WAIVER OF OUR RIGHT TO RECOVER PAYMENTS (WAIVER OF SUBROGATION) - BLANKET

This endorsement modifies insurance provided under the following:

COMMERCIAL AUTO POLICY

SECTION V CONDITIONS, A. LOSS CONDITIONS is amended. **5. Our Right to Recover Payments** is deleted and replaced by the following condition.

5. Our Right to Recover Payments

If **we** make a payment under this policy and the person to or for whom payment is made has a right to recover damages from another, **we** will be entitled to that right. That person shall do everything necessary to transfer that right to **us** and do nothing to prejudice it.

However, **we** waive **our** right to recover payments made for **bodily injury** or **property damage**:

a. Covered by the policy; and

b. Arising out of the operation of **autos** covered by the policy, in accordance with the terms and conditions of a written contract between **you** and such person or entity

only if such rights have been waived by the written contract prior to the **accident** or **loss** which caused the **bodily injury** or **property damage**.

All other policy terms and conditions apply.

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us)

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Schedule

"ALL WRITTEN CONTRACTS THAT REQUIRE A WAIVER OF SUBROGATION"

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective: Policy No. WCV 0264441 08 Endorsement No.

Insured: DANUS UTILITIES INC Premium: $26,550.00

Insurance Company: American Builders Insurance Company Countersigned by: _____

WC 00 03 13
(Ed. 4-84)

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LLOYD'S

PRIMARY AND NON-CONTRIBUTORY INSURANCE

This endorsement, effective 12:01 a.m., 7/2/2024 forms a part of Policy No. CPL00285001 issued by Certain Underwriters at Lloyd's, London

THIS ENDORSEMENT CHANGES THE POLICY – PLEASE READ IT CAREFULLY

In consideration of the premium charged, the insured and the Company agree to the following Policy change(s):

Section VII. CONDITIONS of the above policy is amended by the following addition to Paragraph M. OTHER INSURANCE:

This policy shall be considered primary and non-contributing to any valid and collectible insurance available to third parties in respect to work performed for them by you under any written contractual agreement which requires that you provide primary insurance

ALL OTHER TERMS AND CONDITIONS OF THE POLICY SHALL APPLY AND REMAIN UNCHANGED

LLOYD'S

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

This endorsement, effective 12:01 a.m., 7/2/2024 forms a part of Policy No. CPL00285001 issued by Certain Underwriters at Lloyd's, London

THIS ENDORSEMENT CHANGES THE POLICY – PLEASE READ IT CAREFULLY

In consideration of the premium charged, the insured and the Company agree to the following Policy change(s):

Schedule

Name of Person(s) or Organization(s):
Blanket as required by written contract and/or agreement
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

Section VII. CONDITIONS of the above policy is amended by the following addition to Paragraph Q. TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US:

We waive any right of recovery against the person(s) or organization(s) shown in the above Schedule because of payments we make for injury or damage arising out of your ongoing operations or **YOUR WORK** done under a written contract with that person or organization and included in the **PRODUCTS-COMPETED OPERATIONS HAZARD**. This waiver applies only to the person(s) or organization(s) shown in the above Schedule.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY SHALL APPLY AND REMAIN UNCHANGED

LLOYD'S

ADDITIONAL INSURED - BLANKET

This endorsement, effective 12:01 a.m., 7/2/2024 forms a part of Policy No. CPL00285001 issued by Certain Underwriters at Lloyd's, London.

THIS ENDORSEMENT CHANGES THE POLICY – PLEASE READ IT CAREFULLY

In consideration of the premium charged, the insured and the Company agree to the following Policy change(s):

It is hereby understood and agreed that Section III. WHO IS AN INSURED of the above referenced Policy is amended to include the following person(s) or entity(ies):

Any person(s) or entity(ies) who have entered into a written contract or written agreement with you that such person(s) or entity(ies) be added as an additional insured. Such written contract or written agreement must have been executed and in effect prior to a **LOSS** to which this insurance applies.

But solely as respects their liability arising out of **YOUR WORK** performed during the policy period to which this insurance applies. The coverage provided to the additional insured(s) listed above does not apply to a **CLAIM**, **DAMAGES**or liability arising out of the sole negligence or acts, errors or omissions of the entity(ies) listed above

ALL OTHER TERMS AND CONDITIONS OF THE POLICY SHALL APPLY AND REMAIN UNCHANGED

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 # ITB #24-11

☑ **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: Danus Utilities, Inc.

Signature of Owner/Officer: _____

Title: President Date: 7/17/24

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 Seminole

I, Daniel J Pardus, 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 National Builders Insurance Company Company, under the terms of Policy Number WCV 0264441 08 for a period from July 2, 2024 to July 2, 2025.

WITNESS:

By: _____

Name: Preston Pardus

CONTRACTOR:

Company: Danus Utilities, Inc.

By: _____

Name/Title: Daniel J Pardus - President

Sworn to/Affirmed and subscribed before me this 17 day of July, 2024, by Daniel J Pardus, who is personally known to me or who produced PK as identification.

_____

NOTARY PUBLIC – STATE OF FLORIDA

Type or Print Name: Robert H Brown

Commission No.: HH 145052

Commission Expires: October 23, 2025

(Seal)

ROBERT H. BROWN
MY COMMISSION EXPIRES
OCTOBER 23, 2025
#HH 145052
Bonded thru
Notary Public Underwriters
NOTARY PUBLIC, STATE OF FLORIDA

CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 8/21/2024

SUBJECT: (C7b) Approval of Task Authorization No. 15 with Kimley-Horn & Associates, Inc. for Construction Phase Services relating to ITB #24-11 Christiancy Lift Station Rehab Project

DEPARTMENT: Engineering

GOAL: 2 - Infrastructure

RECOMMENDED MOTION: Move to approve Task Authorization No. 15 with Kimley-Horn & Associates for Construction Phase Services relating to ITB #24-11 Christiancy Lift Station Rehab Project and authorize the Mayor and City Clerk to execute all required documents.

SUMMARY: The Engineering Department is requesting approval of Task Authorization (TA) No. 15 with Kimley-Horn & Associates, Inc. under the Master Contract for Engineering and Environmental Services (CA7763) as it relates to Christiancy Lift Station Construction Phase Services for the amount of $93,774.

The Christiancy Lift Station is located on Commonwealth Blvd. This station was last upgraded in 2002 and needs rehabilitation in order to provide continued services. The lift station is a regional lift station that ultimately provides services to approximately 2,200 residents in the southeast portion of the city.

Kimley-Horn is the Engineer of Record for the Christiancy Lift Station Rehabilitation Project and will be providing the construction phase services.

The completion date of TA No. 15 will be 420 days from the date of the Notice to Proceed. This TA will run concurrent with the construction contract with Danus Utilities, Inc. with additional time after construction to allow for closeout items.

PRESENTER: Junos Reed

ATTACHMENTS:

1.	Kimley-Horn and Associates, Inc. Task Authorization No 15- Christiancy Lift Station Construction Phase Services	Kimley-Horn and Associates, Inc. Task Authorization No 15- Christiancy Lift Station Construction Phase Services.pdf
2.	Christiancy LS CA services	Christiancy LS CA services.pdf
3.	KH-24-015Grev2	KH-24-015Grev2.pdf

4.	Kimley-Horn and Associates, Inc. All including PL (CA7763) 4.1.2025	Kimley-Horn and Associates, Inc. All including PL (CA7763) 4.1.2025.pdf

Julia Wiggins	Created/Initiated - 7/12/2024
Richard Colby	Approved - 7/12/2024
Junos Reed	Approved - 7/22/2024
John McKinney	Approved - 7/25/2024
Matthew Jones	Approved - 8/7/2024
Wayne Clark	Approved - 8/8/2024
Tracee Cody	Final Approval - 8/9/2024

TASK AUTHORIZATION NO. 15
Master Contract for Services dated January 18, 2022
Between the City of Port Orange, Florida and Kimley-Horn 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 **KIMLEY-HORN AND ASSOCIATES, INC.**, North Carolina corporation, registered to transact business in Florida, with its principal place of business at 421 Fayetteville Street, Suite 600, Raleigh, North Carolina 27601 ("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 Christiancy Lift Station Construction Phase Services, 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 420 days of the date ofwritten 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 $93,774.00. All payments shall be governed by the Local Government Prompt Payment Act as Set forth in Sections 218.70 through 218.79, Florida Statutes, as amended.

5. *Truth-in-Negotiations*

(a) For any fixed fee, cost-plus-a-fixed-fee or guaranteed maximum-not-to-exceed compensation professional service contract or compensation in a Task Authorization over $150,000.00, 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 contractor 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 of Task Authorization.

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

KIMLEY-HORN AND ASSOCIATES, INC.

_____ By: _____

Printed Name: _____ Jonathan D. Thigpen, Senior Vice President

_____ Date: _____

Printed Name: _____

CITY OF PORT ORANGE

By:_____
Donald O. Burnette, Mayor

Date:_____

Witnesses:

ATTEST:

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

Date:_____

EXHIBIT "1"

Contractor's Quote

Consisting of 2 Pages

Kimley»Horn

PROPOSAL FOR CHRISTIANCY LIFT STATION
CONSTRUCTION PHASE SERVICES

Describing a specific agreement between Kimley-Horn and Associates, Inc. (Kimley-Horn), and The City of Port Orange (the Client or the City) in accordance with the terms of the Master Agreement for Continuing Professional Services dated January 18, 2022, which is incorporated herein by reference.

Project Understanding

The scope of work presented below was prepared following discussions with the City of Port Orange staff regarding the City of Port Orange Christiancy Lift Station. City staff requested that Kimley-Horn provide a proposal to provide construction phase services. The following is our understanding of the specific scope of work that has been requested by City staff.

Specific Scope of Basic Services:

Task 1: Construction Phase Services

A. Kimley-Horn will contract directly with the electrical engineering subconsultant, Bailey Engineering Consultants (BEC) to provide electrical engineering construction phase services as defined in their proposal, enclosed herein.

B. Kimley-Horn will coordinate a Pre-Construction Conference prior to the commencement of work at the site.

C. Kimley-Horn will review shop drawings, samples, and other data that the Contractor is required to submit based on permit conditions, but only for conformance with the information given in the Contract Documents. Such review and approvals or other action will not extend to means, methods, techniques, equipment choice and usage, sequences, schedules, or procedures of construction or related safety precautions and programs.

D. Kimley-Horn will review requests for information (RFIs), monthly pay applications, change orders, and other appropriate correspondence from the Contractor and will coordinate with the City on approvals and responses.

E. Kimley-Horn will attend monthly construction progress meetings for the duration of the project (estimated at one per month for twelve months). Kimley-Horn will issue electronic meeting minutes and project updates following each progress meeting.

F. Kimley-Horn will provide on-site construction observation services during the construction phase of the project. Kimley-Horn will make up to twelve (12) visits during construction under this task to observe the progress of the Work. Such visits and observations by Kimley-Horn are not intended to be exhaustive or to extend to every aspect of the Contractor's work in progress. Observations are to be limited to spot-checking, selective measurement, and similar methods of general observation of the Work-based on Kimley-Horn’s exercise of professional judgment. Based on information obtained during such visits and such observations, Kimley-Horn will evaluate whether the Contractor's work is generally proceeding by the Contract Documents, and Kimley-Horn will keep the Client informed of the general progress of the Work.

G. Kimley-Horn will review and compile construction records including as-builts, shop drawings, O&M manuals, and engineer record drawings following completion of construction. Kimley-Horn will assist the City in the preparation of certification and close-out documents for applicable FDEP Permits. Kimley-Horn will submit record drawings and certification submittals to FDEP upon receipt of documentation from the Contractor.

Schedule:

These services will be completed as expeditiously as possible. Kimley-Horn assumes a total project schedule of 12 months.

Deliverables:

Deliverables for this project include the following:

- Certification and Close Out Documents
- Final Record Drawings

Method of Compensation:

Kimley-Horn will perform these services for the total lump sum fee of $93,774.00 inclusive of expenses. Invoices will be billed on a percent complete basis per task. A breakdown of the fee by task is as follows:

Task	*Description*	*Subconsultant*	*Kimley-Horn*	*Lump Sum*
1	Construction Phase Services	$39,100	$54,674	$93,774
Total				**$93,774**

Other Special Terms:

Services provided under this agreement will be invoiced on a monthly basis. All invoices will include a description of services provided.

ACCEPTED:

CITY OF PORT ORANGE, FLORIDA

BY: **See Page 4 of Task Authorization No. 15**

TITLE: _____

DATE: _____

KIMLEY-HORN AND ASSOCIATES, INC.

BY: _____
Jon Martin, PE

TITLE: Sr. Vice President

DATE: _____

Kimley»Horn

PROPOSAL FOR CHRISTIANCY LIFT STATION
CONSTRUCTION PHASE SERVICES

Describing a specific agreement between Kimley-Horn and Associates, Inc. (Kimley-Horn), and The City of Port Orange (the Client or the City) in accordance with the terms of the Master Agreement for Continuing Professional Services dated January 18, 2022, which is incorporated herein by reference.

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B. Kimley-Horn will coordinate a Pre-Construction Conference prior to the commencement of work at the site.

C. Kimley-Horn will review shop drawings, samples, and other data that the Contractor is required to submit based on permit conditions, but only for conformance with the information given in the Contract Documents. Such review and approvals or other action will not extend to means, methods, techniques, equipment choice and usage, sequences, schedules, or procedures of construction or related safety precautions and programs.

D. Kimley-Horn will review requests for information (RFIs), monthly pay applications, change orders, and other appropriate correspondence from the Contractor and will coordinate with the City on approvals and responses.

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G. Kimley-Horn will review and compile construction records including as-builts, shop drawings, O&M manuals, and engineer record drawings following completion of construction. Kimley-Horn will assist the City in the preparation of certification and close-out documents for applicable FDEP Permits. Kimley-Horn will submit record drawings and certification submittals to FDEP upon receipt of documentation from the Contractor.

Schedule:

These services will be completed as expeditiously as possible. Kimley-Horn assumes a total project schedule of 12 months.

Deliverables:

Deliverables for this project include the following:

- Certification and Close Out Documents
- Final Record Drawings

Method of Compensation:

Kimley-Horn will perform these services for the total lump sum fee of $93,774.00 inclusive of expenses. Invoices will be billed on a percent complete basis per task. A breakdown of the fee by task is as follows:

Task	*Description*	*Subconsultant*	*Kimley-Horn*	*Lump Sum*
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Total				**$93,774**

Other Special Terms:

Services provided under this agreement will be invoiced on a monthly basis. All invoices will include a description of services provided.

ACCEPTED:

CITY OF PORT ORANGE, FLORIDA

BY:_____

TITLE:_____

DATE:_____

KIMLEY-HORN AND ASSOCIATES, INC.

BY: _____
Jon Martin, PE

TITLE: Sr. Vice President

DATE:_____

July 6, 2024

Mrs. Nicole McConnell, P.E.
Kimley-Horn
189 South Orange Avenue, Suite 1000
Orlando FL 32801

Re: Christiancy Lift Station
Port Orange, Florida

Dear Mrs. McConnell,

We are pleased to submit our proposal for electrical and control system engineering services for the above project. The following serves to provide an overview of the engineering services Bailey Engineering Consultants, Inc. (BEC) intends to furnish on the above referenced project and provides the agreed upon lump sum fee proposal. Our scope of services shall include the following:

Task 1 - Construction Administration Services

Bailey Engineering Consultants, Inc. (BEC) will perform project administration and provide professional services during the construction phase that will implement the facility modifications. BEC shall not have authority or responsibility to supervise, direct, or control the Contractor's work or the Contractor's means and methods, techniques, sequences, or procedures of construction. BEC shall not have authority or responsibility for safety precautions and programs incident to the Contractor's work or for any failure of the Contractor to comply with laws, regulations, rules, ordinances, codes, or orders applicable to the Contractor furnishing and performing the work. Consultant reviews shall not relieve the Contractor of any of his contractual responsibilities. Specific services to be performed by Consultant are as follows:

1. Shop Drawing Review - Review and approve (or take other appropriate action in respect of) Shop Drawings and samples, the results of tests and inspections and other data which each Contractor is required to submit, but only for conformance with the design concept of the Project and compliance with the information given in the Contract Documents (but such review and approval or other action shall not exceed to means, methods, sequences, techniques or procedures of construction or to safety precautions and programs incident thereto); and receive and review (for general content as required by the Specifications) maintenance and operating schedules and instruction, guarantees, bonds and certificates of inspection which are to be assembled by Contractor(s) is in accordance with the Contract Documents.

2. Issue Clarifications - Issue all instructions of OWNER to Contractor(s); issue necessary interpretations and clarifications of the Contract Documents; have authority, as OWNER's representative to require special inspection or testing of the work; act as initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the work thereunder, and make decisions on all claims of OWNER and Contractor(s) relating to the acceptability of the work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of the work. The

ENGINEER shall render all interpretations or decisions in good faith and in accordance with the requirements of the Contract Documents.

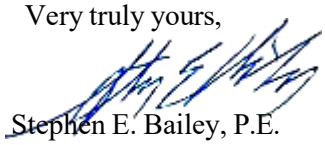
3. BEC shall attend periodic progress meetings based on progress of construction and as per the attached estimation of work effort.

4. Site Visits – Make site visits to observe, as an experienced and qualified professional, the progress and quality of the executed work of Contractor(s) and to determine in general if such work is proceeding in accordance with the Contract Documents. Prepare trip reports to document observations made during these inspections. ENGINEER shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by Contractor(s) or the safety precautions and programs incident to the work of Contractor(s). ENGINEER's efforts will be directed toward providing a greater degree of confidence for OWNER that the completed work of Contractor(s) will conform to the Contract Drawings, but ENGINEER shall not be responsible for the failure of Contractor(s) to perform the work in accordance with the Contract Drawings. During such visits and on the basis of on-site observations, ENGINEER shall keep OWNER informed of the progress of the work, shall endeavor to guard OWNER against defects and deficiencies in such work and may disapprove or reject work failing to conform to the Contract Documents. Consultant will provide to the City a list of items to be completed, if any.

SUPPLEMENTAL SERVICES - Any work requested by the City that is not included in one of the items listed in any other phase will be classified as supplemental services. Our scope of work shall be as outlined above and as indicated on the attached estimate of work effort. Services not specifically outlined above are excluded. Our fee for this work shall be as follows:

Task 1 – Construction Services	$ 39,100.00

Very truly yours,



Stephen E. Bailey, P.E.

ACCEPTED_____DATE_____

KH-24-015Grev2

Christiancy Lift Station
Port Orange, Florida

Task	Man-Hours	Billing Rate/Hour	Cost
Principal	20	$ 260.00	$ 5,200.00
Sr. Electrical Engineer	40	$ 215.00	$ 8,600.00
Subtotal			$ 13,800.00

TASK 2 - ISSUE CLARIFICATIONS/MEETINGS

Task	Man-Hours	Billing Rate/Hour	Cost
Principal	24	$ 260.00	$ 6,240.00
Sr. Electrical Engineer	38	$ 215.00	$ 8,170.00
Subtotal			$ 14,410.00

TASK 3 -SITE VISITS

Task	Man-Hours	Billing Rate/Hour	Cost
Principal	24	$ 260.00	$ 6,240.00
Field Superintedent	30	$ 155.00	$ 4,650.00
Subtotal			$ 10,890.00

Task 1 - Shop Drawing Review	$ 13,800.00
Task 2 - Issue Clarifications	$ 14,410.00
Task 3 - Site Visits	$ 10,890.00
Total	$ 39,100.00

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 3/18/2024

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 Edgewood Partners Ins. Center/Greyling 3780 Mansell Rd. Suite 370 Alpharetta GA 30022	**CONTACT NAME:** Jerry Noyola **PHONE (A/C, No, Ext):** 7702207699 **FAX (A/C, No):** **E-MAIL ADDRESS:** greylingcerts@greyling.com
INSURED KIMLASS Kimley-Horn and Associates, Inc. 421 Fayetteville Street, Suite 600 Raleigh, NC 27601	**INSURER(S) AFFORDING COVERAGE** / **NAIC #** **INSURER A :** National Union Fire Ins Co of Pittsburg 19445 **INSURER B :** Allied World Assurance Co (U.S.) Inc. 19489 **INSURER C :** New Hampshire Insurance Company 23841 **INSURER D :** Lloyd's of London 85202 **INSURER E :** **INSURER F :**

COVERAGES **CERTIFICATE NUMBER:** 591424803 **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	X **COMMERCIAL GENERAL LIABILITY** CLAIMS-MADE X OCCUR X Contractual Liab GEN'L AGGREGATE LIMIT APPLIES PER: POLICY X PRO-JECT X LOC OTHER:			GL5268169	4/1/2024	4/1/2025	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 2,000,000 $ 1,000,000 $ 25,000 $ 2,000,000 $ 4,000,000 $ 4,000,000 $
A A	**AUTOMOBILE LIABILITY** X ANY AUTO OWNED AUTOS ONLY / SCHEDULED AUTOS X HIRED AUTOS ONLY / X NON-OWNED AUTOS ONLY			CA4489663 (AOS) CA2970071 (MA)	4/1/2024 4/1/2024	4/1/2025 4/1/2025	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ 2,000,000 $ $ $ $
B	X **UMBRELLA LIAB** X OCCUR X **EXCESS LIAB** CLAIMS-MADE DED X RETENTION $ 10,000			03127930	4/1/2024	4/1/2025	EACH OCCURRENCE AGGREGATE	$ 5,000,000 $ 5,000,000 $
C C	**WORKERS COMPENSATION AND EMPLOYERS' LIABILITY** Y / N ANYPROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? N **(Mandatory in NH)** If yes, describe under DESCRIPTION OF OPERATIONS below	N / A		WC015893685 (AOS) WC015893686 (CA)	4/1/2024 4/1/2024	4/1/2025 4/1/2025	X PER STATUTE / OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	 $ 2,000,000 $ 2,000,000 $ 2,000,000
D	Professional Liability			B0146LDUSA2404949	4/1/2024	4/1/2025	Per Claim Aggregate	$2,000,000 $2,000,000

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

Re: Master Contract Professional Engineering Services for Public Works, Utilities & Environmental Services; Nicole McConnell. The City of Port Orange is named as an Additional Insured with respects to General & Automobile Liability where required by written contract. The above referenced liability policies with the exception of workers compensation and professional liability are primary & non-contributory where required by written contract. Waiver of Subrogation in favor of Additional Insured(s) with respects to Workers Compensation where required by written contract & allowed by law. Should any of the above described policies be cancelled by the issuing insurer before the expiration date thereof, 30 days' written notice (except 10 days for nonpayment of premium) will be provided to the Certificate Holder.

CERTIFICATE HOLDER

City of Port Orange
1000 City Center Circle
Port Orange FL 32129

CANCELLATION

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

AUTHORIZED REPRESENTATIVE

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CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 8/21/2024

SUBJECT: (C7c) Approval of Task Authorization No. 5 under the Master Contract for Architectural Services (RFSQ #20-03) with Schenkel & Shutz, Inc. as it relates to the Field Operations Facility Additional Services

DEPARTMENT: Engineering

GOAL: 2 - Infrastructure

RECOMMENDED MOTION: Move to approve Task Authorization No. 5 under the Master Contract for Architectural Services (RSFQ #20-03) as it relates to the Field Operations Facility Additional Services for $42,880; authorize the Mayor and City Clerk to execute all required contract documents.

SUMMARY: The Engineering Department is requesting approval of Task Authorization (TA) No. 5 with Schenkel & Shultz, Inc. for Architectural Services as it relates to the Public Utilities Operations Facility Pre-Construction Phase Services for $42,880.00

Engineering is preparing to start the construction of the new Field Operations Facility. This TA is for the Architect, Shenkel Shultz, to work with the Construction Manager, Wharton-Smith, Inc., during the pre-construction phase of the project to complete the final design of the facility, develop preliminary cost estimates, assist with the constructability review, and oversee the bidding and procurement of the different work packages which will lead to the Construction Manager providing a Guaranteed Maximum Price (GMP) for the project. Additionally, this TA includes completing floor plan revisions and updating the construction documents due to recent building code updates.

The award of RFSQ #23-14 Construction Manager at Risk for the construction of the Public Utilities Operations Facility to Wharton-Smith, Inc. is also on this Council agenda.

The completion date for TA No. 5 will be 365 days from the issuance of the Notice to Proceed.

PRESENTER: Junos Reed

ATTACHMENTS:

1.	Task Authorization No 5 - Schenkel & Shultz - Field Operations Facility	Task Authorization No 5 - Schenkel & Shultz - Field Operations Facility

	Additional Services No 2	Additional Services No 2.pdf
2.	2021815-POFO-AddServ2Fee_20240702	2021815-POFO-AddServ2Fee_20240702.pdf
3.	EXECUTED Master Contract CA7525 Schenkel and Schultz Architectural Services eff 6 15 2021 to 6 14 2026	EXECUTED Master Contract CA7525 Schenkel and Schultz Architectural Services eff 6 15 2021 to 6 14 2026.pdf
4.	Certificate of Ins 3.22.25	Certificate of Ins 3.22.25.pdf

Julia Wiggins	Created/Initiated - 7/3/2024
Richard Colby	Approved - 7/3/2024
Junos Reed	Approved - 7/29/2024
John McKinney	Approved - 8/1/2024
Matthew Jones	Approved - 8/7/2024
Wayne Clark	Approved - 8/8/2024
Tracee Cody	Final Approval - 8/9/2024

TASK AUTHORIZATION NO. 5
Master Contract for Architectural Services dated June 15, 2021
Between the City of Port Orange, Florida and Schenkel & Shultz, 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 **SCHENKEL & SHULTZ, INC.**, a Florida corporation with its principal place of business at 200 East Robinson Street, Suite 300, Orlando, Florida 32801 ("Architect"), and hereinafter collectively referred to as the "Parties," and is to that certain Master Contract for Architectural 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 No. 5 shall prevail.

2. In addition to all other terms and conditions contained in the Contract, Architect shall provide services relating to Port Orange Field Operations Facility – Additional Services No 2, and as more particularly described in the Scope of Services, attached hereto and incorporated herein as Task Authorization Exhibit "A."

3. Architect shall complete the services to be provided herein within 365 days from the date of issuance of a written Notice to Proceed by the City to the Architect.

4. In return for the services identified above, the City agrees to compensate Architect 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 $42,880.00. 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 Architect 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:

SCHENKEL & SHULTZ, INC.

_____ By: _____

Printed Name: _____ Daniel C. Laggan, President

_____ Date: _____

Printed Name: _____

CITY OF PORT ORANGE

By:_____
Donald O. Burnette, Mayor

Date:_____

ATTEST:

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

Date:_____

EXHIBIT "A"

Architect's Proposal

Consisting of 6 Pages

PROPOSAL REQUEST

July2, 2024 Revision

Junos Reed, P.E.
City Engineer
City of Port Orange Public Works & Utilities
1395 Dunlawton Avenue
Port Orange, FL 32129
Tel: (386) 506-5754

SUBJECT: Port Orange Field Operations Facility-Additional Service No. 2

Plan Revisions & CM Pre-Construction Meetings / Evaluations & Code Updates

Comm No. 2021815

Dear Junos,

Schenkel Shultz is pleased to present our add services proposal for the above-mentioned project .

Project Overview / Scope

This Additional Service proposal is to provide requested floor plan revisions and design team assistance in Pre-Construction services with the forthcoming Construction Manager as well as any required code updates to the previous release of documents.

Included in the Basic Scope of Services

- Construction Documents revisions based on amended scope of work mentioned in emails and discussed with staff in the June 22nd, 2023 Owner meeting (per Exhibit B sketches attached).
- Pre-Construction activities: meetings, evaluations, and potential estimate review with new Construction Manager and Owner.
- Code updates to previous 100% Construction Documents

Additional Services

Can be provided upon written request by the Client, and can be billed based on the Standard Hourly Rate Schedule from our continuing services contract

- Further client changes or unforeseen conditions may require additional services.
- Construction Administration services will be addressed by a separate proposal request after the project has been awarded to a Construction Manager (as per the City's request).

Clarifications and Exclusions:

- Design scope other than described herein are not included.
- Redesign of the project due to any potential Construction Manager's value engineering costs reduction purposes, are not included.
- All permitting and application fees are not included.
- All deliverables will be submitted electronically except those hard copies required for permitting.
- Base-line services include travel expenses from Schenkel Shultz office to the job site and meetings at Facilities & Planning offices.
- Project will be completed using Revit (BIM) and CAD for civil.
- This proposal does not constitute a contract until the Owner approves it.

PROPOSAL REQUEST

For the Port Orange Field Operations Facility-Additional Service No. 2, **we propose the following Total fixed fee of $42,880.00 (Forty Two Thousand, Eight Hundred and Eighty Dollars and Zero Cents).** This fee includes architectural, civil, structural and Mechanical / Plumbing / Fire Protection / Electrical & Low Voltage engineering.

Professional Design Additional Services fee breakdown is:

ZevCohen – Civil Engineering	$ 4,500.00
BBM – Structural Engineering	$ 10500.00
TLC – MEPFP Engineering	$ 5,980.00
Schenkel Shultz Architecture	$21,900.00
Total	**$42,880.00**

Thank you for considering Schenkel Shultz as a partner for this project. If you have any questions regarding the above, please do not hesitate to call. Let us know if you agree with this proposal. We look forward to collaborating with you.

Sincerely,

SCHENKEL SHULTZ

Gay Geiger, AIA

Principal

Attachments: Exhibit 'B' Scope Confirmation Sketches

Cc: Iris Zayas & Daniel Laggan / SCHENKEL SHULTZ

Exhibit B – Scope Confirmation Sketches

Additional Service No. 2 - Plan Revisions & CM Pre-construction
June 22, 2023 Meeting – Page 1

- Remove Exterior Porch in its entirety
- Add (2) New Offices (match adjacent room 131)
- Add exterior windows
- Replace Kitchen with New interior Corridor
- Revise room names / numbers & door numbers
- Adjust MEPFP accordingly

- 6/22/2023 Owner Revisions Meeting

- Relocate exterior door
- Adjust security items accordingly

- 6/22/2023 Owner Revisions Meeting

- Relocate TV Station & Walls
- Adjust MEPFP accordingly

- 6/22/2023 Owner Revisions Meeting

- Relocate exterior door
- Adjust security items accordingly

- 6/22/2023 Owner Revisions Meeting

- Relocate Kitchen
- Add exterior window
- Adjust MEPFP accordingly

- 6/22/2023 Owner Revisions Meeting

Owner to confirm location of relocated Ice machine shown. Design team to relocate equipment, power and floor drain accordingly

- 6/22/2023 Owner Revisions Meeting

Owner to confirm if they desire to relocate original Outdoor Porch ceiling fans and ceiling lighting to this approximate location?
Or we can switch to wall fans (similar to a Wawa or Racetrack outdoor seating areas)?
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Revise room names

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- Add New Office (match adjacent room 105)
- Add exterior window
- Adjust MEPFP accordingly

- 6/22/2023 Owner Revisions Meeting

Restroom:
- Shift door up (adjust light switch location)
- Revise room shape to square off
- Adjust MEPFP accordingly

Storage:
- Reduce size
- Revise room shape to square off
- Revise room number (and door #)
- Reverse door swing (adjust light switch location)
- Relocate fire extinguisher
- Adjust MEPFP accordingly

- 6/22/2023 Owner Revisions Meeting

REFER TO GENERAL NOTES THIS SHEET FOR ROLLER WINDOW SHADE LOCATIONS, TYP.

REFER TO GENERAL NOTES THIS SHEET FOR ROLLER WINDOW SHADE LOCATIONS, TYP.

MATCHLINE SEE SHEET A1 / A171B

KEYPLAN

A1 EQUIPMENT & FURNITURE PLAN - ADMINISTRATION
1/8" = 1'-0"

6/28/2023 5:26:17 PM
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fax 407-872-3303

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PUBLIC UTILITIES FIELD OPERATIONS FACILITY

BRUNER RD & S CLYDE MORRIS BLVD
PORT ORANGE, FL 32129

CITY OF PORT ORANGE
1000 CITY CENTER CIRCLE
PORT ORANGE, FL 32129

ISSUE DATE: 07/29/2022
COMM. NO.: 2021815

DRAWN BY: IMR/JB CHECKED BY: JB

EQUIPMENT & FURNITURE PLAN - ADMINISTRATION

A171A

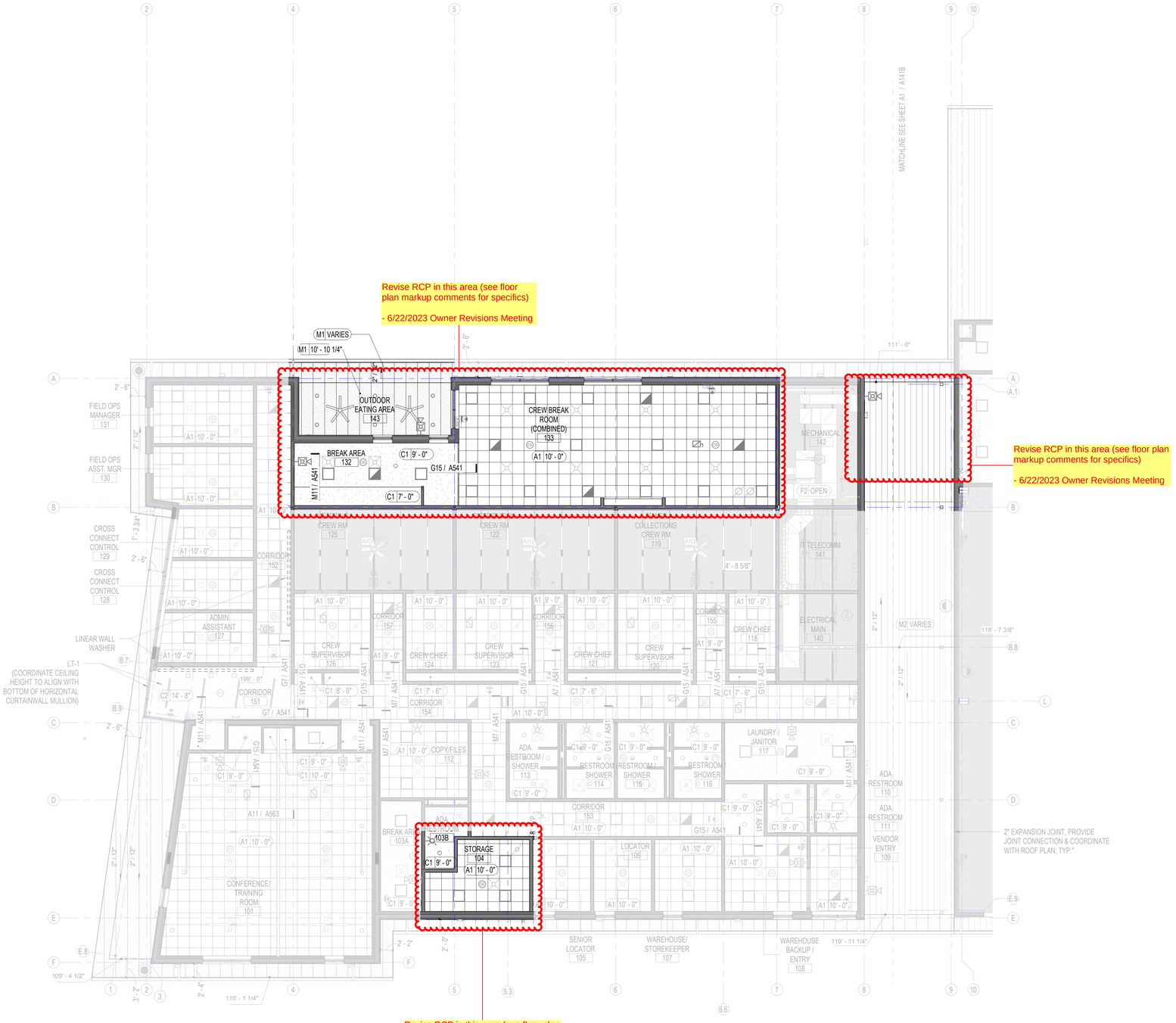
100% CONSTRUCTION DOCUMENTS

NOT RELEASED FOR CONSTRUCTION

Exhibit B – Scope Confirmation Sketches

Additional Service No. 2 - Plan Revisions & CM Pre-construction

June 22, 2023 Meeting – Page 2



KEYPLAN

A1 REFLECTED CEILING PLAN AREA A

1/8" = 1'-0"

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A141A

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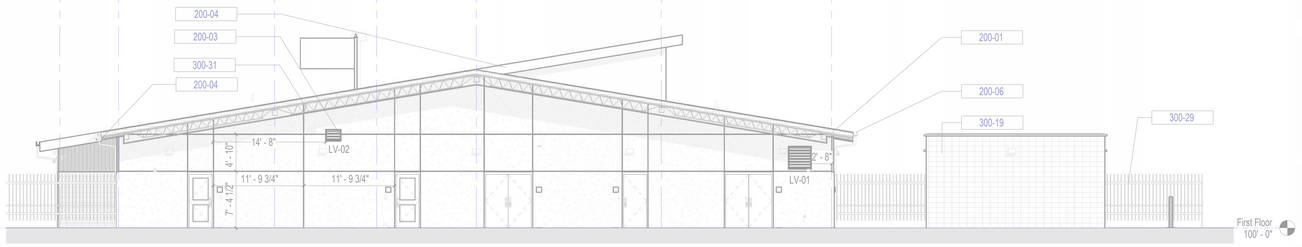

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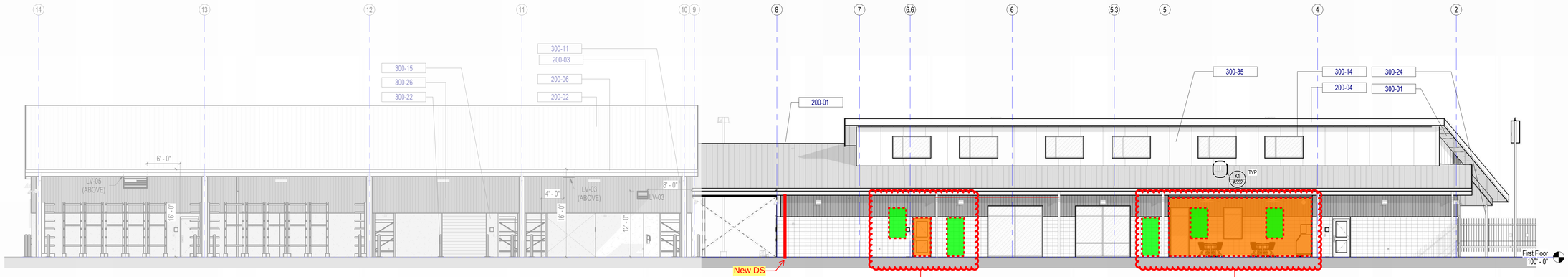
1/8" = 1'-0"



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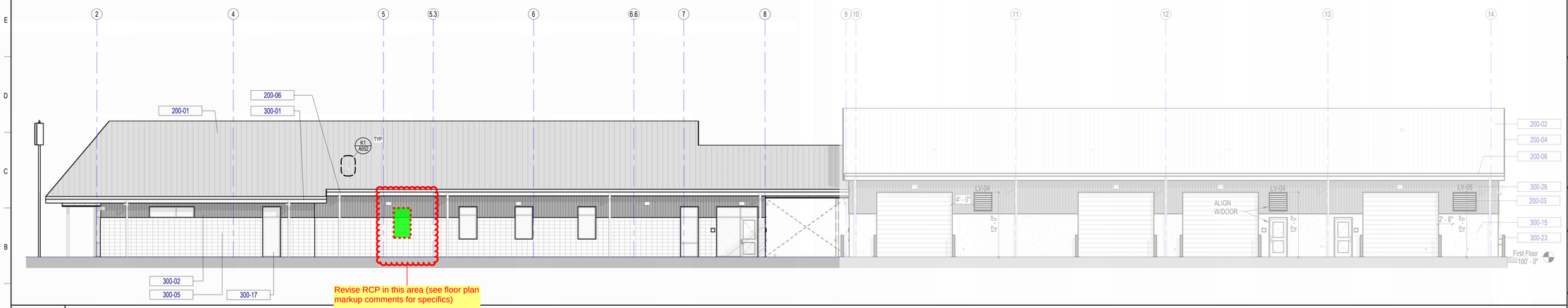

A1 SOUTH ELEVATION

1/8" = 1'-0"

LEGEND

- SPLIT FACE CMU VENEER (INTEGRAL COLOR)
- VERTICAL RIB PROFILE METAL WALL PANEL SYSTEM (B.O.D. HWP PRECISION SERIES, BY PAC-CLAD|PETERSEN A CARLISLE COMPANY OR SIMILAR APPROVED)
- FLUSH PROFILE METAL PANEL SYSTEM COLOR-1 (B.O.D. FLUSH WALL PANEL SERIES, BY PAC-CLAD|PETERSEN A CARLISLE COMPANY OR SIMILAR APPROVED)
- FLUSH PROFILE METAL PANEL SYSTEM COLOR-2 (B.O.D. FLUSH WALL PANEL SERIES, BY PAC-CLAD|PETERSEN A CARLISLE COMPANY OR SIMILAR APPROVED)
- 5/8" CEMENT PLASTER OVER PAPER BACKED METAL LATH

KEYNOTE LEGEND	
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300-22	SCHEDULE 80 6" DIA STL PIPE - WELD TO BASE PLATE WITH 4 CONCRETE ANCHORS, TYP.
300-23	STEEL PIPE BOLLARD LOCATION. SEE CIVIL FOR DETAIL. TYP.
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300-26	PEMB PRE-FINISHED METAL WALL PANEL ON INSULATED METAL LINER PANEL FACED BLANKET INSULATION ON TOP OF CMU WALL
300-29	SITE FENCE, REFER TO CIVIL, TYP.
300-31	METAL SOFFIT PANEL SYSTEM
300-35	1" DEPTH PREFINISHED FLUSH PROFILE MTL PANEL SYSTEM ON MTL. FURRING ON CMU WALL. SEE SPECS. REFER TO ELEVATIONS FOR PANEL COLOR AND LOCATION

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EXTERIOR ELEVATIONS

A201

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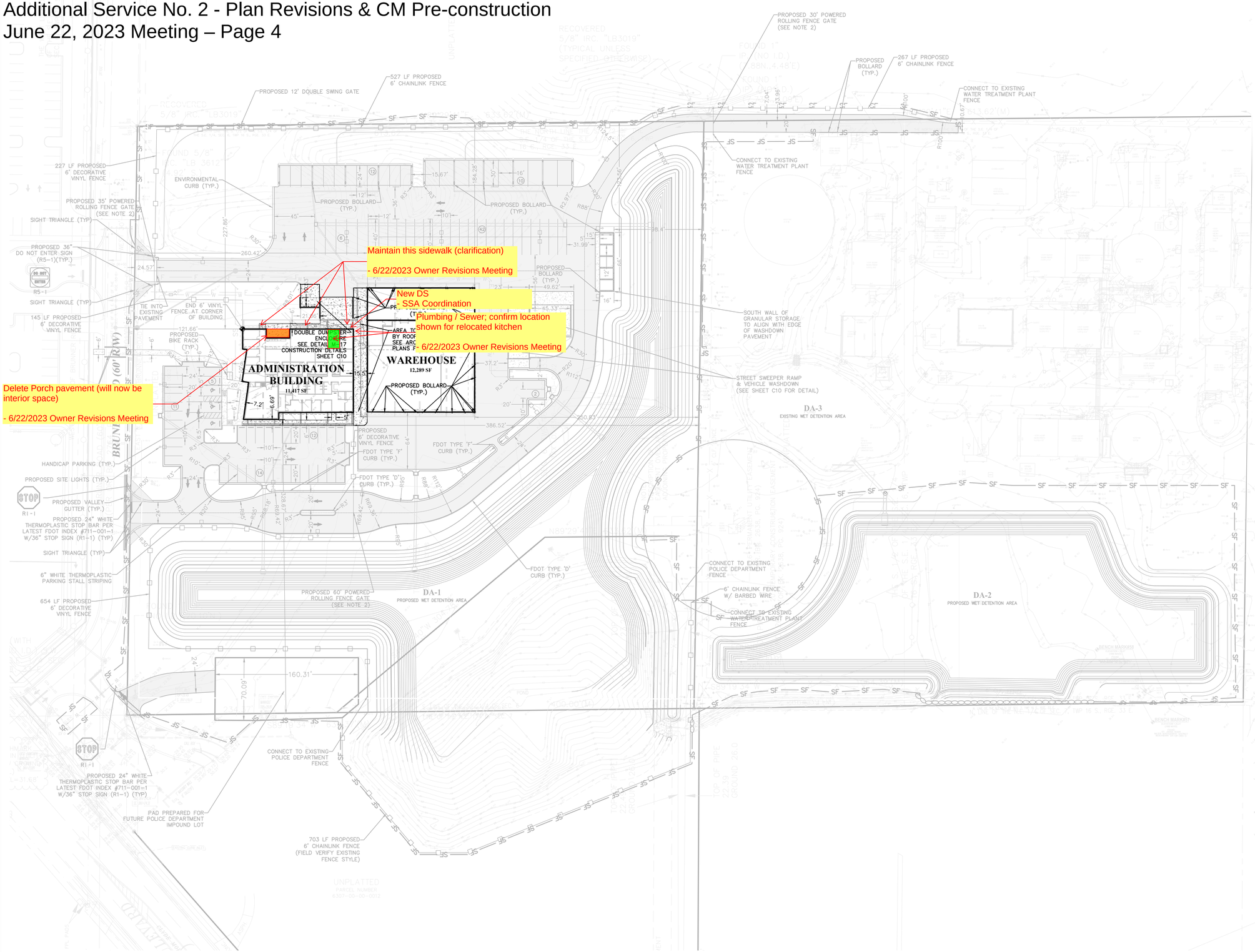
Exhibit B – Scope Confirmation Sketches

Additional Service No. 2 - Plan Revisions & CM Pre-construction
June 22, 2023 Meeting – Page 4



0 25 50 75 100

SCALE : 1" = 50'

LEGEND:

- PROPOSED ASPHALT PAVEMENT
- PROPOSED CONCRETE
- (3) PROPOSED PARKING COUNT
- PROPOSED HANDICAP PARKING SPACE

NOTES:
1. ALL HANDICAP RAMPS ARE TO BE CONSTRUCTED PER FDOT INDEX NO. 522-002, LATEST EDITION.
2. AUTOMATIC SLIDE GATE OPERATOR TO BE LIFT MASTER MODEL CSL24UL OR EQUIVALENT FOR GATES UNDER 50' AND LIFT MASTER MODEL SL585 OR EQUIVALENT FOR GATES LARGER THAN 50'. TO BE CONNECTED TO BACK-UP POWER WITH EMERGENCY "YELP" ACCESS AND FIRE ALARM INPUT. REMOTE CONTROL AND KEYPAD CONTROL REQUIRED. SYSTEM SHALL BE COMPATIBLE WITH CITY OF PORT ORANGE EMERGENCY ACCESS VEHICLES, POLICIES, AND PROCEDURES. COORDINATE WITH ARCHITECTURAL AND ELECTRICAL PLANS.

ZEV COHEN & ASSOCIATES, INC.
300 INTERCHANGE BLVD., STE. C
OWNERS BEACH, FL 32114
WWW.ZEVCOHEN.COM

CIVIL ENGINEERING
LANDSCAPE ARCHITECTURE
ENVIRONMENTAL
PLANNING
TRANSPORTATION
(LC #2)
(EB 6916)

NO	DATE	BY	SUBMITTALS / REVISIONS
1	08-25-22	BBSM	SUBMITTAL TO CITY OF PORT ORANGE/S.JRWMD
2	12-15-22	BBSM	REVISED PER CITY OF PORT ORANGE AND SJRWMD COMMENTS (8-28-22 & 9-20-22)

PORT ORANGE PUBLIC UTILITIES FIELD OPS FACILITY
FINAL ENGINEERING PLANS GEOMETRY, SIGNAGE, AND STRIPING PLAN

CITY OF PORT ORANGE — VOLUSIA COUNTY, FLORIDA

PROJECT NO: ZC 20035

DESIGNED BY: SM

DRAFTED BY: SM

CHECKED BY: BB

DRAWING FILE: 06_20035_GSS
XREF'S: XXXXX.DWG
XREF'S: XXXXX.DWG

ROBERT J. BALL, P.E. NO. 60001
NOT VALID WITHOUT SEAL

SHEET: C6 OF 15

R:\ZC\20035 PORT ORANGE PUBLIC WORKS\FINAL ENGINEERING PLANS\CAD\WORK\06_20035_GSS.DWG -- PRINTED 1/23/2023 2:07 PM

Exhibit A

PROPOSAL REQUEST

July2, 2024 Revision

Junos Reed, P.E.
City Engineer
City of Port Orange Public Works & Utilities
1395 Dunlawton Avenue
Port Orange, FL 32129
Tel: (386) 506-5754

SUBJECT: Port Orange Field Operations Facility-Additional Service No. 2

Plan Revisions & CM Pre-Construction Meetings / Evaluations & Code Updates

Comm No. 2021815

Dear Junos,

Schenkel Shultz is pleased to present our add services proposal for the above-mentioned project .

Project Overview / Scope

This Additional Service proposal is to provide requested floor plan revisions and design team assistance in Pre-Construction services with the forthcoming Construction Manager as well as any required code updates to the previous release of documents.

Included in the Basic Scope of Services

- Construction Documents revisions based on amended scope of work mentioned in emails and discussed with staff in the June 22nd, 2023 Owner meeting (per Exhibit B sketches attached).
- Pre-Construction activities: meetings, evaluations, and potential estimate review with new Construction Manager and Owner.
- Code updates to previous 100% Construction Documents

Additional Services

Can be provided upon written request by the Client, and can be billed based on the Standard Hourly Rate Schedule from our continuing services contract

- Further client changes or unforeseen conditions may require additional services.
- Construction Administration services will be addressed by a separate proposal request after the project has been awarded to a Construction Manager (as per the City's request).

Clarifications and Exclusions:

- Design scope other than described herein are not included.
- Redesign of the project due to any potential Construction Manager's value engineering costs reduction purposes, are not included.
- All permitting and application fees are not included.
- All deliverables will be submitted electronically except those hard copies required for permitting.
- Base-line services include travel expenses from Schenkel Shultz office to the job site and meetings at Facilities & Planning offices.
- Project will be completed using Revit (BIM) and CAD for civil.
- This proposal does not constitute a contract until the Owner approves it.

PROPOSAL REQUEST

For the Port Orange Field Operations Facility-Additional Service No. 2, **we propose the following Total fixed fee of $42,880.00 (Forty Two Thousand, Eight Hundred and Eighty Dollars and Zero Cents).** This fee includes architectural, civil, structural and Mechanical / Plumbing / Fire Protection / Electrical & Low Voltage engineering.

Professional Design Additional Services fee breakdown is:

ZevCohen – Civil Engineering	$ 4,500.00
BBM – Structural Engineering	$ 10500.00
TLC – MEPFP Engineering	$ 5,980.00
Schenkel Shultz Architecture	$21,900.00
Total	**$42,880.00**

Thank you for considering Schenkel Shultz as a partner for this project. If you have any questions regarding the above, please do not hesitate to call. Let us know if you agree with this proposal. We look forward to collaborating with you.

Sincerely,

SCHENKEL SHULTZ

Gay Geiger, AIA

Principal

Attachments: Exhibit 'B' Scope Confirmation Sketches

Cc: Iris Zayas & Daniel Laggan / SCHENKEL SHULTZ

Exhibit B – Scope Confirmation Sketches

Additional Service No. 2 - Plan Revisions & CM Pre-construction
June 22, 2023 Meeting – Page 1

- Remove Exterior Porch in its entirety
- Add (2) New Offices (match adjacent room 131)
- Add exterior windows
- Replace Kitchen with New interior Corridor
- Revise room names / numbers & door numbers
- Adjust MEPFP accordingly

- 6/22/2023 Owner Revisions Meeting

- Relocate exterior door
- Adjust security items accordingly

- 6/22/2023 Owner Revisions Meeting

- Relocate TV Station & Walls
- Adjust MEPFP accordingly

- 6/22/2023 Owner Revisions Meeting

- Relocate exterior door
- Adjust security items accordingly

- 6/22/2023 Owner Revisions Meeting

- Relocate Kitchen
- Add exterior window
- Adjust MEPFP accordingly

- 6/22/2023 Owner Revisions Meeting

Owner to confirm location of relocated Ice machine shown. Design team to relocate equipment, power and floor drain accordingly

- 6/22/2023 Owner Revisions Meeting

Owner to confirm if they desire to relocate original Outdoor Porch ceiling fans and ceiling lighting to this approximate location?
Or we can switch to wall fans (similar to a Wawa or Racetrack outdoor seating areas)?
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1/8" = 1'-0"

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EQUIPMENT & FURNITURE PLAN - ADMINISTRATION

A171A

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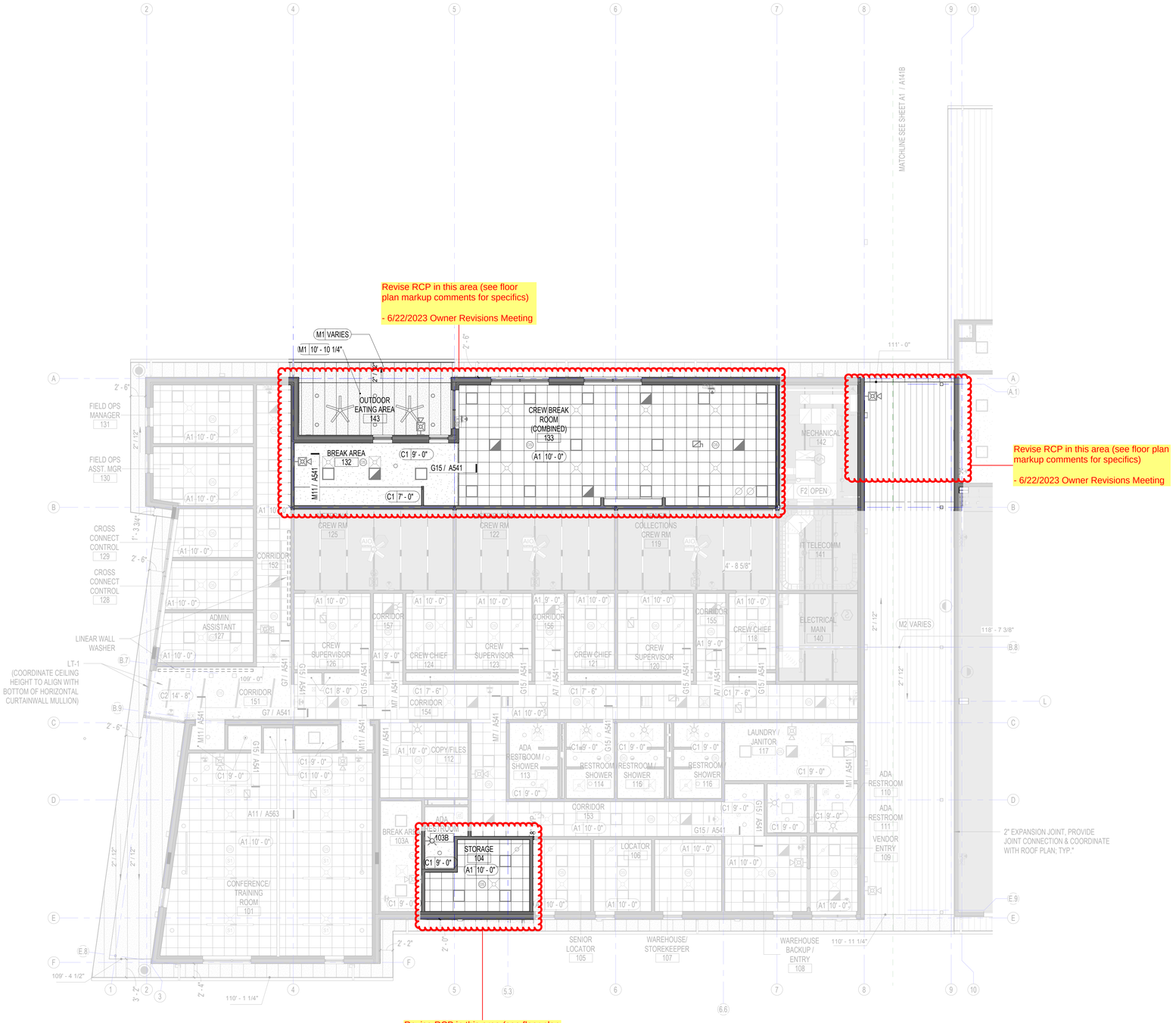
Exhibit B – Scope Confirmation Sketches

Additional Service No. 2 - Plan Revisions & CM Pre-construction

June 22, 2023 Meeting – Page 2



KEYPLAN

A1 REFLECTED CEILING PLAN AREA A

1/8" = 1'-0"

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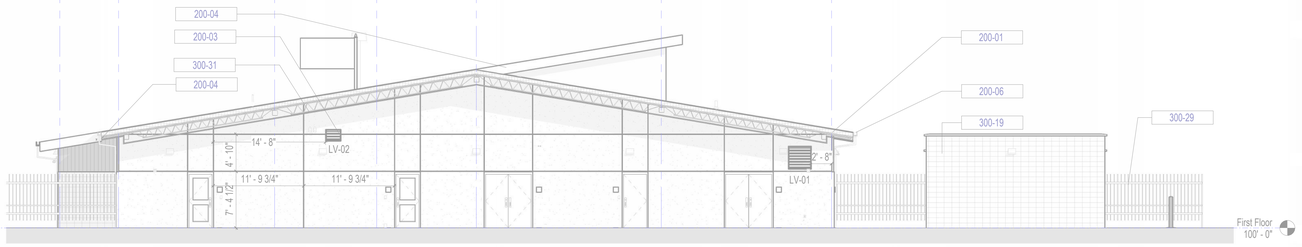

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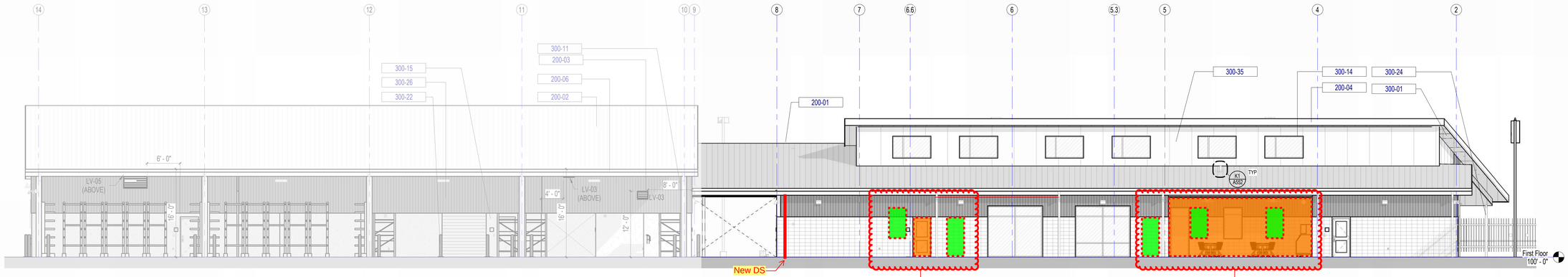

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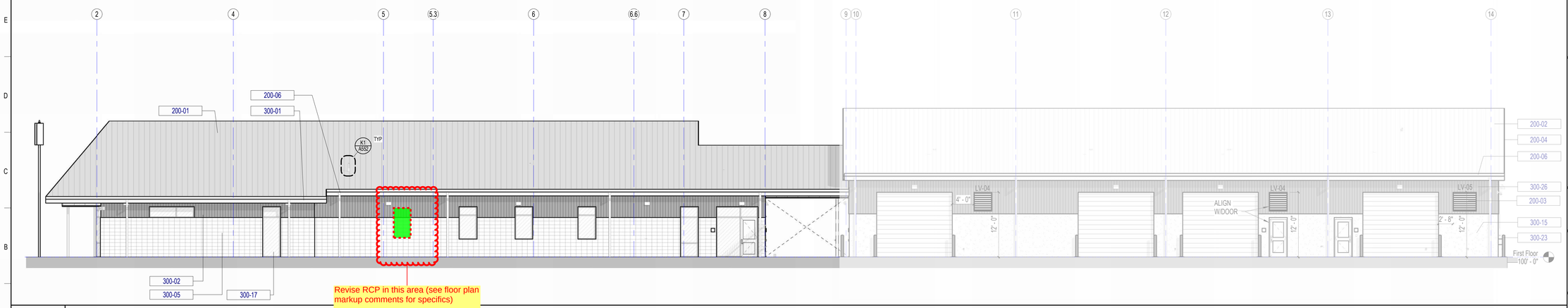

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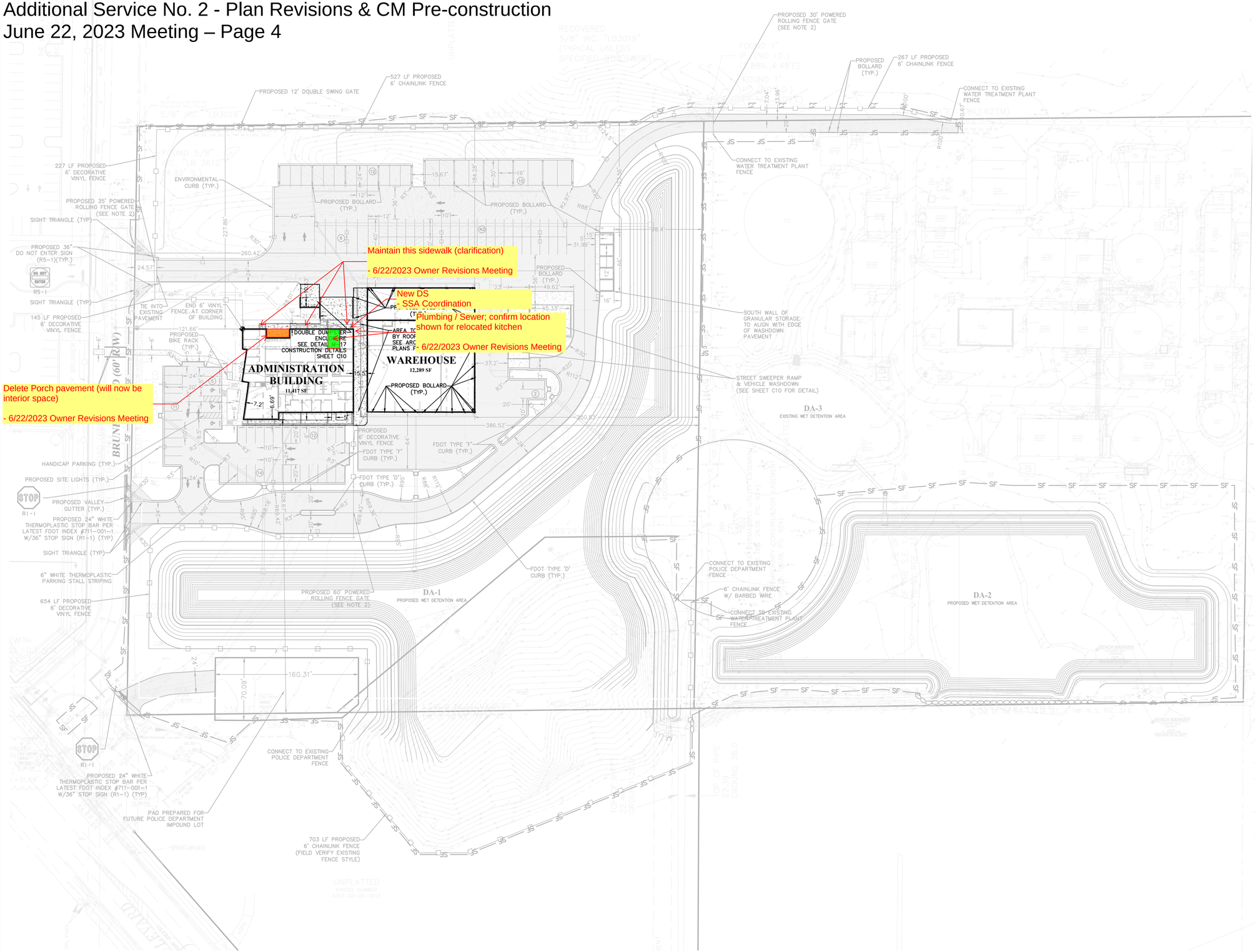
Additional Service No. 2 - Plan Revisions & CM Pre-construction
June 22, 2023 Meeting – Page 4



0 25 50 75 100

SCALE : 1" = 50'

LEGEND:

- PROPOSED ASPHALT PAVEMENT
- PROPOSED CONCRETE
- (3) PROPOSED PARKING COUNT
- PROPOSED HANDICAP PARKING SPACE

NOTES:
1. ALL HANDICAP RAMPS ARE TO BE CONSTRUCTED PER FDOT INDEX NO. 522-002, LATEST EDITION.
2. AUTOMATIC SLIDE GATE OPERATOR TO BE LIFT MASTER MODEL CSL24UL OR EQUIVALENT FOR GATES UNDER 50' AND LIFT MASTER MODEL SL585 OR EQUIVALENT FOR GATES LARGER THAN 50'. TO BE CONNECTED TO BACK-UP POWER WITH EMERGENCY "YELP" ACCESS AND FIRE ALARM INPUT. REMOTE CONTROL AND KEYPAD CONTROL REQUIRED. SYSTEM SHALL BE COMPATIBLE WITH CITY OF PORT ORANGE EMERGENCY ACCESS VEHICLES, POLICIES, AND PROCEDURES. COORDINATE WITH ARCHITECTURAL AND ELECTRICAL PLANS.

ZEV COHEN & ASSOCIATES, INC.
300 INTERCHANGE BLVD., STE. C
OWNERS BEACH, FL 32114
WWW.ZEVCOHEN.COM

CIVIL ENGINEERING
LANDSCAPE ARCHITECTURE
ENVIRONMENTAL
PLANNING
TRANSPORTATION
(LC #2)
(EB 6916)

NO	DATE	BY	SUBMITTALS / REVISIONS
1	08-25-22	BBSM	SUBMITTAL TO CITY OF PORT ORANGE/S.JRWMD
2	12-15-22	BBSM	REVISED PER CITY OF PORT ORANGE AND SJRWMD COMMENTS (8-28-22 & 9-20-22)

PORT ORANGE PUBLIC UTILITIES FIELD OPS FACILITY
FINAL ENGINEERING PLANS GEOMETRY, SIGNAGE, AND STRIPING PLAN

CITY OF PORT ORANGE — VOLUSIA COUNTY, FLORIDA

PROJECT NO: ZC 20035

DESIGNED BY: SM

DRAFTED BY: SM

CHECKED BY: BB

DRAWING FILE: 06_20035_GSS
XREF'S: XXXXX.DWG
XREF'S: XXXXX.DWG

ROBERT J. BALL, P.E. NO. 60001
NOT VALID WITHOUT SEAL

SHEET: C6 OF 15

R:\ZC\20035 PORT ORANGE PUBLIC WORKS\FINAL ENGINEERING PLANS\CAD\WORK\06_20035_GSS.DWG -- PRINTED 1/23/2023 2:07 PM

CITY OF PORT ORANGE
MASTER CONTRACT
FOR ARCHITECTURAL SERVICES

This Master Contract for Architectural Services ("Contract") is entered into this 15 day of JUNE, **2021**, by and between the **CITY OF PORT ORANGE**, a Florida municipal corporation, whose principal address is 1000 City Center Circle, Port Orange, Florida 32129 (the "City"), and **SCHENKEL & SHULTZ, INC.**, a Florida corporation whose principal address is 200 East Robinson Street, Suite 300, Orlando, Florida 32801 ("Architect"). The City and Architect are collectively referred to herein as the "Parties."

1. *Provision of Services*

(a) The Architect hereby agrees to provide Public Utilities Field Operations Facility Architectural Services, and as further described in Request for Statement of Qualifications 20-03 ("RFSQ 20-03"). This Contract together with RFSQ 20-03, Addendum No. 1, and Addendum No. 2, 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 Architect. For convenience, Section 3, Scope of Services/Work and Requirements from RFSQ 20-03, is available in the Office of the City Clerk. Architect represents that they are familiar with the documents that make up the Contract, as referenced hereinabove.

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

Term: The term of this Contract shall become effective on the last date the Contract is signed by the Parties and shall continue for a period of Five (5) years ("Term").

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

Time and Essence: Architect 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 Architect or require the City to place any orders for work or service. Authorization for performance of services by the Architect 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 Architect. 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 Architect 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*. In return for the services identified above, the City agrees to compensate the Architect at the pricing set forth in Task Authorizations; and reserves the right to utilize lump sum or hourly rate compensation, in amounts not to exceed the budget appropriation for each fiscal year. The fee shall be negotiated for each project Task Authorization to this Contract. The Architect shall submit a monthly statement for professional services rendered and expenses incurred to date of statement. Statements for lump sum shall be based upon Architect's estimate of the proportion of the total services actually completed at the time of billing to the total services performed. Such estimates are to be prepared by the Architect and accompanied by such supporting data, as may be required by the Contract Administrator. 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.

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 Architect. For notice provisions, see the paragraph below entitled "Notice." The work shall be under the direction of the authorized Contract Administrator who shall have the final decision authority for all phases of the work, including general direction, review, and approval of the work. Neither the Contract Administrator's review, approval or acceptance of, nor payment for, any of the services required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and the Architect shall be and remain liable to the City for all costs of any kind which were incurred by the City as a result of the Architect's negligent performance of the services furnished under this Contract.

5. *Responsibility of the Architect*. The Architect 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 Architect under this Contract. The Architect shall without additional cost or fee to the City, correct or revise any errors or deficiencies in their performance.

6. *Reuse of Documents*. The City shall have unlimited rights, for the benefit of the City in all drawings, designs, specifications, notes and other architect's work produced in the performance of this Contract, or in contemplation thereof, and all as-built drawings produced after completion of 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 Architect pursuant to this Contract are instruments of service in respect to the project Task Authorization. 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 Architect for the specific purpose intended will be at City's risk. Any such verification or adaptation will entitle the Architect to further compensation at rates to be agreed upon by the City and Architect. 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 Architect.

7. *Expert Witness*. The Architect 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 Architects shall be negotiated att the time the Architect is called as an expert.

8. *Subcontractors or Sub-Subcontractors*

(a) Any subcontractors and outside associates or consultants required by the Architect 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) Architect shall save and hold the City harmless from any and all claims or actions by Architect's Subcontractors or Sub-subcontractors for payment of monies such Subcontractor of Sub-subcontractor claims to be owed by Architect 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 of Sub-subcontractors or claims of a Subcontractor or Sub-subcontractors for amounts owed by Architect to Subcontractor or Sub-subcontractor for work performed under this Contract.

(d) Architect 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 Architect on account of specific work done in accordance with the schedule of values.

(e) The Architect 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 Architect.

9. *Liens*. Architect acknowledges that Architect shall not be entitled to lien the City or other public property.

10. *Termination for Convenience of the City*

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

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

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

(i) cease any further deliveries or work due under this Contract, on the date, and to the extent, which may be specified in the Notice;

(ii) place no further orders with any subcontractors except as may be necessary to perform that portion of this Contract not subject to the Notice;

(iii) terminate all subcontracts except those made with respect to contract performance not subject to the Notice;

(iv) settle all outstanding liabilities and claims which may arise out of such termination, with the ratification of the Finance Director of Port Orange; and

(v) use best efforts to mitigate any damages which may be sustained by the Architect as a consequence of termination under this clause.

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

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

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

(i) With respect to all Contract performance prior to the effective date of Notice of Termination, the total of:

(1) the cost of work performed or supplies delivered;

(2) the cost of settling and paying any reasonable claims as provided in paragraph (c) (iv), above;

(3) a sum as profit on (a) determined by the Finance Director to be fair and reasonable.

(ii) The total sum to be paid under (i) above shall not exceed the contract price, as further reduced by the contract price of work or supplies not terminated.

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

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

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

13. *Architect's Records*. The design, permits and all other records prepared by the Architect, assembled for the City, subcontracted for the City, and any other records related to the scope of work in the possession of the Architect shall be retained by the Architect for the requisite time set forth in Florida Administrative Code Rule 1 B-24 http://dos.myflorida.com/library-archives/records-management/. Architect 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, Architect 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 Architect's obligations pursuant to this paragraph shall survive the termination of this Contract, and as amended from time to time.

14. *Examination of Records*

(a) The Architect 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 Architect involving transactions related to this Contract.

(b) The Architect 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 Architect 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.

15. *Public Records Compliance*. Architect 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 Architect does not transfer the records to the City.

(d) Upon completion of the Contract, Architect shall transfer to the City, at no cost, all public records in possession of the Architect 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 Architect does not comply with a public records request, the City shall deem the non-compliance a breach of this Contract, and the Architect may be subject to penalties under Section 119.0701, Florida Statutes.

ARCHITECT QUESTIONS RELATING TO ARCHITECT'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.

16. *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 Architect. Should termination be accomplished in accordance with this Section, the City shall be liable only for payments due through the date of termination.

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

17. *Insurance*. Architect shall maintain insurance, as required herein, during the life of this Contract. Architect 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 Architect shall be primary and non-contributory. All insurance coverages of the Architect shall not seek contribution from any other insurance or self-insurance available to the City. For workers' compensation coverage, the Architect'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 Architect may use leased employees if the Architect 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 Architect 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. Architect 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.

Architect 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 Architect is responsible for ensuring that its subcontractors maintain the required coverage. Failure of the Architect to ensure the subcontractors maintain the required coverage, shall not relieve the Architect 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 Architect 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 Architect 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**
☒	Workers' Compensation The Architect 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 Architect using an employee leasing company shall complete the Leased Employee Affidavit Form Exhibit.	Contract Amount — Limits Up to $10 million — Statutory/$500,000 $10 - $20 million — Statutory/$1,000,000 Contracts over $20 million To Be Determined by the City.	☐If Contract requires work on or about navigable waters, Longshoreman's and Harbor Workers' Coverage required. ☐If vessels involved, Jones Act coverage with limits of $500,000 required.
☒	Comprehensive General Liability (including Completed Operations and Contractual Liability	Limits: 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 Architect 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.	Limits: Auto Liability Body Injury and Property Damage: $1,000,000 each occurrence $1,000,000 aggregate	
Additional Insurance Requirements			
☐	Property Insurance Builders Risk. Additional Coverage:	Limits: Buildings - Completed value of Contract. "All Risk" coverage on latest ISO for or its equivalent. Permission granted to occupy. Owner named as insured AIMA	If Agreement requires handling or installation of Owner's equipment, coverage should be furnished on "All Risk" form, including transit and Owner shall be named.
☒	Professional Liability	Limits: Coverage - $1,000,000	
☐	Installation Floater (IT)	Limits: Coverage - $ To be determined.	
☐	Architect Pollution Liability	Limits: Coverage - $1,000,000	
☒	Errors and Omissions	Limits: Coverage - $1,000,000	
☐	Umbrella Policy	Limits: Coverage – $ To be determined.	
☐	Payment and Performance Bond Required	Limits: Coverage - Equal to amount of Contract.	
☐	**City Manager waives Payment and Performance Bond for work under $100,000.00.**		

☐	**Unless otherwise required by law, City Manager waives Insurance for FOB goods under $25,000.00.**

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

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

20. *Modifications or Changes to this Contract*

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

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

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

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

21. *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.

22. *Liability for Loss or Damage*. Architect shall be liable for any loss of, or damage to, City property caused by the negligence, recklessness, or intended wrongful misconduct of Architect, 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 Architect, his/its agents, servants and employees. Architect shall submit a full written report to the Finance Director within twenty-four (24) hours following the occurrence of such damage, loss or injury.

23. *Non-discrimination*. During the performance of this Contract, Architect agrees as follows:

(a) Architect 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 Architect. Architect agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-

discrimination clause. Architect agrees and fully supports and complies with the Americans with Disabilities Act of 1990.

(b) Architect shall state in all solicitations or advertisements for employees placed by or on behalf of Architect that Architect 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. Architect shall include the provisions of the foregoing subparagraphs (a), (b), and (c) in every subcontract or purchase order of over $10,000 so that the provisions will be binding upon each subcontractor or vendor.

24. *E-Verify*. Architect 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 Architect 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 Architect with any subcontractor performing work under this Contract shall include the following language: "The Sub-Architect 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 Architect on or after the effective date of this Contract and thereafter during the remaining term of the Contract." The Architect 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 Architect 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.

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

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

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

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

29. *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.

30. *Notice*. For purposes of this agreement, notices shall be sent as follows:

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

Copy to: City of Port Orange
Attention: Lynn Stevens, Public Works and Utilities Director
1000 City Center Circle
Port Orange, Florida 32129
(386) 506-5750

Architect: Schenkel & Shultz, Inc.
Attention: Daniel C. Laggan, President
200 East Robinson Street
Suite 300
Orlando, Florida 32801
(407) 872-3322 – Telephone
(407) 872-3303 – Facsimile
jlohrum@schenkelshultz.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.

31. *Truth-in-Negotiations*

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

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

32. *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.

33. *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 Architect and the City until the City signs this Agreement.

34. *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 Page Intentionally Left Blank]

Witnesses:

Printed Name: JEFFY G. PORTER

Printed Name: Jesus Maldonado

SCHENKEL & SHULTZ, INC.

By: _____
Daniel C. Laggan, President

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

Date: June 1, 2021

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me by means of ✓ physical presence or ___ online notarization, this 1st day of June, 2021, by Daniel C. Laggan, as President of Schenkel & Shultz, 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:

IRIS ELIZABETH ZAYAS
Notary Public - State of Florida
Commission # HH 076467
My Comm. Expires Apr 20, 2025
Bonded through National Notary Assn.

Witnesses:

CITY OF PORT ORANGE

Printed Name: Matt Jones

By: _____
Donald O. Burnette, Mayor

Printed Name: Jamie Miller

Date: 6/15/2021

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of ✓ physical presence or ___ online notarization, this 15th day of June, 2021, by Donald O. Burnette, as Mayor of the City of Port Orange, a Florida municipal corporation, on behalf of the city. He is ✓ personally known or ___ produced _____ as identification.

MATTHEW J. JONES
Commission # GG 931831
Expires January 23, 2024
Bonded Thru Troy Fain Insurance 800-385-7019

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

Witnesses:

ATTEST:

Printed Name: Matt Jones

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

Printed Name: Jamie Miller

Date: 6/15/2021

CITY OF PORT ORANGE 1867 FLORIDA

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me, by means of ✓ physical presence or ___ online notarization, this 15th day of June, 2021, by Robin L. Fenwick, as City Clerk of the City of Port Orange, a Florida municipal corporation, on behalf of the city. She is ✓ personally known or ___ produced _____ as identification.

MATTHEW J. JONES
Commission # GG 931831
Expires January 23, 2024
Bonded Thru Troy Fain Insurance 800-385-7019

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

EXHIBIT "1"

RFSQ 20-03 Scope of Services, Addendum No. 1
and Addendum No. 2

Consisting of 9 Pages

SECTION 3 – SCOPE OF SERVICES/WORK AND REQUIREMENTS

Introduction:

The City of Port Orange Public Works & Utilities requests statements of qualifications from architectural firms for the design of a new Public Utilities Operations Facility. The facility will be located on an eight (8)-acre site which will include office space, meeting space, warehouse space, indoor and outdoor equipment storage areas. Site improvements will include stormwater collection and management along with utilities site grading and other necessary site improvements. The current site is unimproved.

Scope:

The Public Utilities Field Operations Facility scope of services shall consist of, but not be limited to, the following:

- Facility offices for employees, warehouse, and equipment storage needs
- Building(s) design
- Site design
- Permitting
- Construction phase services
- As-built preparation and certification

Qualifications/Certifications:

The preferred firm will have a current Professional Registration Certificate from the appropriate governing board. The firm must be properly registered at the time of submittal to practice their profession in the State of Florida. The preferred firm shall provide professional certifications of staff such as Licensed Architect, Professional Engineer (P.E) and other relevant professional titles/accomplishments related to the proposed project.

Evaluation Method:

The City will appoint a committee consisting of department staff to evaluate the proposals and to make recommendation to the City Council. The City will be the sole judge of its own best interests, the proposals, and the resulting contract. The City's decisions will be final. Award will be made to the proposal, which presents the best value to the City based on the entire evaluation process and all the information gathered. The City may require the short-listed firm(s) to do an oral presentation or have discussions by proposed team relative to their specific experience on similar projects. Although each member of the evaluation committee independently examines the proposals prior to the meeting, the short-listing or selection of the firm(s) is determined by the consensus of the committee.

Evaluation Criteria:

In determining a firm's qualifications, the following criteria will be considered based on qualifications, experience and project approach:

- Company profile including size, location(s), and primary area of professional focus;
- Credentials, qualifications and years' experience of the staff for both the prime and sub consultants and key personnel as presented by resumes, education, and training;
- Number of years prime and sub consultants worked together;
- Professional license, certifications, titles, resumes, and accomplishments of staff designated to this project;
- Location of office facilities and staff whom will be assigned to this project.

- Experience designated project staff has in providing similar projects;
- Overall project approach to support the needs and objectives of the project;
- Documentation that the firm can perform the contract and provide the service within budget and scheduling requirements;
- Quality, availability and adaptability of the contractual services to the particular use required;
- Sufficiency of the financial resources and ability of the firm to perform the contract or provide the services;
- Previous and existing compliance by the firm with laws and ordinance relating to contracts or services;
- The number of professional staff, education, and years' experience in public facilities design including support staff such as GIS specialists, surveyors, CADD Techs, Construction Inspectors (CEI), etc.;
- Documented projects (with at least 3 references) which demonstrate proficiency and experience in projects of a similar nature in scope and complexity to the proposed project;
- Quality of performance on previous contracts or services with similar scope

[End of Scope of Work - Remainder of this page left intentionally blank]

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

ADDENDUM NO. # 1
August 7, 2020
RFSQ #20-03 PUBLIC UTILITIES FIELD OPERATIONS FACILITY ARCHITECTURAL SERVICES

To All Bidders:

The following changes, clarifications and additions are hereby made part of the bidding and specifications for the above referenced project dated July 23, 2020 and prepared by the City of Port Orange Purchasing Division as fully and completely as if the same were fully set forth therein. It is the sole responsibility of bidder to confirm that all addenda have been received prior to submitting bid and acknowledge such in the bid documents.

A. **CLARIFICATIONS:**
N/A
B. **CHANGES TO SPECIFICATIONS:**
N/A
C. **QUESTIONS AND ANSWERS:**

Question 1: Will the pre-proposal conference be available for virtual participation/televised?
Answer: No, there will not be a virtual attendance or call in option for the pre-proposal conference. The pre-proposal conference is non-mandatory, and all questions asked at the conference will appear on Addendum #1. We will also have the audio to the pre-proposal conference available upon request.

Question 2: Will you please clarify how location will affect the point scale under the evaluation criteria? Is location a part of "able to meet City's needs" (page 40)?
Answer: There is no specific formula for how location will affect the point scale under the evaluation criteria and no specific instruction is given to the Evaluation Committee as to how location should affect the point scale. The location of a submitting firms office(s) is primarily used for reference and is not considered a major factor in the five (5) points available under that section of the evaluation criteria.

Question 3: The RFSQ states on page 3 "one (1) original and one (1) identical digital (CD or flash drive) version in PDF format" and then on page 37 it requests "provide one (1) original, six (6) identical copies and one (1) identical digital version in PDF format on CD or USB flash/thumb drive". Can you please confirm the number of submittals that the City is requiring?
Answer: Please provide one (1) original and one (1) identical digital (CD or flash drive) version in PDF format as stated on Page 3. The requested number of submittals found on Page 37 is outdated and is no longer applicable.

Question 4: Has it been determined if the construction portion will be advertised as an ITB for a lump sum bid or an RFQ for Construction Management at Risk Services?
Answer: The subsequent solicitation will be advertised as an ITB for the construction of the Public Utilities Field Operations Facility.

Question 5: Will the Sign-In Sheet be available?
Answer: Yes, the Sign-In Sheet is available on DemandStar and the City of Port Orange website as of 8/6/2020.

Question 6: Can you please discuss the scope of the project and what is anticipated to be included?
Answer: The general scope as it is outlined in the solicitation is for Architectural Services to design, permit, and provide bidding assistance for a brand-new Field Operations Facility located on a designated property that is owned by the City of Port Orange. The zoning is appropriate so there will be no zoning issues. A decent amount of civil work will be required. The facility will be an all-inclusive facility that includes office space, storage space (enclosed and open storage), and other civil work such as a potential Vac Truck Pump-out pit connected to the sanitary system.

Question 7: What is the approximate budget of the project?
Answer: The approximate budget for Construction is $3,000,000.00. At the end of the design, the City of Port Orange expects a full estimate of the Construction costs.

Question 8: Can you clarify which tab of Section 7 will be for the required forms?
Answer: The required forms are their own separate section of the solicitation, which is Section 9 on Page 44. They are not under any tabs for Section 7. Tab E of Section 7 is not to be confused with Section 9's *Form 9.8 – Professional References for Previous Experience*. Additionally, the selection committee does not see the required forms as that is under the purview of the Purchasing Division when opening the received proposals.

Question 9: Will "Due Diligence" (Geotechnical and Environmental) be included in this RFSQ?
Answer: Yes.

Question 10: Can you confirm which tab that you will want a proposer's project experience/project sheet to be listed?
Answer: Please list project experience/project sheet under Tab E - Documented Projects (with at least 3 references) which Demonstrate Proficiency and Experience in Projects of a Similar Nature in Scope and Complexity to the Proposed Project.

Question 11: Is Geotech and Surveying apart of the Architectural team?
Answer: The City of Port Orange will not be supplying Geotech or Surveying. Geotech and Surveying will be provided by a proposer's subconsultant.

Question 12: Will a firm be selected from their written documentation? Will there be a shortlist or presentation?

Answer: The City of Port Orange has the right to select a firm in how it sees fit—either by a firm's written documentation if the Selection Committee sees them as "head and shoulders" above the other firm's proposals or by a shortlist and subsequent presentation if the Selection Committee deems multiple firms to be close with their submitted proposals. Language on this topic can be found in the RFSQ on pages 42 and 43 under "EVALUATION PROCEDURE".

Michael Hall
Buyer
mhall@port-orange.org

In all other respects, except as specifically stated herein, the subject RFSQ #20-03 PUBLIC UTILITIES FIELD OPERATIONS FACILITY ARCHITECTURAL SERVICES remains unchanged.

END OF ADDENDUM NO. #1

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

ADDENDUM NO. #2
August 14, 2020
RFSQ #20-03 PUBLIC UTILITIES FIELD OPERATIONS FACILITY ARCHITECTURAL SERVICES

To All Bidders:

The following changes, clarifications and additions are hereby made part of the bidding and specifications for the above referenced project dated July 23, 2020 and prepared by the City of Port Orange Purchasing Division as fully and completely as if the same were fully set forth therein. It is the sole responsibility of bidder to confirm that all addenda have been received prior to submitting bid and acknowledge such in the bid documents.

A. **CLARIFICATIONS:**
N/A
B. **CHANGES TO SPECIFICATIONS:**
N/A
C. **QUESTIONS AND ANSWERS:**

Question 1: Will the pre-proposal conference be available for virtual participation/televised?
Answer: No, there will not be a virtual attendance or call in option for the pre-proposal conference. The pre-proposal conference is non-mandatory, and all questions asked at the conference will appear on Addendum #1. We will also have the audio to the pre-proposal conference available upon request.

Question 2: Will you please clarify how location will affect the point scale under the evaluation criteria? Is location a part of "able to meet City's needs" (page 40)?
Answer: There is no specific formula for how location will affect the point scale under the evaluation criteria and no specific instruction is given to the Evaluation Committee as to how location should affect the point scale. The location of a submitting firms office(s) is primarily used for reference and is not considered a major factor in the five (5) points available under that section of the evaluation criteria.

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Answer: Please provide one (1) original and one (1) identical digital (CD or flash drive) version in PDF format as stated on Page 3. The requested number of submittals found on Page 37 is outdated and is no longer applicable.

Question 4: Has it been determined if the construction portion will be advertised as an ITB for a lump sum bid or an RFQ for Construction Management at Risk Services?
Answer: The subsequent solicitation will be advertised as an ITB for the construction of the Public Utilities Field Operations Facility.

Question 5: Will the Sign-In Sheet be available?
Answer: Yes, the Sign-In Sheet is available on DemandStar and the City of Port Orange website as of 8/6/2020.

Question 6: Can you please discuss the scope of the project and what is anticipated to be included?
Answer: The general scope as it is outlined in the solicitation is for Architectural Services to design, permit, and provide bidding assistance for a brand-new Field Operations Facility located on a designated property that is owned by the City of Port Orange. The zoning is appropriate so there will be no zoning issues. A decent amount of civil work will be required. The facility will be an all-inclusive facility that includes office space, storage space (enclosed and open storage), and other civil work such as a potential Vac Truck Pump-out pit connected to the sanitary system.

Question 7: What is the approximate budget of the project?
Answer: The approximate budget for Construction is $3,000,000.00. At the end of the design, the City of Port Orange expects a full estimate of the Construction costs.

Question 8: Can you clarify which tab of Section 7 will be for the required forms?
Answer: The required forms are their own separate section of the solicitation, which is Section 9 on Page 44. They are not under any tabs for Section 7. Tab E of Section 7 is not to be confused with Section 9's *Form 9.8 – Professional References for Previous Experience*. Additionally, the selection committee does not see the required forms as that is under the purview of the Purchasing Division when opening the received proposals.

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Answer: Yes.

Question 10: Can you confirm which tab that you will want a proposer's project experience/project sheet to be listed?
Answer: Please list project experience/project sheet under Tab E - Documented Projects (with at least 3 references) which Demonstrate Proficiency and Experience in Projects of a Similar Nature in Scope and Complexity to the Proposed Project.

Question 11: Is Geotech and Surveying apart of the Architectural team?
Answer: The City of Port Orange will not be supplying Geotech or Surveying. Geotech and Surveying will be provided by a proposer's subconsultant.

Question 12: Will a firm be selected from their written documentation? Will there be a shortlist or presentation?
Answer: The City of Port Orange has the right to select a firm in how it sees fit—either by a firm's written documentation if the Selection Committee sees them as "head and shoulders" above the other firm's proposals or by a shortlist and subsequent presentation if the Selection Committee deems multiple firms to be close with their submitted proposals. Language on this topic can be found in the RFSQ on pages 42 and 43 under "EVALUATION PROCEDURE".

Question 13: Can you share the parcel number or address for the site?
Answer: The Parcel Number for the Public Utilities Field Operations Facility site is PID: 630600000062.

Michael Hall
Buyer
mhall@port-orange.org

In all other respects, except as specifically stated herein, the subject RFSQ #20-03 PUBLIC UTILITIES FIELD OPERATIONS FACILITY ARCHITECTURAL SERVICES remains unchanged.

END OF ADDENDUM NO. #2

EXHIBIT "2"

RFSQ 20-03 SAMPLE TASK AUTHORIZATION

Consisting of 4 Pages

TASK AUTHORIZATION NO. __
Master Contract for Architectural Services dated _____
Between the City of Port Orange, Florida and Schenkel & Shultz, 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 **SCHENKEL & SHULTZ, INC.**, a Florida corporation with its principal place of business at 200 East Robinson Street, Suite 300, Orlando, Florida 32801 ("Architect"), and hereinafter collectively referred to as the "Parties," and is to that certain Master Contract for Architectural 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, Architect 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. Architect shall complete the services to be provided herein within _____ days of a written Notice to Proceed issued by the City, to the Architect.

4. In return for the services identified above, the City agrees to compensate Architect at the prices set forth in Exhibit "__" attached hereto and made a part hereof for all purposes, subject to a limit up to but not to exceed $_____. All payments shall be governed by the Local Government Prompt Payment Act as set forth in Sections 218.70 through 218.79, Florida Statutes, as amended.

5. *Truth-in-Negotiations*

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

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

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

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

[Remainder of page intentionally left blank]

Witnesses:

SCHENKEL & SHULTZ, INC.

_____ By:_____

Printed Name:_____ Daniel C. Laggan, 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:_____

Witnesses:

CITY OF PORT ORANGE

_____ By: _____
Printed Name: _____ Wayne Clark, City Manager OR
Donald O. Burnette, Mayor

_____
Printed Name: _____ Date: _____

Witnesses:

ATTEST:

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

_____ Date: _____
Printed Name: _____

[CA 7525]

SCHE&SH-01 JNGUYEN

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 3/6/2024

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
Ames & Gough
8300 Greensboro Drive
Suite 980
McLean, VA 22102

CONTACT NAME:
PHONE (A/C, No, Ext): (703) 827-2277 FAX (A/C, No): (703) 827-2279
E-MAIL ADDRESS: admin@amesgough.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : National Fire Insurance Company of Hartford A(XV)	20478
INSURER B : Continental Casualty Company (CNA) A, XV	20443
INSURER C :	
INSURER D :	
INSURER E :	
INSURER F :	

INSURED
Schenkel & Shultz, Inc.
200 East Robinson Street
Suite 300
Orlando, FL 32801

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	X COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE	$ 1,000,000
	CLAIMS-MADE X OCCUR			7036672442	3/22/2024	3/22/2025	DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 1,000,000
							MED EXP (Any one person)	$ 15,000
							PERSONAL & ADV INJURY	$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$ 2,000,000
	POLICY X PRO-JECT LOC						PRODUCTS - COMP/OP AGG	$ 2,000,000
	OTHER:							$
B	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$ 1,000,000
	ANY AUTO						BODILY INJURY (Per person)	$
	OWNED AUTOS ONLY / SCHEDULED AUTOS			7036672456	3/22/2024	3/22/2025	BODILY INJURY (Per accident)	$
	X HIRED AUTOS ONLY / X NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	$
								$
B	X UMBRELLA LIAB X OCCUR						EACH OCCURRENCE	$ 5,000,000
	EXCESS LIAB CLAIMS-MADE			7036672487	3/22/2024	3/22/2025	AGGREGATE	$ 5,000,000
	DED X RETENTION $ 10,000							$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y/N						X PER STATUTE / OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) N	N / A		7036672473	3/22/2024	3/22/2025	E.L. EACH ACCIDENT	$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	$ 1,000,000
B	Professional Liab.			AEH288393689	3/22/2024	3/22/2025	Per Claim/Aggregate	3,000,000
B	Professional Liab.			AEH288393689	3/22/2024	3/22/2025	Deductible	10,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
RE: City of Port Orange - RFSQ 20-03

City of Port Orange is included as additional insured with respect to General Liability, Automobile Liability and Umbrella Liability when required by written contract. General Liability, Automobile Liability and Umbrella Liability is primary and non-contributory over any existing insurance and limited to liability arising out of the operations of the named insured and when required by written contract. Workers Compensation policy includes a waiver of subrogation in favor of the additional insureds where permissible by state law and when required by written contract.

CERTIFICATE HOLDER

City of Port Orange
1000 City Center Circle
Port Orange, FL 32129

CANCELLATION

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

AUTHORIZED REPRESENTATIVE

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CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 8/21/2024

SUBJECT: (C7d) Approval to Award RFSQ #23-14 Construction Manager at Risk for Construction of Public Utilities Operations Facility to Wharton-Smith, Inc. and approve the Preconstruction Services Phase Proposal

DEPARTMENT: Engineering

GOAL: 2 - Infrastructure

RECOMMENDED MOTION: Move to approve award of RSFQ #23-14 Construction Manager at Risk Services for Construction of Public Utilities Operations Facility and approve Preconstruction Services Phase; authorize the city manager and city attorney to review and approve final terms and conditions of the contract prior to execution; and authorize Mayor and City Clerk to execute all final documents.

SUMMARY: The Engineering Department is requesting approval to award RFSQ #23-14 Construction Manager at Risk (CMAR) for the Construction of the Public Utilities Operations Facility and Phase I - Pre-construction Phase Scope to Wharton-Smith, Inc.

On February 16, the City received five (5) Statements of Qualifications for RFSQ #23-14. On March 7, 2024, the Statement of Qualifications Evaluation Committee scored submittals from the following firms:

Paul Culver Construction, Inc.	Score: 38.83
D.E Scorpio Corporation	Score: 41.73
Pirtle Construction Company	Score: 43.35
W&J Construction Corporation	Score: 43.38
Wharton-Smith, Inc.	Score: 47.61

The committee agreed by consensus to recommend awarding Wharton-Smith, Inc. based on a combination of overall scores and their ability to best meet the needs of the City.

The Engineering Department is also requesting approval of Phase I – CMAR Preconstruction Services Proposal for the amount of $116,932. During the pre-construction phase, the Construction Manager will work with the Architect to develop preliminary cost estimates, complete a constructability review, conduct bidding and procurement of the different work packages, and ultimately prepare a Guaranteed Maximum Price (GMP) for the project.

When the pre-construction phase is complete, the CMAR will deliver an executed

Exhibit "A" Guaranteed Maximum Price Amendment which, if accepted by the City, states the GMP, the completion date, identifies the construction documents, alternates, unit prices, and other pertinent information needed for construction.

If the City does not agree to the GMP, completion date, and other matters included in the Amendment, it is not bound to proceed with construction with the CMAR. Instead, the City can attempt to negotiate with the CMAR for a better deal or proceed with soliciting bids from General Contractors for a standard Owner-General Contractor Agreement.

Some recently completed Central Florida projects that used the CMAR process are;

- Volusia County Medical Examiner's Office
- City of Ocoee City Hall
- Seminole State Center for Public Safety

PRESENTER: Junos Reed

ATTACHMENTS:

1.	AIA Agreement: Wharton-Smith Public Utilities Operations Facility A133-2019 - Final - (1)	PORT ORANGE Wharton-Smith Public Utilities Operations Facility A133-2019 - Final - (1).pdf
2.	City of Port Orange Field Services - Phase 1 Preconstruction Services Proposal	City of Port Orange Field Services - Phase 1 Preconstruction Services Proposal.pdf
3.	City of Port Orange Vendor App signed	City of Port Orange Vendor App signed.pdf
4.	Corrected Form 7.7 - Statement of Respondent s Qualifications (1)	Corrected Form 7.7 - Statement of Respondent s Qualifications (1).pdf
5.	RFSQ 23-14 CMAR for Public Utilities Operations Facility Addendum 1 2.9.24 (2)	RFSQ 23-14 CMAR for Public Utilities Operations Facility Addendum 1 2.9.24 (2).pdf
6.	RFSQ 23-14 Construction Manager at Risk for Construction of Public Utilities Operations Facility	RFSQ 23-14 Construction Manager at Risk for Construction of Public Utilities Operations Facility.pdf
7.	RFSQ 23-14 Evaluation Summary	RFSQ 23-14 Evaluation Summary.pdf
8.	RFSQ 23-14 NOTICE OF INTENT TO AWARD	RFSQ 23-14 NOTICE OF INTENT TO AWARD.pdf
9.	Wharton-Smith - Agenda Submittal	Wharton-Smith - Agenda Submittal.pdf

Julia Wiggins	Created/Initiated - 6/3/2024
Richard Colby	Approved - 6/10/2024
Junos Reed	Approved - 7/22/2024
Steve Parnell	Approved - 7/23/2024
John McKinney	Approved - 8/1/2024

Matthew Jones	Approved - 8/15/2024
Wayne Clark	Approved - 8/15/2024
Tracee Cody	Final Approval - 8/15/2024

AIA® Document A133® – 2019

Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

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

BETWEEN the Owner:
(Name, legal status, address, and other information)

City of Port Orange
1000 City Center Circle
Port Orange, FL 32129

and the Construction Manager:
(Name, legal status, address, and other information)

Wharton-Smith, Inc.
750 Monroe Road
Sanford, FL 32771

for the following Project:
(Name, location, and detailed description)

Public Utilities Field Operations Facility
City of Port Orange

The Architect:
(Name, legal status, address, and other information)

Schenkel Schultz, Inc.
200 East Robinson Street, Suite 300
Orlando, FL 32801

The Owner and Construction Manager agree as follows.

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

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

AIA Document A201™–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.
(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project, as described in Section 4.1.1:
(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

Provide services described in the Preconstruction Phase Scope of Services attached hereto as Exhibit "D" related to the construction of the City of Port Orange Public Utilities Field Operations Facility that will consist of a 11,500 SF Administration Building, a 12,300 SF Warehouse, and all associated site improvements.

§ 1.1.2 The Project's physical characteristics:
(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

See § 1.1 above.

§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6:
(Provide total and, if known, a line item breakdown.)

Eight Million Five Hundred Thousand Dollars and Zero Cents ($8,500,00.00).

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any:

Pre-Construction Services Start Date: The Date of this Agreement

Construction Drawings shall be completed by: Four (4) months from the date hereof

Pre-Construction Services End Date: Four (4) months from the date hereof

.2 Construction commencement date: The date of execution of the Guaranteed Maximum Price Amendment by both Parties (attached hereto as Exhibit "A").

.3 Substantial Completion date or dates: To be provided and agreed upon by both Parties in the Guaranteed Maximum Price Amendment (attached hereto as Exhibit "A").

(Paragraph deleted)

.4 Other milestone dates: To be provided and agreed upon by both Parties in the Guaranteed Maximum Price Amendment (attached hereto as Exhibit "A").

§ 1.1.5 The Owner's requirements for accelerated or fast-track scheduling, or phased construction, are set forth below:
(Identify any requirements for fast-track scheduling or phased construction.)

NOT APPLICABLE

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

NOT APPLICABLE

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§ 1.1.6.1 (Intentionally omitted.)

§ 1.1.7 Other Project information:
(Identify special characteristics or needs of the Project not provided elsewhere.)

NOT APPLICABLE

§ 1.1.8 The Owner identifies the following representative in accordance with Section 4.2:
(List name, address, and other contact information.)

Junos Reed, City Engineer
City of Port Orange
1000 City Center Circle
Port Orange, FL 32129
Phone: 386-506-5757
Email: jureed@port-orange.org

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Construction Manager's submittals to the Owner are as follows:
(List name, address and other contact information.)

NOT APPLICABLE

§ 1.1.10 The Owner may retain consultants and contractors for each Project.
(List name, legal status, address, and other contact information.)

.1 Geotechnical Engineer:

NOT APPLICABLE

.2 Civil Engineer:

NOT APPLICABLE

.3 Other, if any:
(List any other consultants retained by the Owner, such as a Project or Program Manager.)

NOT APPLICABLE

§ 1.1.11 The Architect's representative:
(List name, address, and other contact information.)

Gay Geiger
Schenkel Schultz, Inc.
200 East Robinson Street, Suite 300
Orlando, FL 32801
Phone: 407-872-3322
Email: ggeiger@schenkelshultz.com

§ 1.1.12 The Construction Manager identifies the following representative in accordance with Article 3:
(List name, address, and other contact information.)

James De LaRosa, Project Executive
Wharton-Smith, Inc.
750 Monroe Road
Sanford, FL 32771
Phone: 689-267-8629

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Email: jdelarosa@whartonsmith.com

§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1.9:
(List any Owner-specific requirements to be included in the staffing plan.)

NOT APPLICABLE

§ 1.1.14 The Owner's requirements for subcontractor procurement for the performance of the Work:
(List any Owner-specific requirements for subcontractor procurement.)

The Construction Manager shall seek to develop subcontractor interest in the Project and shall furnish to the Owner and Architect for their information a list of possible subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principal portion of the Work. The Architect will promptly reply in writing to the Construction Manager if the Architect or Owner know of any objection to such subcontractor or supplier. The receipt of such list shall not require the Owner or Architect to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the right of the Owner or Architect to object to or reject any proposed subcontractor or supplier within (5) business days of receipt of Construction Manager's list of possible subcontractors. Provided, however, if Owner or Architect object to a subcontractor or supplier, Owner shall be responsible to compensate Construction Manager should there be additional cost associated with utilizing Owner or Architect's preferred subcontractor or supplier. Further, Owner or Architect shall not object to a subcontractor or supplier due to the price of the work.

§ 1.1.15 Other Initial Information on which this Agreement is based:

See Preconstruction Phase – Scope of Services attached hereto as Exhibit "D".

§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager shall appropriately adjust the Project schedule, the Construction Manager's services, and the Construction Manager's compensation. The Owner shall adjust the Owner's budget for the Guaranteed Maximum Price and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

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

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

The Contract Documents consist of this Agreement, the Guaranteed Maximum Price Amendment(s) (attached hereto as Exhibit "A"), the Insurance and Bonds (attached hereto as Exhibit "B" and Exhibit "B-1"), AIA Document A201-2017 General Conditions (as modified by Owner and attached hereto as Exhibit "C") Conditions of the Contract (General Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in § 15.2 of this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

§ 2.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner to furnish efficient construction administration, management services, and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner,

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information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™–2017, General Conditions of the Contract for Construction as modified by Owner (hereinafter "A201-2017"), shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

§ 2.3.2 For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2017, which document is incorporated herein by reference. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project. The standard of care for the professional services performed by the Construction Manager and its Sub-Consultants pursuant to this Agreement shall be the care and skill ordinarily used by members of the same profession practicing under similar conditions at the same time and locality of the Project.

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The recommendations and advice of the Construction Manager concerning design alternatives shall be subject to the review and approval of the Owner. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

§ 3.1.2 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

§ 3.1.3 Consultation

§ 3.1.3.1 The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.3.2 The Construction Manager shall advise the Owner and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; prefabrication; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. The Construction Manager shall consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase.

§ 3.1.3.3 (Intentionally omitted.)

§ 3.1.4 Project Schedule

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager

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shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner.

§ 3.1.5 Phased Construction

The Construction Manager shall make recommendations to the Owner and Architect regarding the phased construction of the Work, if such phased construction is appropriate for the Project. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues.

§ 3.1.6 Cost Estimates

§ 3.1.6.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare, for the Architect's review and the Owner's approval, preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume, or similar conceptual estimating techniques. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 3.1.6.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and updateat appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action.

§ 3.1.6.3 If the Architect is providing cost estimating services and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Construction Manager and the Architect shall work together to reconcile the cost estimates.

§ 3.1.7 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make recommendations regarding constructability and schedules, for the Architect's review and the Owner's approval.

§ 3.1.8 The Construction Manager shall provide recommendations and information to the Owner and Architect regarding equipment, materials, services, and temporary Project facilities.

§ 3.1.9 The Construction Manager shall provide a staffing plan for Preconstruction Phase services at the Owner's request for the Owner's review and approval.

§ 3.1.10

§ 3.1.11 Subcontractors and Suppliers

§ 3.1.11.1 If the Owner has provided requirements for subcontractor procurement in section 1.1.14, the Construction Manager shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review and approval.

§ 3.1.11.2 The Construction Manager shall develop bidders' interest in the Project.

§ 3.1.11.3 The processes described in Article 9 shall apply if bid packages will be issued during the Preconstruction Phase.

§ 3.1.12 Procurement

The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the

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ordering and delivery of materials that must be ordered in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions as set forth in Section 3.4.5 of the A201-2017 General Conditions.

§ 3.1.13 Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities.

§ 3.1.14 Other Preconstruction Services

Insert a description of any other Preconstruction Phase services to be provided by the Construction Manager, or reference an exhibit attached to this document

(Describe any other Preconstruction Phase services, such as providing cash flow projections, development of a project information management system, early selection or procurement of subcontractors, etc.)

NOT APPLICABLE

§ 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2. If the Owner does not accept the Construction Manager's Guaranteed Maximum Price proposal (Exhibit "A") then the Construction Manager shall have no obligation or right to proceed with construction. Owner retains the right to proceed with construction with another construction manager or contractor.

§ 3.2.2 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.

§ 3.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

.1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;

.2 A list of allowances and a statement of their basis;

.3 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2;

.4 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee; and

.5 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based

.5 A date by which the Owner must accept the Guaranteed Maximum Price.

§ 3.2.4 Contingency

§ 3.2.4.1 Construction Manager's Contingency

The estimated Cost of Work shall include the Construction Manager's Contingency, an amount mutually agreeable between the Construction Manager and Owner, to cover costs arising under Subparagraph 3.2.2, and other costs which are properly reimbursable as Costs of Work, but not the basis for a Change Order. The Construction Manager's Contingency is for the exclusive use of the Construction Manager while executing the construction Work to address unexpected circumstances, force majeure impacts, and to correct unanticipated circumstances which are not otherwise reimbursable and do not constitute a change in the Work, as defined in this Agreement. The Construction Manager's Contingency shall only be adjusted by a written Change Order; and it shall be clearly noted on the Change Order that costs are allocated against the Construction Manager's Contingency. The Construction Manager shall maintain a Contingency tracking log updated each time Construction Manager's contingency funds are used.

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§ 3.2.4.2 Buyout Contingency

It is expected that some cost savings between the Construction Manager's Guaranteed Maximum Price (GMP) and the actual Cost of Work may be generated as a result of the final bidding and negotiations of subcontracts. Any cost savings generated as a result of the final bidding or negotiation of subcontracts, and actual expenses by the Construction Manager, which are less than was estimated in establishing the GMP shall be retained by the Owner as the Buyout Contingency. The negotiated fee and general conditions will not be adjusted as result of these savings. The Buyout Contingency shall only be adjusted by means of the Owner issuing a written Change Order and it shall be clearly noted on the Change Order that costs are allocated against the Buyout Contingency. The Construction Manager shall maintain a Buyout Contingency tracking log updated each time Buyout contingency funds are used. The Buyout Contingency remains in the Project until final completion where remaining funds shall be returned to the Owner.

§ 3.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 3.2.6 Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment(s) amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment(s) shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based. The Guaranteed Maximum Price shall be subject to additions and deductions by a change in the Work as provided in the Contract Documents, and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

§ 3.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of the Guaranteed Maximum Price Amendment(s), unless the Owner provides prior written authorization for such costs.

§ 3.2.8 The Owner shall authorize written revisions to the Contract Documents that incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment(s). The Owner shall furnish such revised Contract Documents to the Construction Manager. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment(s) and the revised Contract Documents and any increase in the Guaranteed Maximum Price, if any.

§ 3.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

§ 3.3 Construction Phase

§ 3.3.1 General

§ 3.3.1.1 For purposes of Section 8.1.2 of A201–2017, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 3.3.1.2 The Construction Phase shall commence as mutually agreed to by the Owner and Construction Manager . The written agreement shall set forth a description of the Work to be performed by the Construction Manager, and any insurance and bond requirements for Work performed prior to execution of the Guaranteed Maximum Price Amendment(s).

§ 3.3.2 Administration

§ 3.3.2.1 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and Architect.

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201–2017.

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§ 3.3.2.3 Monthly Report
The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner.

§ 3.3.2.4 Daily Logs
The Construction Manager shall keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 3.3.2.5 Cost Control
The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect, and shall provide this information in its monthly reports, and payment applications to the Owner and Architect and make access available via Procore, in accordance with Section 3.3.2.3 above.

§ 3.4 CONSTRUCTION MANAGER'S KEY PERSONNEL
The Construction Manager shall provide accounting of Construction Manager's Consultants, Design Professionals, and Suppliers as set forth in Article A.5 Construction Manager's Key Personnel, of the Guaranteed Maximum Price Amendment(s), Exhibit "A" via the Certificates of Payment Application.

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner
§ 4.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

§ 4.1.2 (Intentionally omitted.)

§ 4.1.3 The Owner shall establish and may periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 4.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 4.1.4.1 The Owner shall furnish tests, inspections, and reports, required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials with reasonable promptness.

§ 4.1.4.2 The Owner shall furnish surveys with reasonable promptness describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

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§ 4.1.4.3 The Owner may furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 4.1.5 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

§ 4.1.6

§ 4.2 Owner's Designated Representative

The Owner's Representative is named in § 1.1.8 or designee. The Owner's Representative is authorized to act on Owner's behalf as provided herein and in applicable law, regulation, or ordinance. The Owner's Representative has the authority to reject unsatisfactory work and to stop the work, if necessary, to insure its proper execution. Failure of the Owner's Representative, in any one or more instances, to insist on strict performance of any of the terms of this Contract or to exercise any option herein conferred shall not be construed as a waiver or relinquishment for the future insistence of any such terms or options.

§ 4.2.1 Legal Requirements. The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 4.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Standard Form of Agreement Between Owner and Architect.

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

§ 5.1.1 For the Construction Manager's Preconstruction Phase services described in Sections 3.1 and 3.2, the Owner shall compensate the Construction Manager as follows:
(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

Preconstruction Services will be set at a stipulated sum of One Hundred Sixteen Thousand Nine Hundred Thirty-Two Dollars and Zero Cents ($116,932.00).

§ 5.1.2 The hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager's Consultants and Subcontractors, if any, are set forth below.
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

WSI Wage Rate - 2024

Position	Name of Person Filing Role	Total Rate
Project Director	To Be Determined	$161.00
CMAR Manager	To Be Determined	$169.00
Executive Management	James De La Rosa	$169.00
Senior Project Manager	Keri Strawder	$151.00
Project Manager	To Be Determined	$130.00
Assistant Project Manager	To Be Determined	$112.00
Project Engineer	To Be Determined	$84.00
Project Engineer – Intern	To Be Determined	$51.00
General Superintendent	Tim Moore	$163.00
Senior Superintendent	To Be Determined	$152.00
Superintendent	To Be Determined	$131.00
Assistant Superintendent	To Be Determined	$118.00
Field Engineer	To Be Determined	$89.00

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Administrative Assistant	Jennifer Butcher	$83.00
Safety Manager	Travis Chaput	$118.00
Project Accountant	To Be Determined	$105.00

§ 5.1.2.1 Hourly billing rates for Preconstruction Phase services include all costs to be paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, and shall remain unchanged unless the parties execute a Modification.

§ 5.1.3 Compensation for Preconstruction Phase Services shall be equitably adjusted if such services extend beyond one hundred twenty (120) calendar days from the date of this Agreement or if the originally contemplated scope of services is significantly modified.

§ 5.2 Payments

§ 5.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 5.2.2 Payments are due and payable thirty (30) days upon presentation of the Construction Manager's invoice.

- Proposed Start Date: Pre-Construction Services: August 7, 2024
- Proposed End Date : Pre-Construction Services: October 2024 (estimated)

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 6.1 Contract Sum

§ 6.1.1 If the Owner accepts the Construction Manager's Contract Sum for construction and executes Exhibit "A", then the Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract after execution of the Guaranteed Maximum Price Amendment(s). The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager's Fee.

§ 6.1.2 The Construction Manager's Fee:
(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

Eight and a half percent (8.5%) of the Cost of the Work.

§ 6.1.3 The method of adjustment of the Construction Manager's Fee for changes in the Work:

In the event of Owner directed changes, the Construction Manager's Fee shall be eight and a half percent (8.5%) of the increase in the Cost of Work for the changes.

§ 6.1.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

Subcontractors increased costs of work for Owner directed changes shall include five percent (5%) overhead and five percent (5%) profit.

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed the standard rental rate paid at the place of the Project.

§ 6.1.6 Liquidated damages, if any:
(Insert terms and conditions for liquidated damages, if any.)

The Owner and Construction Manager acknowledge and agree that it would be difficult to determine, with any reasonable degree of certainty, the amount of damages which the Owner would sustain in the event that the Construction Manager fails to attain Substantial Completion of the Work on or before the date established. The Construction Manager acknowledges and understands that failure to fully complete the Work within the aforesaid time periods will result in substantial loss and damages suffered by the Owner. Therefore, if the Construction Manager shall neglect, fail, or refuse to complete the Work within the Contract Time, or any proper extension thereof granted by the Owner in a properly

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executed Change Order, the Construction Manager agrees to pay the Owner liquidated damages in the amount(s) of $500 for each and every calendar day that the Construction Manager shall be in default for untimely completion after expiration of the Contract Time for Substantial Completion. However, liquidated damages shall be limited to and not exceed the fee earned by the Construction Manager in order for the liquidated damages to not be deemed a penalty. Such payments shall constitute liquidated damages, not a penalty, and shall be cumulative, it being understood and agreed by the Construction Manager that the Owner's actual damages in the event of a delay in Substantial Completion would be difficult, if not impossible, to determine. Time is of the essence of this Agreement. Any such liquidated damages may, at the option of the Owner, be withheld and deducted from any unpaid portion of the Guaranteed Maximum Price. Liquidated damages shall be the sole and exclusive remedy for delay.

§ 6.1.7 Other:
(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)

NOT APPLICABLE

§ 6.2 Guaranteed Maximum Price
The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment(s), subject to additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

§ 6.3 Changes in the Work
§ 6.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Construction Manager may be entitled to an equitable adjustment in the Contract Time and/or Guaranteed Maximum Price as a result of changes in the Work.

§ 6.3.1.1 The Architect may order minor changes in the Work as provided in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.3 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201–2017, as they refer to "cost" and "fee," and not by Articles 6 and 7 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in Article 7 of AIA Document A201–2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 6.1.2 of this Agreement.

§ 6.3.5 If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE
§ 7.1 Costs to Be Reimbursed
§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7.

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§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost.

§ 7.1.3 Costs shall be at rates not higher than the standard rates paid at the place of the Project, except with prior approval of the Owner.

§ 7.2 Labor Costs

§ 7.2.1 Wages or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ 7.2.2 (Intentionally omitted.)

§ 7.2.2.1

(Paragraphs deleted)

(Intentionally Omitted.)

§ 7.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 7.2.4 Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

§ 7.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

§ 7.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and this Agreement.

§ 7.3.1 The Construction Manager shall provide the Owner with a copy of each subcontractor's executed contract.

§ 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 7.4.1 Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction.

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 7.5.1 Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.

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§ 7.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 7.5.4 Costs of the Construction Manager's site office, including general office equipment and supplies.

§ 7.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval. Off-site storage shall be in a bonded and insured facility approved by the Owner.

§ 7.6 Miscellaneous Costs

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.

§ 7.6.1.1 Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval. Coverages and costs must be disclosed in the Guaranteed Maximum Price Proposal and accepted by the Owner in the Guaranteed Maximum Price Amendment(s).

§ 7.6.1.2 Costs for insurance through a captive insurer owned or controlled by the Construction Manager, with the Owner's prior approval.

§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Construction Manager is liable.

§ 7.6.3 Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Construction Manager is required by the Contract Documents to pay.

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201–2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

§ 7.6.5.1 The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims, and payments of settlements made with the Owner's consent. The costs of legal defenses, judgments, and settlements shall not be included in the Cost of the Work used to calculate the Construction Manager's Fee or subject to the Guaranteed Maximum Price.

§ 7.6.6 Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior approval.

§ 7.6.7 Costs of document reproductions and delivery charges.

§ 7.6.8 (Intentionally omitted.)

§ 7.6.9 (Intentionally omitted.)

§ 7.6.10 (Intentionally omitted.)

§ 7.6.11 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling outside the Sanford area in discharge of duties connected with the Work.

§ 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work, with the Owner's prior approval.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201–2017.

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§ 7.7.3 Notwithstanding anything herein to the contrary, no costs shall be paid by the Owner to the Construction Manager for any expenses made necessary to correct defective workmanship or to correct any Work not in conformance with the Contract Documents or to correct any deficiency or damage caused by negligent acts by the Construction Manager as determined by the Architect.

§ 7.7.4 The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2017 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 7.9.

§ 7.8 Related Party Transactions

§ 7.8.1 For purposes of this Section 7.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Construction Manager; (2) any entity in which any stockholder in, or management employee of, the Construction Manager holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Construction Manager; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Construction Manager.

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

§ 7.9 Costs Not To Be Reimbursed

§ 7.9.1 The Cost of the Work shall not include the items listed below:

- **.1** Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
- **.2** Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- **.3** Expenses of the Construction Manager's principal office and offices other than the site office;
- **.4** Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- **.5** The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- **.6** Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- **.7** Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- **.8** Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;
- **.9** Costs for services incurred during the Preconstruction Phase;
- **.10** Rental costs of machinery and equipment, except as specifically provided in Section 7.5.2.; and
- **.11** Legal costs of whatever nature.

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

§ 8.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

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§ 8.2 Amounts that accrue to the Owner in accordance with the provisions of Section 8.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 The Construction Manager shall obtain bids on all of the Work, including obtaining third party bids on any work the Construction Manager desires to self-perform. Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. Upon request by Owner, Construction Manager shall deliver such bids and bid tabulations to the Architect and Owner within a reasonable period of time. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier within (5) five business days. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection. Copies of executed contracts, subcontracts and supplier contracts shall be provided by the Construction Manager to the Owner within a reasonable time period.

§ 9.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 9.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, the Construction Manager shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Article 10.

ARTICLE 10 ACCOUNTING RECORDS

The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

§ 11.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager, and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum, to the Construction Manager, as provided below and elsewhere in the Contract Documents, and in conformance with Florida's Prompt Payment Statutes.

§ 11.1.2 (Intentionally omitted.)

§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the 25th day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the 25th day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than thirty (30) days after the Architect receives the Application for Payment.

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

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit receipted invoices or invoices with check vouchers attached, each subcontractor's application for payment and or invoice, affidavits, lien waivers and such other documents required by Article 9 of A201-2017 and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager less that portion of the progress payments attributable to the Construction Manager's Fee.

§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee.

§ 11.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect and the Owner may require. Submission of the schedule of values shall be a representation by the Construction Manager that the values scheduled therein are accurate and for subcontracted work, match the applicable subcontract amounts. Any inaccuracies shall be corrected immediately by the Construction Manager so as to maintain the accuracy of the schedule of values. The schedule of values shall be used as a basis for reviewing and processing the Construction Manager's Applications for Payment.

§ 11.1.5.2 The allocation of the Guaranteed Maximum Price under this Section 11.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

§ 11.1.5.3 When the Construction Manager allocates costs from a contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the Architect.

§ 11.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work and for which the Construction Manager has made payment or intends to make payment prior to the next Application for Payment, by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

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

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

.1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;

.2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and

.3 The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

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

.1 The aggregate of any amounts previously paid by the Owner;

.2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;

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.3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;

.4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;

.5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and

.6 Retainage withheld pursuant to Section 11.1.8.

§ 11.1.8 Retainage

§ 11.1.8.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:
(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

Ten percent (10%) until fifty percent (50%) completion of the work. After fifty percent (50%) completion of the work, five percent (5%) retainage shall be withheld from each subsequent progress payment.

§ 11.1.8.1.1 The following items are not subject to retainage:
(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

Insurance, bonds, and general conditions.

§ 11.1.8.2 Reduction or limitation of retainage, if any, shall be as follows:
(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)

See § 11.1.8.1 above.

§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:
(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)

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

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

§ 11.1.11 The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors.

§ 11.1.12 In taking action on the Construction Manager's Applications for Payment the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and such action shall not be deemed to be a representation that (1) the Architect has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 11.1.4 or other supporting data; (2) that the Architect has made exhaustive or continuous on-site inspections; or (3) that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

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§ 11.2 Final Payment

§ 11.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

.1 the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work reported on the Owner provided Certificate of Substantial Completion, and as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;

.2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment;

.3 the Construction Manager's application for Final Payment has been certified by the Architect and submitted to the Owner with all warranties, guarantees, close out documents including Consent of Surety to Final Payment (, and receipt by Owner of Contractor's Final Payment Affidavit, Conditional Final Release of Lien upon receipt of final payment Construction Manager shall submit Unconditional Final Release of Lien, manufacturers' manuals of operation and any other items required under the Contract Documents. Complete as-built drawings in paper document and digital PDF format (scan document file acceptable) submitted to and accepted by the Architect for production of the final Project record documents; and

.4 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2; and

.5 in accordance with applicable Florida Prompt Payment Statutes

§ 11.2.2 Within 30 days of the Owner's receipt of the Construction Manager's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit.

§ 11.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors' findings to the Architect.

§ 11.2.2.2 Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201–2017. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201–2017. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 11.2.2.3 If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201–2017. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 11.2.2.4 The amount of the final payment shall be calculated as follows:

.1 Take the sum of the Cost of the Work substantiated by the Construction Manager's final accounting and the Construction Manager's Fee, but not more than the Guaranteed Maximum Price.

.2 Subtract amounts, if any, for which the Architect withholds, in whole or in part, a final Certificate for Payment as provided in Section 9.5.1 of A201-2017 or other provisions of the Contract Documents.

.3 Subtract the aggregate of previous payments made by the Owner.

.4 If the aggregate of previous payments made by the Owner exceeds the amount due the Construction Manager, the Construction Manager shall reimburse the difference to the Owner.

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

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§ 11.2.4 If, subsequent to final payment, and at the Owner's request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, and not excluded by Section 7.9, the Owner shall reimburse the Construction Manager for such costs applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price.

§ 11.3 Interest

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

4.5% annually

ARTICLE 12 DISPUTE RESOLUTION

The parties expressly agree to opt out of the provisions of Section 558.05, Florida Statutes. The provisions of Chapter 558, Florida Statutes shall not apply to this Agreement.

§ 12.1 Initial Decision Maker

§ 12.1.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201–2017. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 12.1.2 of this Agreement shall not apply.

§ 12.1.2 The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017 for Claims arising from or relating to the Construction Manager's Construction Phase services.
(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

§ 12.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by mediation pursuant to and set forth in Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:
(Check the appropriate box.)

(Paragraph deleted)

[X] Litigation in a court of competent jurisdiction

(Paragraphs deleted)

If the Owner and Construction Manager do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

§ 12.2.1 The Parties expressly waive any and all right to trial by jury in any action filed by either Party or parties.

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination Prior to Execution of the Guaranteed Maximum Price Amendment

§ 13.1.1 If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner.

§ 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in

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accordance with the terms of this Agreement. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.3 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Article 14 of A201–2017.

§ 13.1.4 In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.5 If the Owner terminates the Contract pursuant to Section 13.1.3 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.4:

.1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;

.2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and

.3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

§ 13.1.6 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

§ 13.1.6.1 If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination not including attorneys' fees.

§ 13.1.6.2 In no event shall the Owner be liable to Construction Manager for anticipated fee or profit for Work not performed.

§ 13.2 Termination or Suspension Following Execution of the Guaranteed Maximum Price Amendment
§ 13.2.1 Termination
The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of AIA Document A201–2017.

§ 13.2.2 Termination by the Owner for Cause
§ 13.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

.1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;

.2 Add the Construction Manager's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager' Fee is stated as a fixed sum in that Section, an

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amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;

.3 Subtract the aggregate of previous payments made by the Owner; and

.4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

§ 13.2.2.2 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

§ 13.2.3 Termination by the Owner for Convenience

If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Construction Manager a termination fee as follows:

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

The amount of Construction Manager's fee earned as of the date of termination, the cost of the Work completed up to date of completion, and reasonable termination expenses but not overhead or profit on uncompleted work.

§ 13.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Guaranteed Maximum Price and Contract Time, if established, shall be increased as provided in Article 14 of AIA Document A201–2017, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 6.1 and 6.3.5 of this Agreement.

ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Terms in this Agreement shall have the same meaning as those in A201–2017. Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 14.2 Successors and Assigns

§ 14.2.1 The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of A201–2017, neither party to the Contract shall assign the Contract as a whole or in part without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 14.2.2 The Owner may, without consent of the Construction Manager, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Construction Manager shall execute all consents reasonably required to facilitate the assignment.

§ 14.3 Insurance and Bonds

§ 14.3.1 Preconstruction Phase

The Construction Manager shall maintain the following insurance for the duration of the Preconstruction Services performed under this Agreement. If any of the requirements set forth below exceed the types and limits the Construction Manager normally maintains, the Owner shall reimburse the Construction Manager for any additional cost.

§ 14.3.1.1 Commercial General Liability with policy limits of not less than three million dollars and zero cents ($ 3,000,000.00) for each occurrence and five million dollars and zero cents ($ 5,000,000.00) in the aggregate for bodily injury and property damage.

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§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than three million dollars and zero cents ($ 3,000,000.00) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 14.3.1.3 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 14.3.1.1 and 14.3.1.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 14.3.1.4 Workers' Compensation at statutory limits as required by Chapter 440 F.S., and Employers Liability with policy limits not less than one million dollars and zero cents ($ 1,000,000.00) each accident, one million dollars and zero cents ($ 1,000,000.00) each employee, and one million dollars and zero cents ($ 1,000,000.00) policy limit.

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than three million dollars and zero cents ($ 3,000,000.00) per claim and three million dollars and zero cents ($ 3,000,000.00) in the aggregate.

§ 14.3.1.6 Other Insurance
(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)

Coverage	Limits
See Exhibits "B" and "B-1".	

§ 14.3.1.7 Additional Insured Obligations. To the fullest extent permitted by law, the Construction Manager shall cause the primary and excess or umbrella polices for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 14.3.1.8 The Construction Manager shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 14.3.1.

§ 14.3.2 Construction Phase
After execution of the Guaranteed Maximum Price Amendment, the Owner and the Construction Manager shall purchase and maintain insurance as set forth in Exhibit "B", Insurance and Bonds, and elsewhere in the Contract Documents.

(Paragraph deleted)
§ 14.4
(Paragraphs deleted)
During the Construction Phase, Construction Manager shall provide insurance as required in Exhibit "B" and Exhibit "B-1".

§ 14.5 Other provisions:

The parties expressly agree to opt out of the provisions of Section 558.05, Florida Statutes. The provisions of Chapter 558, Florida Statutes shall not apply to this Agreement.

No person or entity shall be deemed to be a third party beneficiary of any provisions of the Contract, nor shall any provisions thereof be interpreted to create a right of action or otherwise permit anyone not a signatory party to the Contract to maintain an action for personal injury or property damage.

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ARTICLE 15 SCOPE OF THE AGREEMENT

§ 15.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 15.2 The following documents comprise the Agreement:

.1 AIA Document A133™–2019 (as modified by Owner), Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

.2 AIA Document A133™-2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed

.3 AIA Document A133™–2019, Exhibit B, Insurance and Bonds

.4 AIA Document A201™–2017, General Conditions of the Contract for Construction (as modified by Owner), Exhibit "C"

.5

(Paragraphs deleted)

Other documents, if any, listed below:

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

Exhibit "A" AIA Document A133™-2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed by the Parties

Exhibit "B" AIA Document A133™–2019, Exhibit B, Insurance and Bonds

Exhibit "B-1" Owner's Insurance and Bond Requirements for Construction Manager

Exhibit "C" AIA Document A201™–2017, General Conditions of the Contract for Construction (as modified by Owner)

Exhibit "D" Preconstruction Phase – Scope of Services

Exhibit "E" Waiver and Partial Releases, Final Waivers and Releases of Lien, Construction Manager's Affidavit of Outstanding Accounts, Construction Manager's Final Affidavit

Exhibit "F" Contractor's Completion Checklist

Exhibit "G" Application for Payment

Exhibit "H" Payment and Performance Bond

SIGNATURES

This Agreement may be executed in counterparts, each of which shall constitute an original and all of which shall constitute one and the same instrument. In the event the Parties hereto execute and deliver this Agreement by signing and delivery using facsimile or e-mail transmission, such signing and delivery of facsimile signatures shall be effective and shall have the same effect as if original signatures were delivered. The Parties each stipulate and agree that for the purposes of validity, enforceability, and admissibility, this Agreement may be signed electronically and that a photocopy, facsimile, scanned Portable Document Format ("PDF") image or image generated through the electronic DocuSign© program shall have the same force and effect as an original signature. If both Parties are unable to sign electronically, each Party shall execute at least two (2) originals in blue ink, of which one is to be delivered to the Architect and the remainder to the Owner.

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

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CITY OF PORT ORANGE	WHARTON-SMITH, INC.
OWNER *(Signature)*	**CONSTRUCTION MANAGER** *(Signature)*
(Printed name and title)	*(Printed name and title)*
WITNESS *(Signature)*	**WITNESS** *(Signature)*
(Printed name and title)	*(Printed name and title)*

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Additions and Deletions Report for

AIA® Document A133® – 2019

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

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PAGE 1

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

...

City of Port Orange
1000 City Center Circle
Port Orange, FL 32129

...

Wharton-Smith, Inc.
750 Monroe Road
Sanford, FL 32771

...

Public Utilities Field Operations Facility
City of Port Orange

...

Schenkel Schultz, Inc.
200 East Robinson Street, Suite 300
Orlando, FL 32801

PAGE 2

EXHIBITS

~~EXHIBIT~~ **A GUARANTEED MAXIMUM PRICE AMENDMENT**

~~**EXHIBIT B INSURANCE AND BONDS**~~**B INSURANCE AND BONDS**

B-1 OWNER'S INSURANCE AND BOND REQUIREMENTS FOR CONSTRUCTION MANAGER

C AIA DOCUMENT A201™–2017, GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION (AS MODIFIED BY OWNER)

D PRECONSTRUCTION PHASE – SCOPE OF SERVICES

E WAIVER AND PARTIAL RELEASES, FINAL WAIVERS AND RELEASES OF LIEN, CONSTRUCTION MANAGER'S AFFIDAVIT OF OUTSTANDING ACCOUNTS, CONSTRUCTION MANAGER'S FINAL AFFIDAVIT

F CONTRACTOR'S COMPLETION CHECKLIST

G APPLICATION FOR PAYMENT

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PAGE 3

Provide services described in the Preconstruction Phase Scope of Services attached hereto as Exhibit "D" related to the construction of the City of Port Orange Public Utilities Field Operations Facility that will consist of a 11,500 SF Administration Building, a 12,300 SF Warehouse, and all associated site improvements.

...

See § 1.1 above.

...

Eight Million Five Hundred Thousand Dollars and Zero Cents ($8,500,00.00).

...

Pre-Construction Services Start Date: The Date of this Agreement

Construction Drawings shall be completed by: Four (4) months from the date hereof

Pre-Construction Services End Date: Four (4) months from the date hereof

.2 Construction commencement date: The date of execution of the Guaranteed Maximum Price Amendment by both Parties (attached hereto as Exhibit "A").

.3 Substantial Completion date or dates: To be provided and agreed upon by both Parties in the Guaranteed Maximum Price Amendment (attached hereto as Exhibit "A").

~~**.4** Other milestone dates:~~

.4 Other milestone dates: To be provided and agreed upon by both Parties in the Guaranteed Maximum Price Amendment (attached hereto as Exhibit "A").

...

NOT APPLICABLE

...

NOT APPLICABLE

§ 1.1.6.1 ~~If the Owner identifies a Sustainable Objective, the Owner and Construction Manager shall complete and incorporate AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E234–2019 is incorporated into this agreement, the Owner and Construction Manager shall incorporate the completed E234–2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.~~(Intentionally omitted.)

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...

Junos Reed, City Engineer

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City of Port Orange
1000 City Center Circle
Port Orange, FL 32129
Phone: 386-506-5757
Email: jureed@port-orange.org

...

NOT APPLICABLE

§ 1.1.10 The Owner ~~shall retain the following consultants and contractors:~~may retain consultants and contractors for each Project.

...

NOT APPLICABLE

...

NOT APPLICABLE

...

NOT APPLICABLE

...

Gay Geiger
Schenkel Schultz, Inc.
200 East Robinson Street, Suite 300
Orlando, FL 32801
Phone: 407-872-3322
Email: ggeiger@schenkelshultz.com

...

James De LaRosa, Project Executive
Wharton-Smith, Inc.
750 Monroe Road
Sanford, FL 32771
Phone: 689-267-8629
Email: jdelarosa@whartonsmith.com
PAGE 5

NOT APPLICABLE

...

The Construction Manager shall seek to develop subcontractor interest in the Project and shall furnish to the Owner and Architect for their information a list of possible subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principal portion of the Work. The Architect will promptly reply in writing to the Construction Manager if the Architect or Owner know of any objection to such subcontractor or supplier. The receipt of such list shall not require the Owner or Architect to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the right of the Owner or Architect to object to or reject any proposed subcontractor or supplier within (5) business days of receipt of Construction Manager's list of possible subcontractors. Provided, however, if Owner or Architect object to a subcontractor or supplier, Owner shall be responsible to compensate Construction Manager should there be additional

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cost associated with utilizing Owner or Architect's preferred subcontractor or supplier. Further, Owner or Architect shall not object to a subcontractor or supplier due to the price of the work.

...

See Preconstruction Phase – Scope of Services attached hereto as Exhibit "D".

...

The Contract Documents consist of this Agreement, ~~Conditions of the Contract (General, Supplementary and other~~ the Guaranteed Maximum Price Amendment(s) (attached hereto as Exhibit "A"), the Insurance and Bonds (attached hereto as Exhibit "B" and Exhibit "B-1"), AIA Document A201-2017 General Conditions (as modified by Owner and attached hereto as Exhibit "C") Conditions of the Contract (General Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in § 15.2 of this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.
PAGE 6

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™–2017, General Conditions of the Contract for ~~Construction,~~ Construction as modified by Owner (hereinafter "A201-2017"), shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

...

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project. The standard of care for the professional services performed by the Construction Manager and its Sub-Consultants pursuant to this Agreement shall be the care and skill ordinarily used by members of the same profession practicing under similar conditions at the same time and locality of the Project.

...

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The recommendations and advice of the Construction Manager concerning design alternatives shall be subject to the review and approval of the Owner. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

...

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§ 3.1.3.3 ~~The Construction Manager shall assist the Owner and Architect in establishing written protocols for the development, use, transmission, reliance, and exchange of digital data, including building information models for the Project.~~(Intentionally omitted.)

PAGE 7

The Construction ~~Manager, in consultation with the Architect, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction.~~ Manager shall make recommendations to the Owner and Architect regarding the phased construction of the Work, if such phased construction is appropriate for the Project. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues.

...

§ 3.1.6.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and ~~update, at~~ updateat appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action.

§ 3.1.6.3 If the Architect is providing cost estimating services ~~as a Supplemental Service,~~ and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Construction Manager and the Architect shall work together to reconcile the cost estimates.

...

§ 3.1.9 The Construction Manager shall provide a staffing plan for Preconstruction Phase services at the Owner's request for the Owner's review and approval.

§ 3.1.10 ~~If the Owner identified a Sustainable Objective in Article 1, the Construction Manager shall fulfill its Preconstruction Phase responsibilities as required in AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.~~

...

The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions ~~acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.~~as set forth in Section 3.4.5 of the A201-2017 General Conditions.

PAGE 8

NOT APPLICABLE

...

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction

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Manager's Fee described in Section 6.1.2. If the Owner does not accept the Construction Manager's Guaranteed Maximum Price proposal (Exhibit "A") then the Construction Manager shall have no obligation or right to proceed with construction. Owner retains the right to proceed with construction with another construction manager or contractor.

...

.2 A list of allowances and a statement of their basis;

.3 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2;

~~**.3**~~ **.4** A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee; and

~~**.4**~~ **.5** The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is ~~based; and~~based

...

§ 3.2.4 ~~In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order.~~**Contingency**

§ 3.2.4.1 Construction Manager's Contingency

The estimated Cost of Work shall include the Construction Manager's Contingency, an amount mutually agreeable between the Construction Manager and Owner, to cover costs arising under Subparagraph 3.2.2, and other costs which are properly reimbursable as Costs of Work, but not the basis for a Change Order. The Construction Manager's Contingency is for the exclusive use of the Construction Manager while executing the construction Work to address unexpected circumstances, force majeure impacts, and to correct unanticipated circumstances which are not otherwise reimbursable and do not constitute a change in the Work, as defined in this Agreement. The Construction Manager's Contingency shall only be adjusted by a written Change Order; and it shall be clearly noted on the Change Order that costs are allocated against the Construction Manager's Contingency. The Construction Manager shall maintain a Contingency tracking log updated each time Construction Manager's contingency funds are used.

§ 3.2.4.2 Buyout Contingency

It is expected that some cost savings between the Construction Manager's Guaranteed Maximum Price (GMP) and the actual Cost of Work may be generated as a result of the final bidding and negotiations of subcontracts. Any cost savings generated as a result of the final bidding or negotiation of subcontracts, and actual expenses by the Construction Manager, which are less than was estimated in establishing the GMP shall be retained by the Owner as the Buyout Contingency. The negotiated fee and general conditions will not be adjusted as result of these savings. The Buyout Contingency shall only be adjusted by means of the Owner issuing a written Change Order and it shall be clearly noted on the Change Order that costs are allocated against the Buyout Contingency. The Construction Manager shall maintain a Buyout Contingency tracking log updated each time Buyout contingency funds are used. The Buyout Contingency remains in the Project until final completion where remaining funds shall be returned to the Owner.

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§ 3.2.6 ~~If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager.~~ Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price ~~Amendment~~ Amendment(s) amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price ~~Amendment~~ Amendment(s) shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based. The Guaranteed Maximum Price shall be subject to additions and deductions by a change in the Work as provided in the Contract Documents, and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

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§ 3.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of the Guaranteed Maximum Price ~~Amendment,~~ Amendment(s), unless the Owner provides prior written authorization for such costs.

§ 3.2.8 The Owner shall authorize ~~preparation of~~ written revisions to the Contract Documents that incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price ~~Amendment.~~ Amendment(s). The Owner shall ~~promptly~~ furnish such revised Contract Documents to the Construction Manager. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price ~~Amendment and the revised Contract Documents.~~Amendment(s) and the revised Contract Documents and any increase in the Guaranteed Maximum Price, if any.

...

§ 3.3.1.2 The Construction Phase shall commence ~~upon the Owner's execution of the Guaranteed Maximum Price Amendment or, prior to acceptance of the Guaranteed Maximum Price proposal, by written agreement of the parties.~~ as mutually agreed to by the Owner and Construction Manager . The written agreement shall set forth a description of the Work to be performed by the Construction Manager, and any insurance and bond requirements for Work performed prior to execution of the Guaranteed Maximum Price ~~Amendment.~~Amendment(s).

PAGE 10

The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect, and shall provide this information in its monthly ~~reports to the Owner and Architect,~~ reports, and payment applications to the Owner and Architect and make access available via Procore, in accordance with Section 3.3.2.3 above.

§ 3.4 CONSTRUCTION MANAGER'S KEY PERSONNEL

The Construction Manager shall provide accounting of Construction Manager's Consultants, Design Professionals, and Suppliers as set forth in Article A.5 Construction Manager's Key Personnel, of the Guaranteed Maximum Price Amendment(s), Exhibit "A" via the Certificates of Payment Application.

...

§ 4.1.2 ~~Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. After execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request such information as set forth in A201-2017 Section 2.2.~~(Intentionally omitted.)

§ 4.1.3 The Owner shall establish and may periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

...

§ 4.1.4.1 The Owner shall furnish tests, inspections, and reports, required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous ~~materials.~~materials with reasonable promptness.

§ 4.1.4.2 The Owner shall furnish surveys with reasonable promptness describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both

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public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 4.1.4.3 The ~~Owner, when such services are requested, shall~~ Owner may furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.
PAGE 11

§ 4.1.6 ~~If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.~~

...

The ~~Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201–2017, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.~~Owner's Representative is named in § 1.1.8 or designee. The Owner's Representative is authorized to act on Owner's behalf as provided herein and in applicable law, regulation, or ordinance. The Owner's Representative has the authority to reject unsatisfactory work and to stop the work, if necessary, to insure its proper execution. Failure of the Owner's Representative, in any one or more instances, to insist on strict performance of any of the terms of this Contract or to exercise any option herein conferred shall not be construed as a waiver or relinquishment for the future insistence of any such terms or options.

...

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA ~~Document B133™–2019,~~ Standard Form of Agreement Between Owner and ~~Architect, Construction Manager as Constructor Edition, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager with a copy of the scope of services in the executed agreement between the Owner and the Architect, and any further modifications to the Architect's scope of services in the agreement.~~Architect.

...

Preconstruction Services will be set at a stipulated sum of One Hundred Sixteen Thousand Nine Hundred Thirty-Two Dollars and Zero Cents ($116,932.00).

...

WSI Wage Rate - 2024

~~**Individual or Position** **Rate**~~

Position	**Name of Person Filing Role**	**Total Rate**
Project Director	To Be Determined	$161.00
CMAR Manager	To Be Determined	$169.00
Executive Management	James De La Rosa	$169.00
Senior Project Manager	Keri Strawder	$151.00
Project Manager	To Be Determined	$130.00
Assistant Project Manager	To Be Determined	$112.00
Project Engineer	To Be Determined	$84.00
Project Engineer – Intern	To Be Determined	$51.00
General Superintendent	Tim Moore	$163.00
Senior Superintendent	To Be Determined	$152.00

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Superintendent	To Be Determined	$131.00
Assistant Superintendent	To Be Determined	$118.00
Field Engineer	To Be Determined	$89.00
Administrative Assistant	Jennifer Butcher	$83.00
Safety Manager	Travis Chaput	$118.00
Project Accountant	To Be Determined	$105.00

PAGE 12

§ 5.1.3 ~~If the Preconstruction Phase services covered by this Agreement have not been completed within ( ) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.~~Compensation for Preconstruction Phase Services shall be equitably adjusted if such services extend beyond one hundred twenty (120) calendar days from the date of this Agreement or if the originally contemplated scope of services is significantly modified.

...

§ 5.2.2 Payments are due and payable thirty (30) days upon presentation of the Construction Manager's invoice. ~~Amounts unpaid ( ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.~~

- Proposed Start Date: Pre-Construction Services: August 7, 2024

~~(Insert rate of monthly or annual interest agreed upon.)~~

- Proposed End Date : Pre-Construction Services: October 2024 (estimated)

~~%~~

...

§ 6.1.1 ~~The~~ If the Owner accepts the Construction Manager's Contract Sum for construction and executes Exhibit "A", then the Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract after execution of the Guaranteed Maximum Price ~~Amendment.~~ Amendment(s). The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager's Fee.

...

Eight and a half percent (8.5%) of the Cost of the Work.

...

In the event of Owner directed changes, the Construction Manager's Fee shall be eight and a half percent (8.5%) of the increase in the Cost of Work for the changes.

...

Subcontractors increased costs of work for Owner directed changes shall include five percent (5%) overhead and five percent (5%) profit.

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed ~~percent (%) of~~ the standard rental rate paid at the place of the Project.

...

The Owner and Construction Manager acknowledge and agree that it would be difficult to determine, with any reasonable degree of certainty, the amount of damages which the Owner would sustain in the event that the Construction Manager fails to attain Substantial Completion of the Work on or before the date established. The Construction Manager acknowledges and understands that failure to fully complete the Work within the aforesaid time periods will result in substantial loss and damages suffered by the Owner. Therefore, if the Construction Manager shall neglect, fail, or refuse to complete the Work within the Contract Time, or any proper extension thereof granted by the Owner in a properly executed Change Order, the Construction Manager agrees to pay the Owner liquidated damages

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in the amount(s) of $500 for each and every calendar day that the Construction Manager shall be in default for untimely completion after expiration of the Contract Time for Substantial Completion. However, liquidated damages shall be limited to and not exceed the fee earned by the Construction Manager in order for the liquidated damages to not be deemed a penalty. Such payments shall constitute liquidated damages, not a penalty, and shall be cumulative, it being understood and agreed by the Construction Manager that the Owner's actual damages in the event of a delay in Substantial Completion would be difficult, if not impossible, to determine. Time is of the essence of this Agreement. Any such liquidated damages may, at the option of the Owner, be withheld and deducted from any unpaid portion of the Guaranteed Maximum Price. Liquidated damages shall be the sole and exclusive remedy for delay.

PAGE 13

NOT APPLICABLE

...

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price ~~Amendment,~~ Amendment(s), subject to additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

...

§ 6.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Construction Manager may be entitled to an equitable adjustment in the Contract Time and/or Guaranteed Maximum Price as a result of changes in the Work.

PAGE 14

§ 7.2.2 ~~Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site and performing Work, with the Owner's prior approval.~~(Intentionally omitted.)

§ 7.2.2.1 ~~Wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:~~
~~*(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)*~~

(Intentionally Omitted.)

...

§ 7.3.1 The Construction Manager shall provide the Owner with a copy of each subcontractor's executed contract.

PAGE 15

§ 7.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval. Off-site storage shall be in a bonded and insured facility approved by the Owner.

...

§ 7.6.1.1 Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval. Coverages and costs must be disclosed in the Guaranteed Maximum Price Proposal and accepted by the Owner in the Guaranteed Maximum Price Amendment(s).

...

§ 7.6.5.1 The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Construction Manager resulting

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from such suits or claims, and payments of settlements made with the Owner's ~~consent, unless the Construction Manager had reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Construction Manager failed to promptly furnish such information to the Architect as required by Article 3 of AIA Document A201–2017.~~ consent. The costs of legal defenses, judgments, and settlements shall not be included in the Cost of the Work used to calculate the Construction Manager's Fee or subject to the Guaranteed Maximum Price.

...

§ 7.6.8 ~~Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.~~(Intentionally omitted.)

§ 7.6.9 ~~Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.~~(Intentionally omitted.)

§ 7.6.10 ~~Expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work, with the Owner's prior approval.~~(Intentionally omitted.)

§ 7.6.11 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling outside the Sanford area in discharge of duties connected with the Work.

PAGE 16

§ 7.7.3 ~~Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Construction Manager, and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.~~Notwithstanding anything herein to the contrary, no costs shall be paid by the Owner to the Construction Manager for any expenses made necessary to correct defective workmanship or to correct any Work not in conformance with the Contract Documents or to correct any deficiency or damage caused by negligent acts by the Construction Manager as determined by the Architect.

...

.8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; ~~and~~

.9 Costs for services incurred during the Preconstruction ~~Phase.~~Phase;

.10 Rental costs of machinery and equipment, except as specifically provided in Section 7.5.2.; and

.11 Legal costs of whatever nature.

PAGE 17

§ 9.1 The Construction Manager shall obtain bids on all of the Work, including obtaining third party bids on any work the Construction Manager desires to self-perform. Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. ~~The~~ Upon request by Owner, Construction Manager shall deliver such bids ~~to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept.~~ and bid tabulations to the Architect and Owner within a reasonable period of time. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or ~~supplier.~~ supplier within (5) five business days. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction

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Manager has reasonable objection. Copies of executed contracts, subcontracts and supplier contracts shall be provided by the Construction Manager to the Owner within a reasonable time period.

...

§ 11.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager, and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum, to the Construction Manager, as provided below and elsewhere in the Contract ~~Documents.~~Documents, and in conformance with Florida's Prompt Payment Statutes.

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

(Intentionally omitted.)

§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the 25th day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the 25th day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than ~~(___)~~ thirty (30) days after the Architect receives the Application for Payment.

PAGE 18

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit ~~payrolls, petty cash accounts,~~ receipted invoices or invoices with check vouchers attached, each subcontractor's application for payment and or invoice, affidavits, lien waivers and such other documents required by Article 9 of A201-2017 and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction ~~Manager, plus payrolls for the period covered by the present Application for Payment,~~ Manager less that portion of the progress payments attributable to the Construction Manager's Fee.

...

§ 11.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect and the Owner may require. Submission of the schedule of values shall be a representation by the Construction Manager that the values scheduled therein are accurate and for subcontracted work, match the applicable subcontract amounts. Any inaccuracies shall be corrected immediately by the Construction Manager so as to maintain the accuracy of the schedule of values. The schedule of values shall be used as a basis for reviewing and processing the Construction Manager's Applications for Payment.

...

.2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and

.3 ~~That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and~~

.4 ~~—~~The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

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Ten percent (10%) until fifty percent (50%) completion of the work. After fifty percent (50%) completion of the work, five percent (5%) retainage shall be withheld from each subsequent progress payment.

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...

Insurance, bonds, and general conditions.

...

See § 11.1.8.1 above.

...

§ 11.1.11 The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to ~~Subcontractors, and the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.~~Subcontractors.

PAGE 20

.1 the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work reported on the Owner provided Certificate of Substantial Completion, and as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;

.2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment;

.3 the Construction Manager's application for Final Payment has been certified by the Architect and submitted to the Owner with all warranties, guarantees, close out documents including Consent of Surety to Final Payment (, and receipt by Owner of Contractor's Final Payment Affidavit, Conditional Final Release of Lien upon receipt of final payment Construction Manager shall submit Unconditional Final Release of Lien, manufacturers' manuals of operation and any other items required under the Contract Documents. Complete as-built drawings in paper document and digital PDF format (scan document file acceptable) submitted to and accepted by the Architect for production of the final Project record documents; and

~~.3~~ **.4** a final Certificate for Payment has been issued by the Architect in accordance with Section ~~11.2.2.2.~~11.2.2.2; and

.5 in accordance with applicable Florida Prompt Payment Statutes

...

§ 11.2.2.4 The amount of the final payment shall be calculated as follows:

.1 Take the sum of the Cost of the Work substantiated by the Construction Manager's final accounting and the Construction Manager's Fee, but not more than the Guaranteed Maximum Price.

.2 Subtract amounts, if any, for which the Architect withholds, in whole or in part, a final Certificate for Payment as provided in Section 9.5.1 of A201-2017 or other provisions of the Contract Documents.

.3 Subtract the aggregate of previous payments made by the Owner.

.4 If the aggregate of previous payments made by the Owner exceeds the amount due the Construction Manager, the Construction Manager shall reimburse the difference to the Owner.

PAGE 21

§ 11.2.4 If, subsequent to final payment, and at the Owner's request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, and not excluded by Section 7.9, ~~to correct defective or nonconforming Work,~~ the Owner shall reimburse the Construction Manager for such ~~costs, and the Construction Manager's Fee~~ costs applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. ~~If adjustments to the Contract Sum are provided for in Section 6.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 11.2.4 in determining the net amount to be paid by the Owner to the Construction Manager.~~

...

~~%~~ 4.5% annually

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...

The parties expressly agree to opt out of the provisions of Section 558.05, Florida Statutes. The provisions of Chapter 558, Florida Statutes shall not apply to this Agreement.

...

§ 12.1.2 The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017 for Claims arising from or relating to the Construction Manager's Construction Phase ~~services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.~~services.

...

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

...

~~[–] Arbitration pursuant to Article 15 of AIA Document A201–2017~~

[**X**] Litigation in a court of competent jurisdiction

~~[–] Other: *(Specify)*~~

If the Owner and Construction Manager do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

§ 12.2.1 The Parties expressly waive any and all right to trial by jury in any action filed by either Party or parties.
PAGE 22

§ 13.1.6.1 If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such ~~termination.~~termination not including attorneys' fees.

§ 13.1.6.2 In no event shall the Owner be liable to Construction Manager for anticipated fee or profit for Work not performed.
PAGE 23

The amount of Construction Manager's fee earned as of the date of termination, the cost of the Work completed up to date of completion, and reasonable termination expenses but not overhead or profit on uncompleted work.

...

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Guaranteed Maximum Price and Contract ~~Time~~ Time, if established, shall be increased as provided in Article 14 of

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AIA Document A201–2017, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 6.1 and 6.3.5 of this Agreement.

...

§ 14.2.1 The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of A201–2017, neither party to the Contract shall assign the Contract as a whole or in part without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

...

§ 14.3.1.1 Commercial General Liability with policy limits of not less than three million dollars and zero cents ($ 3,000,000.00) for each occurrence and five million dollars and zero cents ($ 5,000,000.00) in the aggregate for bodily injury and property damage.

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than three million dollars and zero cents ($ 3,000,000.00) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

PAGE 24

§ 14.3.1.4 Workers' Compensation at statutory limits as required by Chapter 440 F.S., and Employers Liability with policy limits not less than one million dollars and zero cents ($ 1,000,000.00) each accident, one million dollars and zero cents ($ 1,000,000.00) each employee, and one million dollars and zero cents ($ 1,000,000.00) policy limit.

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than three million dollars and zero cents ($ 3,000,000.00) per claim and three million dollars and zero cents ($ 3,000,000.00) in the aggregate.

...

See Exhibits "B" and "B-1".

§ 14.3.1.7 Additional Insured Obligations. To the fullest extent permitted by law, the Construction Manager shall cause the primary and excess or umbrella ~~policies~~ polices for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

...

After execution of the Guaranteed Maximum Price Amendment, the Owner and the Construction Manager shall purchase and maintain insurance as set forth in ~~AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, Exhibit B,~~ Exhibit "B", Insurance and Bonds, and elsewhere in the Contract Documents.

~~**§ 14.3.2.1** The Construction Manager shall provide bonds as set forth in AIA Document A133™–2019 Exhibit B, and elsewhere in the Contract Documents.~~

§ 14.4 ~~Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with a building information modeling exhibit, if completed, or as otherwise set forth below:~~

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~~*(If other than in accordance with a building information modeling exhibit, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)*~~

During the Construction Phase, Construction Manager shall provide insurance as required in Exhibit "B" and Exhibit "B-1".

...

The parties expressly agree to opt out of the provisions of Section 558.05, Florida Statutes. The provisions of Chapter 558, Florida Statutes shall not apply to this Agreement.

No person or entity shall be deemed to be a third party beneficiary of any provisions of the Contract, nor shall any provisions thereof be interpreted to create a right of action or otherwise permit anyone not a signatory party to the Contract to maintain an action for personal injury or property damage.

PAGE 25

.1 AIA Document ~~A133™–2019,~~ A133™–2019 (as modified by Owner), Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

...

.4 AIA Document A201™–2017, General Conditions of the Contract for Construction (as modified by Owner), Exhibit "C"

.5 ~~Building Information Modeling Exhibit, if completed:~~

~~**.6** Other Exhibits:~~
~~*(Check all boxes that apply.)*~~

~~[ ] AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, dated as indicated below:~~
~~*(Insert the date of the E234-2019 incorporated into this Agreement.)*~~

~~_____~~

~~[ ] Supplementary and other Conditions of the Contract:~~

~~Document~~	~~Title~~	~~Date~~	~~Pages~~

~~**.7** Other~~ documents, if any, listed below:

...

Exhibit "A" AIA Document A133™-2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed by the Parties

Exhibit "B" AIA Document A133™–2019, Exhibit B, Insurance and Bonds

Exhibit "B-1" Owner's Insurance and Bond Requirements for Construction Manager

Exhibit "C" AIA Document A201™–2017, General Conditions of the Contract for Construction (as modified by Owner)

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Exhibit "D" Preconstruction Phase – Scope of Services

Exhibit "E" Waiver and Partial Releases, Final Waivers and Releases of Lien, Construction Manager's Affidavit of Outstanding Accounts, Construction Manager's Final Affidavit

Exhibit "F" Contractor's Completion Checklist

Exhibit "G" Application for Payment

Exhibit "H" Payment and Performance Bond

SIGNATURES

This Agreement may be executed in counterparts, each of which shall constitute an original and all of which shall constitute one and the same instrument. In the event the Parties hereto execute and deliver this Agreement by signing and delivery using facsimile or e-mail transmission, such signing and delivery of facsimile signatures shall be effective and shall have the same effect as if original signatures were delivered. The Parties each stipulate and agree that for the purposes of validity, enforceability, and admissibility, this Agreement may be signed electronically and that a photocopy, facsimile, scanned Portable Document Format ("PDF") image or image generated through the electronic DocuSign© program shall have the same force and effect as an original signature. If both Parties are unable to sign electronically, each Party shall execute at least two (2) originals in blue ink, of which one is to be delivered to the Architect and the remainder to the Owner.

...

CITY OF PORT ORANGE **WHARTON-SMITH, INC.**

PAGE 26

WITNESS *(Signature)* **WITNESS** *(Signature)*

(Printed name and title) *(Printed name and title)*

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Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, S. LARUE WILLIAMS, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 13:46:34 ET on 08/02/2024 under Order No. 2114446244 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ – 2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, other than those additions and deletions shown in the associated Additions and Deletions Report.

_____

(Signed)

_____

(Title)

_____

(Dated)

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Wharton-Smith, Inc.
CONSTRUCTION GROUP

May 28, 2024

Mr. Junos Reed, P.E.
City Engineer
City of Port Orange
1395 Dunlawton Avenue
Port Orange, FL 32129

Subject: RFSQ #23-14
City of Port Orange Public Utilities Operations Facility – Field Services
Phase 1 CMAR Preconstruction Services Proposal

Dear Mr. Reed:

Wharton-Smith, Inc. offers our proposal to provide CMAR preconstruction services for the City of Port Orange Public Utilities Operations Facility – Field Services project. The general summary for the scope of work includes the following:

- Preconstruction Management, Coordination, and Meetings
- Preliminary Cost Estimates
- Design and Constructability Review
- Value Engineering
- Schedule Development
- Bidding, Procurement, and GMP Development

Our proposed lump sum fee for the preconstruction services: $116,932. Additional back-up and detail are provided in the attachments to this letter.

We appreciate the opportunity to provide our services and look forward to working with the City of Port Orange on a successful project.

If you have any questions or comments, please contact me directly.

Regards,

James De La Rosa
Project Executive
Wharton-Smith, Inc.

PRECONSTRUCTION PHASE PROPOSAL

CITY OF PORT ORANGE
PUBLIC UTILITIES FIELD OPERATIONS FACILITY – PHASE 1 PRECONSTRUCTION

PHASE 1: PRECONSTRUCTION SCOPE OF SERVICES

The following narrative is to provide detail to Phase 1 Preconstruction Services for the Public Utilities Field Operations Facility.

The duration of Phase 1 is assumed to be approximately 4 months for design and GMP development which is inclusive of preconstruction services provided by Wharton-Smith, and 2 months for production and negotiation of the final Guaranteed Maximum Price (GMP). Please note that the 2 months allotted for the GMP does not include the time required for the City's approval and contract amendment.

Generally:

Attend general progress review and coordination meetings with Owner and the project team.

Attend periodic design meetings to provide consultation on aspects of the design and construction that will impact the budget, schedule, and quality of the completed Work.

1. CMAR will work with Owner to develop the optimum scope and quality of Work to meet Owner's budget. Such work will consist of considering options and alternates with scope and quality adjustments as determined by Owner. CMAR will assess cost and schedule impact of these options and alternates.

2. Consult with Owner regarding site use and improvements, and the selection of materials, building systems, and equipment.

3. Provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost including estimates of alternative designs or materials, preliminary budgets and possible opportunities for savings.

4. Provide recommendations on construction schedule for opportunities for time savings.

Provide input to the Owner regarding current construction market, bidding climate, status of key Subcontractor and Supplier markets, and other local economic conditions. Develop Subcontractor and Supplier interest in the Work, consistent with Legal Requirements. Furnish Owner a list of suggested Subcontractors and Suppliers, from whom bids will be requested for each principal portion of the Work. Submission of this list is for information and discussion purposes only and not for prequalification.

In conjunction with the Owner, identify the appropriate early work packages including procurement of long-lead time items and equipment and other Work required to meet the schedule for the Owner.

In conjunction with the Owner, identify the appropriate Work packages from the Contract Documents for distribution to prospective bidders for providing all elements of Work not included in the General Conditions. Appropriate Work packages shall mean scopes of work that will maximize the competition for those Work packages. Work packages will also be identified with appropriate scopes of work should the Owner have any goals for involvement of the local and/or small contracting communities.

The following breakdown lists the anticipated tasks and expectations considered when producing the preconstruction proposal. Any work outside of this scope of work that is requested of Wharton-Smith by the Owner, shall be submitted in the form of a 'Request for Quotation' for review and approval prior to such work taking place.

Task 1 Project Coordination

1.1 Project Management & Administration – Wharton-Smith provides overall project management for the preconstruction phase. This includes budget control, schedule control, quality planning, safety planning, subcontractor management, and coordination with the City and the design consultant.

1.2 Project Kickoff Meeting / Team Chartering Workshop – Wharton-Smith staff will attend one (1) project kickoff meeting (Team Chartering Workshop) with City of Port Orange (Owner) and Schenkel Shultz (Engineer).

1.3 Design Review Workshops – Wharton-Smith staff will attend one (1) design review workshops with City of Port Orange and Schenkel Shultz. These meetings will be workshop style meetings to review drawings and specifications at the 100% design submittals.

1.4 Interim Design Progress Meetings – Wharton-Smith staff will attend progress meetings with City of Port Orange and Schenkel Shultz as necessary to review design progress, action items, and other outstanding items.

1.5 Cost Estimate and VE Workshops – Wharton-Smith will conduct cost estimate workshops at each design phase to review the current cost model and maintain project budget. This may be handled in a conference call, or may be in person, depending on the status of the project.

1.6 Value Engineering Workshops – Wharton-Smith will conduct value engineering workshops at each design phase to provide input on potential cost savings and to review the overall design and O&M impact of those decisions. This may be handled in a conference call, or may be in person, depending on the status of the project.

1.7 Site Visits & Investigation – Wharton-Smith will perform site visits to investigate existing conditions, review spatial constraints, evaluate structure placement, develop ingress & egress

plan during construction, and analyze site conditions for development of site-specific safety and quality plans. Wharton-Smith will provide final reports of encountered conditions to the City.

1.8 Bidding Workshop – In conjunction with the design engineer, Wharton-Smith staff will coordinate a meeting will all applicable City Stakeholders to review the bidders lists, outline the bidding process, and understand all requirements to remain compliant with Local, State, Federal, and Funding source requirements.

1.9 GMP Review Workshop – Upon completion of the bidding phase, but prior to commission approval, Wharton-Smith will meet with the City to present a final GMP, reviewing all project specific clarifications and to present all final costs. Contingencies and allowances will be reviewed, comparing to the presented risk register.

Task 2 Preliminary Cost Estimates

2.1 60% Cost Estimate – Wharton-Smith preconstruction staff will perform detailed takeoffs (based on drawing concepts) on all construction trades such as site work, concrete, utilities, mechanical, building, finishes, etc. A full cost estimate book will be provided showing all material, labor, and equipment take-offs and any subcontractor cost estimates.

Task 3 Design Review and Value Engineering

3.1 100% Submittal Constructability Review & Value Engineering (VE) – Wharton-Smith will perform detailed design and constructability review to identify changes, conflicts, constructability concerns, spatial concerns, general questions, and overall consistency of the design disciplines (structural, civil, mechanical, etc.). Value engineering options are provided during this phase and throughout the life cycle of the project.

3.2 Issued for Construction/Conformed Documents Review – These costs are for the same items outlined in Task 3.1 but include final review of all documents to ensure that they are conformed and ready for construction.

CMAR shall review in-progress design documents, including at a minimum the documents generally described above in 3.1 through 3.2 and provide input and advice to Owner on constructability, materials and equipment selections, and availability. Provide timely suggestions for modifications to improve:

- Constructability, including sequencing or coordination issues, to enable Work to be completed with a minimum of RFI's and change orders.
- Recommend potential vendors and manufacturers for incorporation into the design.
- Adequacy of details for construction.
- Potential conflicts during construction.
- Ability to coordinate among Subcontractors and Suppliers.
- Coordination between Contract Documents.
- Operability.
- Ability to minimize disruptions to existing operations.

- Ability to complete construction connections to existing facilities or utilities.
- Modifications to facilitative commissioning and start-up and/or performance testing.
- Ability of Owner to operate/maintain the Work in a safe, time and cost-efficient manner when completed.

Task 4 CPM Master Schedule

4.1 Schedule Development and Phasing – At the 100% design phase, Wharton-Smith will develop a baseline Critical Path Method (CPM) schedule using Primavera P6 software based on available information (and providing reasonable allowances for Owner review time and time for permits and approvals from governmental agencies). The schedule will be broken down by phase (design/permitting, procurement, construction, and closeout) and by structure. A detailed schedule sequence will be provided for each structure. All portions of the project will be interrelated by schedule logic so that a true "critical path" is easily identifiable. This schedule will be updated as the project progresses.

4.2 Final Schedule Update at GMP – The schedule developed in Task 4.1 is modified based on the GMP design documents and final construction sequencing is determined. This schedule shall serve as the basis for General Condition's costs in the GMP as well as the contract time required for the duration of construction.

Task 5 Bidding, Procurement, and GMP

5.1 Owner Direct Purchase Plan – In conjunction with City of Port Orange, Wharton-Smith staff will identify and assist City of Port Orange in direct purchase of major equipment and materials for savings on sales tax.

5.2 GMP Bid Package Development – Wharton-Smith will identify and assemble appropriate work packages from GMP design documents to solicit prospective subcontractor and supplier proposals for providing all elements of Work not included in the General Conditions. Work packages will be assembled with appropriate scopes of work should the Owner have any goals for involvement of the local and/or small contracting community. A selected bidders list will be developed and evaluated with the City prior to the bidding phase. Wharton-Smith preconstruction staff will perform detailed takeoffs (based on the GMP design documents) for all self-perform work and facilitate all bidding efforts. A full cost estimate book will be provided showing all material, labor, and equipment take-offs and any subcontractor/supplier cost proposals. This estimate will be submitted as the GMP Proposal for the work.

5.3 Pre-Bid Site Visits – Wharton-Smith will host, coordinate, and manage a pre-bid site visit for all potential bidders for the subcontract and purchase order work packages. Wharton-Smith will take notes and answer questions. Clarifications/addenda will be issued to bidding parties as needed based on the formal bid questions that are received.

5.4 Receive Bids – Wharton-Smith will receive bids throughout the course of an entire day. The bid times may be staggered to ensure our ability to answer questions or provide direction up to the last minute.

5.5 Review Bids and Recommend Award – All of the subcontractor and purchase order work package bids are reviewed for completeness, responsiveness, exceptions, clarifications, and deviations from the contract documents. Value engineering ideas and schedule commitments will also be evaluated. Wharton-Smith will provide a bid tabulation worksheet and make a recommendation for package award based on the best interest of the City. Final decision is made by Owner.

5.6 Final GMP Assembly – All documents that comprise the GMP are assembled into a single tabbed and searchable binder/pdf document. This includes all schedules, bid documents, subcontractor and supplier bids, other backup quotes, general conditions breakdowns, value engineering logs, contingencies and allowances, and other GMP relevant documents that were considered in creation of the GMP.

Task 6 Miscellaneous

6.2 No Services Anticipated or Included

Task 7 Subcontractor Services

7.2 No Services Anticipated or Included

Task 8 Allowances

8.1 No Services Anticipated or Included

Fee Summary: See attached fee summary.

OWNER: **City of Port Orange**
ENGINEER **SchenkelShultz**
PROJECT: **Public Utilities Field Operations**
BUDGET: **$8.5M**
CURRENT DESIGN STATUS: **100%**

				Executive Management		Project Director		General Superintendent		Senior Preconstruction Manager		Director of Estimating		Senior Project Manager		Speciality Estimator		Administrative Assistant		Quality Manager		Safety Manager		Risk Coordinator		Document Specialist		Project Accountant		WHARTON-SMITH PERSONNEL				SUBCONTRACTOR		
					$169.00		$161.00		$163.00	Rate	$151.00	Rate	$169.00	Rate	$151.00	Rate	$130.00	Rate	$83.00	Rate	$151.00	Rate	$118.00	Rate	$113.00	Rate	$83.00	Rate	$105.00							
Item	TASK	QTY	UNIT	HR	$	HR	$	HR	$	HR	$	HR	$	HR	$	HR	$	HR	$	HR	$	HR	$	HR	$	HR	$	HR	$	HR's	LABOR COSTS	MISC. COSTS (PRO-RATED)	SUBTOTAL	SUB	COST	$ TOTALS
TASK 1	**MEETINGS & SITE INVESTIGATION**																																			
1.1	PROJECT MANAGEMENT & ADMINISTRATION	1	EA	0	0	2	322		0	16	2416	2	338	2	302		0	12	996		0		0	8	904	6	498	12	1260	60	7,036	171	7,207		-	7,207
1.2	PROJECT KICKOFF MEETING	3	EA	0	0	2	322		0	4	604	1	169	2	302		0	2	166		0		0		0		0		0	11	1,563	31	1,594		-	1,594
1.3	ATTEND REVIEW DESIGN MILESTONE MEETINGS	1	EA		0		0		0	6	908	2	338	4	604		0	2	166		0		0		0		0		0	14	2,014	40	2,054		-	2,054
1.4	ATTEND INTERIM DESIGN PROGRESS MEETINGS	2	EA		0		0		0	8	1208	4	676	4	604		0	4	332		0		0		0		0		0	20	2,820	57	2,877		-	2,877
1.5	COST ESTIMATE AND VE WORKSHOPS	1	EA		0		0		0	6	908	4	676	2	302		0	2	166		0		0		0		0		0	14	2,050	40	2,090		-	2,090
1.6	VALUE ENGINEERING REVIEW MEETINGS	1	EA		0		0		0	6	908	4	676	2	302		0	2	166		0		0		0		0		0	14	2,050	40	2,090		-	2,090
1.7	SITE VISITS & INVESTIGATION	1	EA		0		0	6	978	6	908		0	6	908		0	1	83		0		0		0		0		0	19	2,873	54	2,927		-	2,927
1.8	BIDDING WORKSHOP	1	LS		0		0		0	6	908	2	338	4	604		0	4	332		0		0		0		0		0	16	2,180	46	2,226		-	2,226
1.9	GMP REVIEW WORKSHOP	1	LS		0	2	322		0	6	908		0	4	604		0	2	166		0		0		0		0		0	14	1,998	40	2,038		-	2,038
	SUBTOTALS			**0**	**0**	**6**	**966**	**6**	**978**	**64**	**9664**	**19**	**3211**	**30**	**4530**	**0**	**0**	**31**	**2573**	**0**	**0**	**0**	**0**	**8**	**904**	**6**	**498**	**12**	**1260**	**182**	**24,584**	**519**	**25,103**		**-**	**25,103**
TASK 2	**PRELIMINARY COST ESTIMATES**																																			
2.1	100% DESIGN COST ESTIMATE	1	EA	0	0	2	322	2	326	12	1812	24	4056	8	1208	72	9360	12	996		0		0	2	226	4	332		0	138	18,638	393	19,031		-	19,031
	SUBTOTALS			**0**	**0**	**2**	**322**	**2**	**326**	**12**	**1812**	**24**	**4056**	**8**	**1208**	**72**	**9360**	**12**	**996**	**0**	**0**	**0**	**0**	**2**	**226**	**4**	**332**	**0**	**0**	**138**	**18,638**	**393**	**19,031**		**-**	**19,031**
TASK 3	**DESIGN REVIEW AND VALUE ENGINEERING**																																			
3.1	100% SUBMITTAL CONFORMED DOCUMENTS REVIEW	1	EA		0		0	4	652	8	1208	2	338	6	906	0	0	4	332	2	302	2	236	0	0	2	166	0	0	30	4,140	86	4,226		-	4,226
3.2	IFC DOCUMENTS REVIEW	1	EA		0		0	4	652	8	1208	2	338	6	906	0	0	2	166	2	302	2	236	0	0	2	166	0	0	28	3,974	80	4,054		-	4,054
	SUBTOTALS			**0**	**0**	**0**	**0**	**8**	**1304**	**16**	**2416**	**4**	**676**	**12**	**1812**	**0**	**0**	**6**	**498**	**4**	**604**	**4**	**472**	**0**	**0**	**4**	**332**	**0**	**0**	**58**	**8,114**	**165**	**8,279**		**-**	**8,279**
TASK 4	**CPM MASTER SCHEDULE**																																			
4.1	SCHEDULE DEVELOPMENT	1	EA		0	1	161	4	652	16	2416		0	8	1208		0	2	166		0		0		0		0		0	31	4,603	88	4,691		-	4,691
4.2	FINAL SCHEDULE UPDATE AT GMP (DETERMINES GC'S)	1	EA		0		0		0		0		0		0		0		0		0		0		0		0		0	0	-	-	-		-	-
	SUBTOTALS			**0**	**0**	**1**	**161**	**4**	**652**	**16**	**2416**	**0**	**0**	**8**	**1208**	**0**	**0**	**2**	**166**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**31**	**4,603**	**88**	**4,691**		**-**	**4,691**
TASK 5	**BIDDING, PROCUREMENT, AND GMP**																																			
5.1	OWNER DIRECT PURCHASE PLAN	1	LS		0		0		0	16	2416		0	8	1208		0	40	3320		0		0		0		0	4	420	68	7,364	194	7,558		-	7,557.80
5.2	GMP BID PACKAGES	1	LS		0	2	322		0	40	6040	4	676	40	6040		0	8	664		0		0	4	452	16	1328		0	114	15,522	325	15,847		-	15,846.90
5.3	PRE-BID SITE VISITS	1	LS		0		0		0	8	1208		0	8	1208		0	4	332		0		0		0		0		0	20	2,748	57	2,805		-	2,805.00
5.4	RECEIVE BIDS (SINGLE BID DAY)	1	EA		0	2	322		0	8	1208		0	8	1208		0	8	664		0		0		0		0		0	26	3,402	74	3,476		-	3,476.10
5.5	REVIEW BIDS AND RECOMMEND AWARD	1	LS		0		0		0	40	6040	4	676	40	6040		0	4	332		0		0		0		0		0	88	13,088	251	13,339		-	13,338.80
5.6	ASSEMBLE AND APPROVE FINAL GMP	1	EA	0	0	4	644		0	16	2416	2	338	16	2416		0	4	332		0		0		0	2	332		0	46	6,478	131	6,609		-	6,609.10
	SUBTOTALS			**0**	**0**	**8**	**1288**	**0**	**0**	**128**	**19328**	**10**	**1690**	**120**	**18120**	**0**	**0**	**68**	**5644**	**0**	**0**	**0**	**0**	**4**	**452**	**20**	**1660**	**4**	**420**	**362**	**48,602**	**1,032**	**49,634**		**-**	**49,634**
TASK 6	**MISCELLANEOUS**																																			
6.1	TEMPORARY FACILITIES PLAN	0	EA																											0	-	-	-		-	-
6.2	VENDOR OUTREACH PROGRAM	0	EA																											0	-	-	-		-	-
6.3	ENVIRONMENTAL PLAN (SWPPP)	0	EA																											0	-	-	-		-	-
6.4	SITE UTILIZATION PLAN	0	EA																											0	-	-	-		-	-
6.5	CONTINGENCY	0	EA		0		0		0		0		0		0		0		0		0		0		0		0		0	0	-	-	-		-	-
	SUBTOTALS			**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**-**	**-**	**-**		**-**	**-**
TASK 7	**SUBCONTRACTOR SERVICES**																																			
7.1	SUBSURFACE UTILITY EXPLORATION (SUE)	0	EA																											0	-	-	-			-
7.2	PUBLIC OUTREACH	0	EA																											0	-	-	-			-
7.3	DESIGN SERVICES	0	EA		0		0		0		0		0		0		0		0		0		0		0		0		0	0	-	-	-			-
	SUBTOTALS			**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**-**	**-**	**-**	**-**	**-**	**-**
TASK 8	**ALLOWANCES**																																			
8.1	ALLOWANCE - ELECTRICAL DESIGN REVIEW & COST ESTIMAT	0	EA		0		0		0		0		0		0		0		0		0		0		0		0		0	0	-	-	-			-
	SUBTOTALS			**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**-**	**-**	**-**	**-**	**-**	**-**
	TOTAL PRECONSTRUCTION SERVICES			0		17		20		236		57		178		72		119		4		4		14		34		16		771	**104,541**	**2,197**	**106,738**		**TOTAL**	**106,738**

MARKUP (8.5%)	**9,073**
INSURANCE (1.05%)	**1,121**
Grand Total	**116,932**

CITY OF PORT ORANGE

Vendor Application and Agreement

City of Port Orange
Attn: Purchasing Division
(386) 506-5718
PurchDiv@port-orange.org
1000 City Center Blvd.
Port Orange, FL 32129

Please complete the following information, fill in lines on page 6 and submit with a completed W-9 form to the email address above:

Name of Individual or Business: Wharton-Smith, Inc.

Payment Remit to Name: Wharton-Smith, Inc.

Contact Name and Title: Stephanie Pompeo, CFO

Phone number: (407) 321-8410 Email address: ar@whartonsmith.com

Taxpayer Identification Number (TIN): 59-2392802

Type of Commodity/Services: General Contractor

Permanent Address:

Street Address: 750 Monroe Road

City: Sanford State: FL Zip: 32771

Remit to Address (if different from above):

Street Address: _____

City: _____ State: _____ Zip: _____

Please choose payment type(s): ☑ ACH Direct ☐ Purchasing card (Visa) ☐ Check

If ACH payment is chosen, please fill out the information below:

Name of Bank:	Regions Bank
Bank ACH Routing Number:	063104668
Bank Account Number:	0247835559
Name on Bank Account:	Wharton-Smith Operating Account
Accounts Receivable Email:	ar@whartonsmith.com

PURCHASING GENERAL TERMS AND CONDITIONS

The City objects in advance to the inclusion of any additional terms and conditions proposed by the vendor in its acceptance or acknowledgement of any order. The inclusion of terms and conditions, or reference thereto, by the vendor shall be of no significance, shall not be binding on the City, and the City's acceptance of the vendor's goods or services shall not be deemed as acceptance of such terms and conditions. The terms and conditions contained in a Supplemental Document, as defined hereinafter, to the Purchase Order shall only control if and when a Supplemental Document to the Purchase Order is signed by the City Manager or Mayor. The terms and conditions contained in a Supplemental Document fully executed by the City Manager or Mayor are incorporated herein by this reference. **In the event that a vendor contracts with the City via a Supplemental Document and there is a conflict between the general terms and conditions set forth herein and the Supplemental Document, the terms and conditions of the Supplemental Document shall control. Supplemental Document shall be defined as to include invitation to bid, proposal, quote, and contract.** Unless otherwise stated on the face of a purchase order, the following terms and conditions shall apply:

1. ACCEPTANCE. The Purchase Order (" PO") issued by the City of Port Orange (" the City") and made apart hereof by reference, becomes a binding contract, subject to the terms and conditions set forth herein, upon confirmation of the PO by the Vendor; or by the commencement of the work set forth in the PO; or by acceptance of payment for the work set forth in the PO. Any change, addition or modification to the terms set forth on the face of the PO must be agreed to in writing by the City.

2. ASSIGNMENT. Neither the PO nor any interest under such PO may be assigned by Vendor without the prior written consent of City.

3. CHANGES. City shall have the right at any time to make changes in drawings, designs, specifications, materials, packaging, time and place of delivery and method of transportation. If any such changes cause an increase or decrease in the costs or the time required for Vendor's required performance, an equitable adjustment will be made and the PO will be modified, in writing, accordingly.

4. COMPLIANCE WITH LAWS. Vendor warrants that all goods and services applicable under the PO will have been produced, sold, delivered and furnished in strict compliance with all applicable Federal and State laws and regulations. Vendor shall execute and deliver such documents as may be required to effect or to evidence compliance. All laws and regulations required in agreements of this character are incorporated by this reference.

5. FREIGHT. Vendor shall ensure that shipper complies with the shipping terms and instructions stated on the face of the PO. Failure to accurately follow the shipping terms and instructions as stated may result in one of the following: (i) a chargeback for any freight cost increase; or (ii) a chargeback for the full cost of the freight.

6. INSPECTION.

a. All goods and/or services, purchased are subject to City's inspection, test and approval at destination, whether or not prior payments have been made or inspections have been performed by the City. All goods and/or services not in accordance with specifications may be rejected and held subject to shippers' orders. Shipper must pay all expenses, including freight both ways, on rejected goods.

b. If goods and/or services provided hereunder are rejected, in whole or in part by the City by reason of the Vendor's failure to comply with any of the terms, conditions and/or specifications contained herein and on the face of the PO, City, after notifying Vendor in writing may (i) return the rejected portion of such goods and/or services to Vendor at Vendor's expense or hold the same for such disposal as Vendor shall indicate, without invalidating the remainder of the PO; (ii) may reject the

entire shipment of goods and cancel the PO for any undelivered goods; or (iii) to cause Vendor to pay City promptly for expenses incurred in remedying the defective or nonconforming goods and/or services (including without limitation, the purchase of substitute (or functionally equivalent) goods and/or services), or to cause Vendor, at Vendor's expense, to expeditiously replace, upgrade, or repair any defective or rejected goods. If the option set forth in (i) is exercised, City may, in its discretion, reduce the quantity specified in the PO by the number of goods and/or services returned or rejected.

7. INDEMNIFICATION. The City reserves the right to add in a Supplemental Document, as previously defined to include invitation to bid, proposal, quote, and contract, the following clause or substantially similar language:

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

8. INTELLECTUAL PROPERTY INDEMNIFICATION. Vendor warrants that there has been no violation or infringement of any copyright, trade name, trademark, patent or related intellectual property right, as a result of manufacturing, producing or selling the goods. Vendor further agrees to defend and indemnify City, its officers, agents and employees from all claims, expenses and liabilities arising from any actual or alleged intellectual property violation or infringement.

9. INSURANCE. THE DEPARTMENT HEAD HAS THE RIGHT TO WAIVE CERTAIN INSURANCE REQUIREMENTS AND SHALL PROVIDE THE WAIVER WITH THE REQUEST FOR PURCHASE ORDER. IF INSURANCE IS REQUIRED, THE FOLLOWING TERMS SHALL APPLY:

Vendor shall maintain all insurance as required by the City. Vendor shall provide to the City a certificate of insurance evidencing coverage and identifying the City as an additional insured. Failure of the Vendor to provide a certificate of insurance shall not relieve the Vendor from its responsibility to maintain the insurance coverage required by the City. The certificates shall clearly indicate that the Vendor has obtained insurance of the type, amount and classification required by the City. 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. For worker's compensation coverage, the Vendor's insurance certificate shall include the insurer's waiver of subrogation in lieu of naming the City as an additional insured for Workers' Compensation. Policies for Workers' Compensation may be issued by companies authorized as a group self-insurer by F.S. 440.572.

Vendor shall not commence work until the City has received a certificate or certificates of insurance and endorsements evidencing the required insurance. Vendor shall be solely responsible to provide the City the written original certificate, notice of cancellation, nonrenewal or any other changes in coverage no later than ten (10) days prior to the effective date of the change. If insurance policies required are not provided to the City within thirty (30) days of the date requested, this Vendor Application and Agreement may be terminated.

10. INVOICING. Vendor agrees to submit an invoice with each shipment showing the PO number. All invoices should be issued to the City c/o Accounts Payable. The discount period of any cash discounts available to the City will commence on the date of the invoice. When freight is prepaid by Vendor, Vendor must show freight charges separately; before adding freight charges, and submit a copy of the freight bill with the invoice. No allowance will be made for boxes, reels, drums or other returnable containers unless so stated on the face of the PO and invoiced separately.

11. JURISDICTION AND VENUE. For any suit or proceeding to enforce the provisions of the PO, Vendor irrevocably consents to the jurisdiction of the Courts of the State of Florida. Furthermore, Vendor agrees that the PO will be interpreted, construed and enforced in all respects in accordance with the laws of the State of Florida, without giving effect to its principles of conflicts of law.

12. OVERSHIPMENT. Quantities in excess of that shown on the face of the PO, if rejected, will be returned to Vendor at Vendor's risk and expense. Any excess quantities that City accepts will be billed at the PO price.

13. TERMINATION. City reserves the right to cancel all or any part of the PO without penalty.

14. TIME. Time is of the essence of the PO. The City reserves the right to cancel the PO (or any portion) without penalty in the event that deliveries are not made within the specified time, without liability for deliveries previously made and accepted by City.

15. TITLE. Unless the face of the PO provides for the City's assumption of ownership at the point of shipment, title to the goods purchased under the PO remains with the Vendor until such goods are off-loaded at the City facility or site specified on the face of the PO; provided, however, that in all cases, Vendor shall bear all risks of loss or damage in transit until such goods are delivered to City's facility or site and accepted by City or it's designee.

16. WARRANTY. Vendor expressly warrants that all goods, services, workmanship, and title furnished and/or delivered pursuant to the PO and the terms and conditions stated herein will be free from defects in material, workmanship and title. Further Vendor warrants all goods and/or services will conform in all respects to all applicable specifications, drawings, and shall be fit for its intended use and service. All goods and/or services shall be new and not secondhand, of good quality and free from defects whether latent or patent in material or workmanship; all material and workmanship is warranted for a minimum of one (1) year from date of acceptance by City unless otherwise stipulated herein. Upon notification by City, Vendor shall correct any defect either by repair or replacement of the defective goods subject to the approval of the City, at Vendor's expense, provided that City's continued use of said defective goods pending repair or replacement shall not constitute a waiver by City under the PO. Further warrants that all goods and/or services covered by the PO meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Law (Public Law 91-956) and its regulations in effect as of the date of the PO. These warranties shall survive acceptance of and payment for the goods and/or services furnished.

17. PAYMENT. Vendor agrees that payment will be made subject to " Local Government Prompt Payment Act" , Sections 218.70-218.74, Florida Statutes, and in accordance with the City's policies and procedures, including but not limited to the requirement that Vendor shall be required to maintain a Current Vendor Application on file with the City. Prior to release of payment, Vendor shall be required to make current the vendor application on file with the City. For purposes set forth herein, a " Current Vendor Application" shall include the following: 1) an updated, completed, and executed current vendor application; 2) proof of current and updated insurance, if required; 3) updated and completed W-9, and 4) any other documentation that may be required by the City or otherwise required by law.

18. PUBLIC RECORDS COMPLIANCE. Vendor shall also be defined as to include the term set forth in Chapter 119.0701(l)(a), Florida Statutes. Vendor 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 records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
(c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Vendor does not transfer the records to the City.
(d) Upon completion of the Contract, Vendor shall transfer to the City, at no cost, all public records in possession of the Vendor 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.
(e) Comply with the City's request for records within a reasonable time. Failure to comply with the City's request for records within a reasonable time may subject Vendor to penalties set forth in Chapter 119.10, Florida Statutes.

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

19. SEVERABILITY. Vendor understands and agrees that if any provision, term, or condition stated herein or on the face of the PO is by the courts held to be illegal or in conflict with any law of the State of Florida, the validity of the remaining provisions shall not be affected, and the rights and obligations of the Vendor and the City shall be construed and enforced as if the PO and this Vendor Application and Agreement did not contain the particular provision, term or condition held to be invalid.

20. COUNTERPARTS; FACSIMILE SIGNATURES. This Vendor Application and 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. Any party may affect the execution and delivery of this Vendor Application and Agreement by signing the same and sending a copy thereof to the City by facsimile, email or other electronic mean and so executed, shall have the full force and effect as an original.

[Remainder of this page left intentionally blank]

[Signatures on next page]

ACKNOWLEDGEMENT AND AUTHORIZATION

Vendor acknowledges, authorizes, and agrees to the following:

1. The Vendor, as also defined to include principals and officers authorized to legally bind and obligate the Vendor for purposes set forth herein, does hereby certify under penalty of law that this Vendor Application and Agreement and all attachments provided are correct and were prepared under Vendor direction or supervision. Furthermore, Vendor is legally authorized to sign this Vendor Application and Agreement and by such execution does hereby approve and accept all of the terms and conditions contained herein.

2. The Vendor does hereby certify that Vendor has read and understands the Vendor Application and Agreement and Purchasing General Terms and Conditions contained herein.

3. The Vendor does hereby certify that no person (or concern) in connection with the Vendor, so far as is known, is disqualified from public contracting or purchasing from any agency of the federal government, State of Florida or City of Port Orange. Vendor further certifies that Vendor will notify the City of Port Orange should any person (or concern) in connection with the Vendor, so far as is known, becomes disqualified while Vendor contracts with the City of Port Orange.

4. Vendor acknowledges and agrees to be bound by the terms and conditions set forth in the Current Vendor Application form approved by the City Finance Director, posted on the City's website, www.port-orange.org, as of the date of issuance on the face of the PO and as otherwise referenced herein. Furthermore, it shall be the Vendor's responsibility to maintain a current Vendor Application, as defined in Section 16 of this Vendor Application and Agreement, on file with the City. **Vendor agrees that the City is not required to make payment until the current Vendor Application is filed.**

Name of Vendor: Wharton-Smith, Inc.

Signature: Stephanie Pompeo

Printed Name: Stephanie Pompeo

Title: Chief Financial Officer

Date: 3/19/2024

Please return the completed Vendor Application and Agreement along with the required documentation to:

City of Port Orange
Attn: Purchasing Division
1000 City Center Circle
Port Orange, FL 32129

Or email: PurchDiv@port-orange.org

Any questions, please call the Purchasing Division at (386) 506-5718.

Form **W-9**
(Rev. October 2018)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

▶ Go to *www.irs.gov/FormW9* for instructions and the latest information.

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

Print or type. See Specific Instructions on page 3.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.
Wharton-Smith Inc

2 Business name/disregarded entity name, if different from above

3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only **one** of the following seven boxes.

☐ Individual/sole proprietor or single-member LLC ☑ C Corporation ☐ S Corporation ☐ Partnership ☐ Trust/estate

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

Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is **not** disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.

☐ Other (see instructions) ▶

4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):

Exempt payee code (if any) _____

Exemption from FATCA reporting code (if any) _____

(Applies to accounts maintained outside the U.S.)

5 Address (number, street, and apt. or suite no.) See instructions.
750 Monroe Rd

Requester's name and address (optional)

6 City, state, and ZIP code
Sanford, FL 32771

7 List account number(s) here (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number
[ ][ ][ ] - [ ][ ] - [ ][ ][ ][ ]

or

Employer identification number
5 9 - 2 3 9 2 8 0 2

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here Signature of U.S. person ▶ Stephanie Pompeo Date ▶ 01/06/2023

General Instructions

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

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to *www.irs.gov/FormW9*.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)
- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, *later.*

FORM 9.7 - STATEMENT OF RESPONDENT'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 9.7 is complete, true and correct to the best of his or her knowledge and belief. **If necessary, questions may be answered on a separate paper and attached with any additional information that may be pertinent.**

A. Name of Respondent: _____

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 appropriate 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 SHET & 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: _____

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 compromising the Statement Qualifications.

_____
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

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

ADDENDUM #1
February 9, 2024

RFSQ #23-14 CONSTRUCTION MANAGER AT RISK FOR CONSTRUCTION OF PUBLIC UTILITIES OPERATIONS FACILITY

To All Submitters:

The following changes, clarifications and additions are hereby made part of the RFSQ for the above referenced project dated January 12, 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 the submitter to confirm that all addenda have been received prior to submitting a Statement of Qualifications and acknowledge such in the RFSQ documents.

A. CLARIFICATIONS:

Form 9.7 – Statement of Respondent's Qualifications is hereby replaced with an updated version and is included with this Addendum #1 as a separate document posted on our web page and DemandStar. Please be sure to download the new version and include it with your submittal.

B. CHANGES TO SPECIFICATIONS:

N/A

C. QUESTIONS AND ANSWERS:

Question #1

If form 9.8 is to be included only with Tab A, can you please clarify what is required to be included in Tab E?

Answer #1

Form 9.8 Professional References for Previous Experience is to be included with Tab A and does not need to be included with Tab E. References provided by respondents will be contacted by Purchasing staff and responses disseminated to the Statement Evaluation Committee for scoring purposes.

Question #2

Can you please provide the location of the project?

Answer #2

The address is 4505 Clyde Morris Blvd., Port Orange, FL 32129.

In all other respects, except as specifically stated herein, the subject RFSQ #23-14 Construction Manager at Risk for Construction of Public Utilities Operations Facility remains unchanged.

END OF ADDENDUM #1

CITY OF PORT ORANGE, FLORIDA

REQUEST FOR STATEMENT OF QUALIFICATIONS

Construction Manager at Risk for Construction of Public Utilities Operations Facility

RFSQ #23-14

City of Port Orange Purchasing Division

Prepared by: Jill Poolman, CPPO, CPPB, FCCM/Purchasing Manager
Release Date: January 12, 2024

Statement of Qualifications

Due Date & Time: February 16, 2024 at 2:30 PM EST

Legal Notice to Respondents

RFSQ #23-14
Construction Manager at Risk for Construction of Public Utilities Operations Facility

Notice is hereby given that the City of Port Orange is seeking Statements of Qualifications for RFSQ #23-14 Construction Manager at Risk for Construction of Public Utilities Operations Facility. Submissions of Statements of Qualifications will be accepted in the City Clerk's Office, Port Orange City Hall, 1000 City Center Circle, Port Orange, Florida until 2:30 PM Eastern Standard Time (EST) on February 16, 2024 which may be amended by addendum issued by the City. All untimely statements will not be considered and will be returned to the Respondent unopened. All statements will be evaluated to ensure they contain all required forms in order to deem the Respondent responsive or non-responsive. Statements will be opened and read aloud February 16, 2024 at 2:30 PM EST in Council Chambers.

There will be a Non-Mandatory Pre-Statement Conference for the project at 10:00 AM EST on January 26, 2024 at City Hall, Council Chambers (1st floor), 1000 City Center Circle, Port Orange, Florida 32129. All attendees to the Pre-Statement Conference must sign in. The representative of each Responder shall be an authorized employee of the Respondent and shall sign in accordingly. Responders are urged to obtain Statement documents and familiarize themselves with the documents prior to the Pre-Statement Conference.

The work to be performed under this Request for Statement of Qualifications and subsequent agreement between the awarded contractor and the City will require the awarded contractor to furnish and pay for a one hundred percent (100%) of project value Payment and Performance Bond to be recorded by the City, with the Clerk of the Circuit Court, Volusia County, Florida.

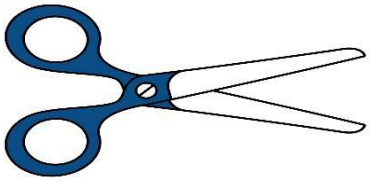
DESCRIPTION: Statements of Qualifications from qualified individuals and/or firms that are interested in providing the City of Port Orange Construction Manager at Risk (CMAR) services for the construction of a Public Utilities Operations Facility.

All Statements of Qualifications are solicited and will be evaluated on the criteria outlined in this RFSQ. An evaluation committee primarily comprised of City staff has been appointed to evaluate and rank the Statements of Qualifications received in accordance with the Code of Ordinances City of Port Orange, Chapter 2, Article VI, Division 2, Section 2-278, and all statements 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.

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 proposers, 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 proposer who initiates any discussions or attempts to influence a member or members of the aforementioned shall be disqualified from continued participation in the procurement process with regard to that particular solicitation. While the Cone of Silence is in effect, all communications from potential proposers, suppliers, contractors and sub-contractors must be directed to the Purchasing Division @ purchdiv@port-orange.org .

Copies of the RFSQ 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 https://www.port-orange.org/bids.aspx and DemandStar at www.demandstar.com. All questions shall be directed in writing to Jill Poolman, Purchasing Manager at jpoolman@port-orange.org and purchdiv@port-orange.org and reference "Questions on RFSQ #23-14 Construction Manager at Risk for Construction of Public Utilities Operations Facility" in the subject line. Last day for questions will be February 2, 2024 at 5:00 PM EST.

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



SEALED STATEMENT OF QUALIFICATIONS – DO NOT OPEN

SEALED STATEMENT NO. **RFSQ #23-14**

STATEMENT TITLE: **Construction Manager at Risk for Construction of Public Utilities Operations Facility**

DUE DATE AND TIME: **February 16, 2024 AT 2:30 PM**

SUBMITTED BY: _____
(Name of Company)

ADDRESS: _____

_____

DELIVER TO: **CITY OF PORT ORANGE CITY CLERK'S OFFICE**
ATTN: Jill Poolman, CPPO, CPPB, FCCM
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 for this Request for Statement of Qualifications (RFSQ) is to solicit competitive sealed Statements of Qualifications from qualified individuals and/or firms that are interested in providing the City of Port Orange Construction Manager at Risk (CMAR) services for the construction of a Public Utilities Operations Facility. The budget for this project is $8.5 million dollars.

NOTE: The City may not accept statements from firms, that have had adversarial relationships with the City or firms that have represented entities that have had adversarial relationships with the City. This includes the firm, employees and financial or legal interests. The City will not enter into a contract or conduct business with any firm or any personnel that is listed on the Federal, State, or other local government agencies' Excluded Parties List, Suspended List or Debarment List.

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

[Remainder of this page left intentionally blank]

SECTION 2 – INSTRUCTIONS TO RESPONDENTS

Firms or companies (Respondents) desiring to provide services, as described herein shall submit sealed Statements of Qualifications, including one (1) original, five (5) identical copies and one (1) digital (USB 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	January 12, 2024
Non-Mandatory Pre-Statement Conference	January 26, 2024 @10:00 AM
Deadline for Questions	February 2, 2024 by 5:00 PM
Final Addendum Posting (If needed)	February 9, 2024 by 5:00 PM
Statements Due	**February 16, 2024 by 2:30 PM**
Evaluation Period	To Be Determined
Public Scoring Meeting	To Be Determined
City Council Meeting for Approval of Recommendation of Award	To Be Determined

Statements must be delivered in a sealed envelope/package to:

City of Port Orange City Clerk's Office
Attn: Jill Poolman, Purchasing Manager
Purchasing Division
1000 City Center Circle
Port Orange, Florida 32129

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

Statements of Qualifications shall be sealed, and Respondents shall clearly indicate on the outside of their statement the following:

a) Request for Statement of Qualifications (RFSQ) Number and Title
b) Date of Opening
c) Name of Respondent
d) Address of Respondent

Due to the timing of mail service, the City cautions Respondents to ensure actual delivery of Statements of Qualifications to the City prior to the deadline set for receiving statements. Carrier and hand deliveries of Statements of Qualifications 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. Statements received after the established deadline shall not be considered.

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

Offers by telephone, fax or email will not be accepted.

All Statements of Qualifications will be opened publicly, and the names of all Respondents shall be read aloud. All conferences and meetings regarding this RFSQ are recorded electronically (audio only).

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

QUESTIONS REGARDING THIS RFSQ

All questions shall reference "RFSQ 23-14 Construction Manager at Risk for Construction of Public Utilities Operations Facility" in the subject line. All questions concerning this RFSQ shall be submitted in writing no later than the date & time referenced in the Timeline above to:

Jill Poolman, CPPO, CPPB, FCCM/Purchasing Manager
1000 City Center Circle
Port Orange, FL 32129
jpoolman@port-orange.org **and**
purchdiv@port-orange.org

ADDENDA REGARDING THE REQUEST FOR STATEMENT OF QUALIFICATIONS

The City will issue responses to inquiries and any other corrections or amendments it deems necessary in written addenda prior to the Statement due date. Respondents should not rely on any representations, statements or explanations other than those made in this RFSQ or in any addendum to this RFSQ. Where there appears to be a conflict between the RFSQ and any addenda issued, the last addendum issued will prevail.

It is the responsibility of the Respondent to ensure all addenda have been received prior to submitting a Statement and acknowledge such by completing Form 9.3 Addendum and Change Order Procedure Acknowledgement Form. Written responses to questions posed prior to the question deadline, in the form of an addendum, will be provided via the City website: www.port-orange.org/proposals.aspx and Demand Star website: 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 RFSQ submittal.

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

CLARIFICATIONS

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

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

MINIMUM QUALIFICATIONS

Respondents shall be licensed to do business in the State of Florida. The City of Port Orange will verify Sunbiz report showing the Respondent's license registered as "Active". (The responding firm's registered name in Sunbiz must match exactly to the name on all documents related to this RFSQ.) Respondents must be properly registered and licensed to engage in the scope of work pertaining to this RFSQ, by all applicable state and local agencies. Respondents must provide a minimum of three (3) verifiable references from similar scopes of work as identified in this RFSQ on the provided Form 9.8 Professional References for Previous Experience. If references cannot be reached using the provided contact information and/or are not responsive, points for this criterion shall reflect as such. **The City of Port Orange is not to be used as a reference.**

NO LOBBYING

All Respondents 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 RFSQ. During the entire procurement process, all Respondents 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 Statements for this project. Any Respondent contacting individuals mentioned herein are in violation of this warning and may automatically be disqualified from further consideration for this RFSQ.

STATEMENT FORMS
Statement Forms are to be completed as directed and without modification and returned as part of the RFSQ submittal prior to the RFSQ deadline for submission. Failure to fill out the Statement Forms as directed and without modification may negatively affect the evaluation of your Statement and may result in rejection of your Statement.

EXCEPTIONS TO SPECIFICATIONS
If taking exception to any portion of the RFSQ requirements, the Respondent must indicate those exceptions as stated on the Respondent's Acknowledgement Form (9.2).

STATEMENT SUBMISSION AND WITHDRAWAL
Unless otherwise specified, Respondent shall use the forms supplied by the Purchasing Division. Statements, once opened, become the property of the City, cannot be withdrawn, and will not be returned to the Respondents. Upon opening, Statements become subject to public disclosure in accordance with Chapter 119, Florida Statutes.

CORRECTION OF STATEMENTS
Correction of inadvertently erroneous Statements shall be permitted up to the time of RFSQ opening. Respondents shall not be allowed to modify their Statements after the opening time and date.

WITHDRAWAL OF STATEMENTS
Statements shall NOT be withdrawn for a period of one-hundred-twenty (120) days subsequent to the Statement opening without the consent of the City of Port Orange, Florida. Negligence on the part of the Respondent preparing the Statement confers no right of withdrawal or modification after the Statement has been opened at the appointed time and place by the City of Port Orange. Any such withdrawn Statement shall not be resubmitted.

OPENING OF STATEMENTS
Statements will be received until the date and time stated in this RFSQ and will be publicly opened and read at the place, time and date stated. The Purchasing Division will not be responsible for the premature opening of a statement not properly addressed and identified.

LITIGATION HISTORY
The City will consider a Respondent's litigation history information in its review and determination of responsibility. All Respondents 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 Respondent, any parent or subsidiary of the Respondent, or any predecessor organization. If the Respondent is a joint venture, the information provided should encompass the joint venture (if it is not newly formed for purposes of responding to this solicitation) and each of the entities forming the joint venture. Although the review of a Respondent's litigation history is an issue of responsibility, the failure to provide litigation history as required in Section 7 may result in a recommendation of non-responsive by the Purchasing Manager.

DEBARMENT HISTORY
The City will consider a Respondent's debarment history information in its review and determination of responsibility. All Respondents 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 Respondent, any parent or subsidiary of the Respondent, or any predecessor organization. If the Respondent is a joint venture, the information provided should encompass the joint venture (if it is not newly formed for purposes of responding to this solicitation) and each of the entities forming the joint venture. Although the review of a Respondent's debarment history is an issue of responsibility, the failure to provide debarment history as required in Section 7 may result in a recommendation of non-responsive by the Purchasing Manager.

REJECTION OF STATEMENTS
The City reserves the right to reject any and/or all Statements when such rejection is in the best interest of the City. *Statements may be rejected and/or respondent(s) disqualified for the following reasons:*

(a) Failure to update the information on file including address, product, service or business descriptions.
(b) Failure to perform according to contract provisions.
(c) Conviction in a court of law of any criminal offense in connection with the conduct of business.

(d) Evidence of a violation of any federal or state antitrust law based on the submission of Statements or the awarding of contracts. Evidence that the Respondent has attempted to give a Board employee a gratuity of any kind for the purpose of influencing a recommendation or decision in connection with any part of the Board's purchasing activity.

(e) Other reasons deemed appropriate by the City.

OWNERSHIP OF DOCUMENTS

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

AMERICANS WITH DISABILITIES ACT (ADA)

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

SECTION 3 – SCOPE OF SERVICES AND REQUIREMENTS

The City of Port Orange invites interested construction managers with extensive experience in the construction of public facilities and in alternative/collaborative delivery processes to submit Statements of Qualifications for services related to construction of the City of Port Orange Public Utilities Field Operations Facility that will consist of a 11,500 SF Administration Building, a 12,300 SF Warehouse, and all associated site improvements. The purpose of this RFSQ is to establish an agreement with a Construction Manager at Risk (CMAR) in accordance with Florida Statue 287.055, known as the "Consultants' Competitive Negotiation Act" (the "CCNA").

The city has contracted with Schenkel Schultz Architects to provide design services for the facility. It is at 100% design and has been issued permits from St. Johns River Water Management District (SJRWMD) for the Environmental Resource Permit and the City of Port Orange Site Development Permit.

SECTION 4 – STANDARD PURCHASING DEFINITIONS

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

1. **Addendum** is a formal written document, released prior to the public opening that modifies any aspect of a Solicitation. Plural: Addenda
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/Proposer/Respondent** is a person, firm, or entity that that submits a Response to a Solicitation. Any Bidder/Proposer/Respondent 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 offerors who submit Responses through a Request for Statements of Qualifications.
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 Respondents 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. **DemandStar** is the official online repository for all City competitive solicitations.
18. **Due Date** means the date and time specified for receipt of Responses to a Solicitation.
19. **End User** is a person, program, agency, or other eligible user who uses a contract to purchase a commodity or contractual service.
20. **Evaluation Committee/Team** is a temporary group of City personnel who are responsible for the evaluation of statements of qualifications as part of a Request for Submission of Qualifications (RFSQ).
21. **Evaluator** is a member of the evaluation committee/team.
22. **Goods** are supplies, materials, or equipment.
23. **Intent to Award** is a document, published on Onvia/DemandStar, that informs the public and respondents of the City's decision to award a contract pursuant to a previously issued competitive solicitation.
24. **Issues** means points, matters, or concerns to be addressed during negotiations.
25. **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.
26. **Negotiation Team** is a temporary group of City personnel who are responsible for negotiations.
27. **Negotiator** is a member of the negotiation team.
28. **Offer** means a complete signed Statement submitted to the City in response to a Solicitation.
29. **Outlier** is a bid, offer, or statement which is determined by the Purchasing Director or Manager to be significantly dissimilar to or inconsistent with, competing bids or offers.
30. **Pre-Statement Conference** means a meeting conducted by the Purchasing Office, held in order to allow Respondents to ask questions about the proposed Contract and particularly the Contract specifications with the City department requesting the goods/services.
31. **Price Analysis** is an evaluation of the total cost of a contract in order to determine if the price is reasonable.
32. **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.
33. **Professional Services** means those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping, as defined by the laws of the state, or those performed by any architect, professional engineer, landscape architect, or registered surveyor and mapper in connection with his or her professional employment or practice.
34. **Protest** is a formalized process by which respondents have an opportunity to challenge a procurement practice or contract award.
35. **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.
36. **Request for Statement of Qualifications (RFSQ)** means a formal request to prospective Respondents requesting statements of qualifications pursuant to Florida Statute 287.055 "Consultant's Competitive Negotiation Act" which has been advertised for Statement in a newspaper.

37. **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.
38. **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 response, depending on the type of competitive solicitation being issued.
39. **Responsible (Respondent)** is a Respondent who has the capability in all respects to fully perform the contract requirements and the integrity and reliability that will assure good faith performance.
40. **Responsive (Respondent)** is a Respondent that has submitted a bid, proposal, statement of qualifications, or reply that conforms in all material respects to the solicitation.
41. **Scope** means the extent of the area or subject matter that something deals with or to which it is relevant.
42. **Scope of Work** means a description of the work activities, deliverables, and/or timeline that a Respondent must execute in terms of delivering specific commodities or in performance of contractual services.
43. **Services** include all work or labor performed for the City on an independent contractor basis other than construction.
44. **Solicitation** means a formal request, as applicable, for prospective Respondents to submit statements to a Request for Qualifications.
45. **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.
46. **Stakeholder** means an individual, who is not likely to become a Respondent, who has an interest in the commodities/contractual services needed.
47. **Subcontractor** means a person, firm or entity providing goods or services to a Respondent to be used in the performance of the Respondent's obligations under the Contract.
48. **Subject Matter Expert** means a person who has working or expert knowledge about a particular topic or field.

SECTION 5 – GENERAL TERMS AND CONDITIONS

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

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

1. ADDENDUM

When specifications are revised, the City of Port Orange Purchasing Division will issue an addendum addressing the nature of the change. Respondents should acknowledge all addenda by completing Form 9.3 contained herein. Failure to acknowledge the correct number of addenda issued may result in rejection of the statement. It is the responsibility of the Respondent to ensure all addenda have been received prior to submitting a statement. All Addenda shall be posted by the City on www.demandstar.com and City of Port Orange Purchasing Web page at 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 Statement Due Date. Respondents should not rely on any representations, statements or explanations other than those made in this Solicitation or in any addendum to the Solicitation. Where there appears to be a conflict between the Solicitation and any addenda issued, the last addendum issued shall prevail.

2. ANTI-COLLUSION STATEMENT

By submitting this statement to a Formal Solicitation, the Respondent affirms that this statement is without previous understanding, agreement or connection with any person, business or corporation submitting a statement for the same materials, supplies or equipment, and that this statement is in all respects fair and without collusion or fraud. Additionally, Respondent agrees to abide by all conditions of this Solicitation and certifies that they are authorized to sign this statement for the Respondent. In submitting a statement to the City of Port Orange, the Respondent offers and agrees that if the statement is accepted, the Respondent 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 Respondent.

3. APPLICABLE LAWS

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

4. ASSIGNMENT

The successful Respondent 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 Respondent from all contractual obligations.

5. AUTHORITY TO CONDUCT BUSINESS IN FLORIDA

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

6. AWARD AND EXECUTION OF CONTRACT

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

7. AWARDS

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

8. BONDS

If this Solicitation requires submission of bid guarantee 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.

9. CERTIFICATE OF INSURANCE

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

10. CHANGE ORDER REQUEST NOTIFICATION

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

11. CHANGE ORDERS

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

12. CLEAN UP

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

13. CONDUCT OF RESPONDENTS

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

14. 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 Respondents, 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 Respondent 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-Statement 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.

15. CONFLICT OF INSTRUCTIONS

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

16. CONFLICT OF INTEREST

For purposes of determining any possible conflict of interest, all Respondents must disclose if any City of Port Orange employee is also an owner, corporate officer or employee of Respondents 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.

17. CONTRACT

Any acquisition above the $100,000 level shall be done through one of the formal competitive methods except upon City Council waiver and/or shall have City Council approval. Only the Purchasing Manager and/or City Manager, have the authority to obligate the City by entering into a written contract to purchase goods and/or services up to $25,000.00. The City of Port Orange, Florida reserves the right to reject any and all Statements or to waive any and all non-substantial irregularity in Statements received, whenever such waiver or rejection is in the best interest of the City.

18. CONTRACT OBLIGATION

The City of Port Orange City Council shall approve the contract if greater than $25,000.00 annually. The Mayor or other person authorized by the Mayor must sign the contract before it becomes binding on the City of Port Orange or the Respondent. 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.

19. CONTRACT RENEWALS

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

20. COOPERATIVE PURCHASING

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

21. COPYRIGHT AND PATENT RIGHTS

Respondent 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 Statement, and successful Respondent agrees to hold the City harmless from any and all liability, loss or expense by any such violation.

22. COST INCURRED BY RESPONDENT

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

23. DEBARMENT HISTORY

The City will consider a Respondent's debarment history information in its review and determination of responsibility. All Respondents 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 statement due date, whether such actions were brought by or against the Respondent, any parent or subsidiary of the Respondent or any predecessor organization. If the Respondent 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 Respondent's debarment history is an issue of responsibility, the failure to provide debarment history on Form 9.11 as required in the RFP may result in a recommendation of non-responsive by the Purchasing Manager.

24. DEFAULT PROVISIONS

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

25. DISCLOSURE OF CONFLICTS

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

26. E-VERIFY

Respondents 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 Respondent 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. Respondents shall complete Form 9.11 E-Verify Affidavit and include it in the returned Statement package. Failure to include the affidavit may result in rejection of the Statement.

27. EXCEPTIONS TO REQUIREMENTS

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

28. FACILITIES

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

29. FAILURE TO RESPOND

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

30. FINANCIAL STABILITY

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

31. 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.

32. 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.

33. GOVERNING LAW

Respondents shall comply with all applicable federal, state and local laws and regulations. All Statements 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 Statements will be evaluated in accordance with the provisions thereof. Code of Ordinances, City of Port Orange is on file in the Office of the City Clerk, City Hall, 1000 City Center Circle, Port Orange, Florida and at www.municode.com. The City of Port Orange is also governed by the Consultants' Competitive Negotiation Act, Section 287.055, Florida Statutes, as the method of selecting architects, engineers and land surveyors. The City has utilized the procedures in the Act for Professional counselors,

environmentalists, planners, general contractors, computer systems, designers, telecommunications consultants, maintenance technicians, financial services and other professional services. Every acquisition equal to or greater than $10,000.00 must have a signed, notarized "Public Entity Crimes Form" to comply with Section 287.133(3)(a), Florida Statutes. Also required is the "Drug- Free Preference Form" to comply with Section 287.087, Florida Statutes. Each form is included in the Solicitation.

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

35. HIPAA COMPLIANCE

The Respondent 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 Respondent uses, discloses or has access to protected health information as defined by HIPAA.

36. INDEMNIFICATION/HOLD HARMLESS

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

37. INDEPENDENT CONTRACTOR

It is expressly understood and agreed by both parties hereto that the City is contracting with the successful Respondent 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 Respondent under this contract and that the successful Respondent has no authority to bind the City. The Respondent 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 Respondent 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 Respondent shall further understand that the City cannot save and hold harmless and or indemnify the Respondent and/or the Respondent's employees against any liability incurred or arising as a result of any activity of the Respondent or any activity of the Respondent's employees performed in connection with the Contract.

38. 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 Respondent cannot furnish a sample of a Statement item, where applicable, for review, or fails to satisfactorily show an ability to perform, the City can reject the Statement as inadequate and non-responsive.

39. INSURANCE

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

40. INSURANCE CANCELLATION

No change or cancellation in insurance shall be made without thirty (30) days' written notice by the Respondent 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.

41. <u>INSURANCE REQUIREMENTS</u>

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

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

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

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

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

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

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Standard Insurance Requirements			
Required	**Insurance**	**Standards**	**Additional Requirements**
☒	Workers' Compensation 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.	Contract Amount — Limits Up to $10 million — Statutory/$500,000 $10 - $20 million — Statutory/$1,000,000 Contracts over $20 million to be determined by the City	• If contract requires work on or about navigable waters, Longshoreman's and Harbor Workers' coverage required. • If vessels involved, Jones Act coverage with limits of $500,000 required
☒	Comprehensive General Liability (including completed operations and contractual liability)	Limits: 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	Limits: Auto Liability Bodily Injury and Property Damage: $1,000,000 each occurrence $1,000,000 aggregate	
Additional Insurance Requirements			
☐	Property Insurance Builders Risk Additional Coverage:	Limits: 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)	Limits: Coverage – To Be Determined	
☐	Contractor Pollution Liability	Limits: Coverage - $1,000,000	
☐	Professional Liability/Errors and Omissions	Limits: Coverage - $1,000,000	
☐	Umbrella Policy	Limits: Coverage – To Be Determined	
☐	Payment and Performance Bond required	Limits: 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.		

42. 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 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 Respondent offers a payment discount. The City cannot make advance payments, make deposits in advance of receipt of goods, or pay C.O.D. Respondents should state any payment discount in the space provided on the proposal form for construction services. If the awarded firm would like to receive payment via ACH, this can be accommodated after the contract is fully executed.

43. IRREVOCABILITY OF STATEMENTS

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

44. 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.

45. 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 Statements received in response hereto and shall govern any and all claims and disputes which may arise between person(s) submitting a statement 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 Respondent shall not constitute a cognizable defense against the legal effect thereof. Upon execution of a contract, the successful Respondent shall hold harmless, indemnify and defend the City of Port Orange, its members, officials, officers and employees against any claim, action, loss, damage, injury, liability, cost and expense of whatsoever kind or nature (including, but not by way of limitation, attorneys' fees and court costs) arising out of or incidental to the performance of the Contract, whether or not due to or caused by negligence of the City of Port Orange, its members, officials, officers or employees. This Contract requirement shall be reflected in the insurance coverage certificate.

46. LICENSES, PERMITS AND TAXES

The Respondent 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 Respondent 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.

47. LITERATURE (if applicable)

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

48. STATEMENT RETURNS

Respondents shall return all completed Statements 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 Respondents unopened.

49. 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.

50. NON-EXCLUSIVITY OF CONTRACT

The selected Respondent 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.

51. NON-PERFROMANCE

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

52. 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.

53. 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.

54. POSTPONEMENT/CANCELLATION/WAIVER OF IRREGULARITIES

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

55. PRE-STATEMENT CONFERENCE

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

56. PROPRIETARY INFORMATION

Upon receipt by the City, statements to Solicitations, become public records subject to the provisions of Florida's state policy on public records, Section 119, Florida Statutes. If you believe that any portion of your statement 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 Respondent to submit in order to prequalify for responding to a proposal for a road or any other public works project is exempt from Section 119.07, Florida Statutes, and Article I, 24(a), Florida Constitution. Respondent must complete Form 9.12 Non-Disclosure Agreement for confidential materials.

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

58. PROTEST

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

immediate and serious danger to the public health, safety, or welfare. The City shall provide an opportunity to resolve the protest by mutual agreement between the parties. The policy the City has established is as follows:

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

59. PUBLIC ENTITY CRIMES

In accordance Section 287.133 (2)(a), Florida Statutes: A person or affiliate who has been placed on the convicted Respondent 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 Respondent list.

60. PUBLIC RECORDS COMPLIANCE

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

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

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

61. PUBLIC RECORDS/PUBLIC MEETING EXEMPTION STATEMENT

Section 119.071(1)(c), Florida Statutes: Any financial statement that an agency requires a prospective Respondent to submit in order to prequalify for responding to a proposal for a road or any other public works project is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. On June 2, 2011, Governor Scott signed HB 7223 into law. This new legislation amends Florida's Public Records and Sunshine Laws, by expanding "exemptions" applicable to bids, proposals and replies to sealed competitive solicitations, and closes evaluation meetings from the public in certain instances. First, Section 119.071, Florida Statutes was amended to provide that sealed bids, proposals, or replies received by a Florida public agency shall remain exempt from disclosure until an intended decision is announced or until 30 days from the opening, whichever is earlier. This means that Respondents will not be able to procure a copy of their competitor's proposals until an intended decision is

reached, or 30 days has elapsed since the time of the bid opening. The prior version of the law provided for a 10-day exemption. Next, Section 286.0113, Florida Statutes was amended to provide that meetings of persons appointed to evaluate proposals and negotiate contracts shall be closed in certain circumstances. Specifically, portions of such meetings may now be closed to the public during oral presentations made by a Respondent, or where a Respondent answers questions. In other words, neither Respondents, 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 Respondents, but the new law limits public attendance to portions of such meetings.

62. QUESTIONS/INTERPRETATIONS

Questions regarding interpretation of Statements, 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.

63. RECORDS/AUDIT

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

64. REQUEST FOR ADDITIONAL INFORMATION

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

65. REVIEW OF STATEMENTS SUBMISSIONS

Each Statement will be reviewed to determine if the Statement is responsive to the submission requirements outlined in the Solicitation. A responsive Statement 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 Statement non- responsive.

66. RIGHT OF NEGOTIATION

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

67. RIGHT OF WITHDRAWAL

A bid, proposal, statement or reply may not be withdrawn before the expiration of one-hundred-twenty (120) days from the Statement due date.

68. RIGHTS TO SOLICITATION SUBMITTED MATERIAL

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

69. RULES, REGULATIONS AND LICENSING REQUIREMENT

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

70. 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 9.10 Scrutinized Company Certification, certifying the Contractor's compliance with this section, prior to the execution of this Agreement.

71. SEPARATION AND DISTRIBUTION

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

72. 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.

73. SIGNATURE REQUIRED

All Statements 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. All manual signatures must be original - no rubber stamp, photocopy, etc.

74. SIGNED REPONSE CONSIDERED AN OFFER

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

75. 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.

76. SOLICITATION FORM COMPLETION, SUBMISSION AND RECEIPT OF STATEMENTS

Unless otherwise specified, Respondent shall use the Solicitation forms supplied by the Purchasing Division. Statements shall be typewritten or handwritten in ink and shall bear the original signature of the Respondent's authorized representative. Statements containing erasures or corrections must be initialed by the Respondent in ink. Statements shall be submitted by mail or hand delivery only. No Statement will be accepted by facsimile transmission, e-mail or other electronic delivery. Statements submitted by mail shall be addressed to: City of Port Orange, Attn: Purchasing Division, Port Orange City Hall, 1000 City Center Circle, Port Orange, Florida 32129. Statements submitted by hand delivery shall be delivered to: City Clerk, Port Orange City Hall, 1000 City Center Circle, Port Orange, Florida 32129. Statements will be accepted until 2:30 P.M. on the date indicated in the Solicitation documents or an addendum 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. Statements (Envelope/Package) shall contain one (1) original and one (1) digital (flash drive) PDF version unless otherwise indicated in the "Instructions to Respondents" section of this document and shall be mailed or delivered as set forth in the preceding paragraph in one (1) SEALED ENVELOPE/PACKAGE. The envelope/package shall be clearly marked on the outside to include the project name, statement number, name and address of the Respondent.

77. STATE LICENSING REQUIREMENTS

All entities defined under Chapters 607, 608, 617 or 620, Florida Statutes, seeking to do business with the City shall be on file and in good standing with the State of Florida's Department of State. Prior to making an offer, the Respondent 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 Respondent shall provide follow-up evidence that the Respondent maintains such credentials throughout the period of the agreement. A copy of a current certificate of authority from the Secretary of State authorizing the Respondent/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 statement to the Solicitation. Information concerning

certification with the Secretary of State may be obtained at http://ccfcorp.dos.state.fl.us/index.html. Contract documents shall be executed by the entity's duly authorized officer as evidence by entity records.

78. STATEMENT EVALUATION

Respondents who wish to receive a copy of the statement evaluation may obtain it via www.demandstar.com or on the City of Port Orange Purchasing web page at www.port-orange.org/bids.aspx.

79. STATEMENT RETURNS

Respondents shall return all completed Statements 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 Respondents unopened.

80. SUBCONTRACTING

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

81. 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.

82. TERMINATION

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

83. TERMINATION NOTICE

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

84. USE OF SOLICITATION FORMS

The Respondent 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 Statement. If additional space for a statement 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 statement 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 Statement. The original Statement, and each copy submitted shall contain an original signature on the Respondent's Acknowledgement Form contained in each Solicitation.

85. VARIANCES

For purposes of Statement evaluation, Respondents must indicate any variances, no matter how slight, contained in the Statement. No variations or exceptions by a Respondent will be considered or deemed a part of the Statement submitted unless such variances or exceptions are listed in the Statement and referenced in the space provided on the Statement 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 Statement, the City does not necessarily accept any variances contained in the Statement. All variances submitted are subject to review and approval by the City. If any Statement contains material variances that, in the City's sole opinion, make that Statement conditional in nature, the City reserves the right to reject the Statement or part of the Statement that is declared, by the City, as conditional.

86. WAIVER OF IRREGULARITIES

The City of Port Orange reserves the right to waive and/or reject any non-substantial irregularity in Statements 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 Statements will be considered. However, the City reserves the right to waive formalities or informalities in Statements, to reject, with or without cause, any or all Statements or portions of Statements, or to interview or not interview individual Respondents and to accept any Statements or portions of Statements 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)

SECTION 6 – SPECIAL CONDITIONS

PERIOD OF OFFER VALIDITY

Statements of Qualifications offered in this RFSQ must remain firm for a period of one-hundred-twenty (120) days from the RFSQ opening date.

AWARD

It is the intent of the City to recommend an award to the responsive and responsible Construction Manager at Risk (CMAR) that receives the highest overall evaluation score and is voted by a consensus of the Statement of Qualifications Evaluation Committee to be the overall best firm to provide the services outlined in this RFSQ.

COMPETITIVE NEGOTIATIONS

Approval of the recommendation to award by the City of Port Orange will constitute authorization to negotiate with the top-ranked firm. The statement package, signed by the successful respondent, along with documentation included in the statement as required by this RFSQ and other additional materials submitted by the respondent, and accepted by the City, shall be the basis for negotiation of a contract. The City shall negotiate a contract with the top ranked firm for performing Construction Manager at Risk services for the construction of a Public Utilities Operations Facility at compensation which the City determines is fair, competitive, and reasonable. The firm receiving the award shall be required to 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.

ELIGIBILITY OF RESPONDENT

1. To be eligible to respond to this RFSQ, the respondent's firm must have been incorporated, organized and/or established for a period of at least three (3) years prior to firm's submittal and have prior experience working with the services described in this RFSQ. Please provide eligibility experience with your submittal.
2. Respondents shall be licensed to do business in the State of Florida. Submit Sunbiz report showing your company registered as "Active". A copy of all required licenses must be provided with submission. During the course of the contract term, if any changes occur in awardee's licensure, the contractor must notify the City of Port Orange.

PAYMENT & PERFORMANCE BONDS

The work to be performed under this Request for Statement of Qualifications and subsequent agreement between the awarded contractor and the City will require the awarded contractor to furnish and pay for a one hundred percent (100%) of project value Payment and Performance Bond to be recorded by the City, with the Clerk of the Circuit Court, Volusia County, Florida. After recording, the City will furnish to the contractor the recording information for the bond to evidence that the contractor has met the requirement of Florida law. The City will bill the cost of recording to the contractor. The Respondent must submit proof of their present bonding capacity with their submittal package in the form of a current (not older than 3 months) letter from Respondent's surety. Respondent's bonding capacity must be equal to or greater than 100% of the total project amount. **Respondents who do not include their present bonding capacity letter 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.

LICENSES AND PERMITS
Contractor is responsible for providing all applicable local and state licenses, permits and fees.

SECTION 7 – STATEMENTS OF QUALIFICATIONS SUBMITTAL & REQUIREMENTS

Statements of Qualifications shall include all the information solicited in this RFSQ, and any additional data that the respondent deems pertinent to the understanding and evaluation of the Statement. The respondent should not withhold any information from the written statement in anticipation of presenting the information orally or in a demonstration.

Submittal of a Statement of Qualifications shall constitute the respondent's agreement and intent to follow and adhere to all statements and offerings contained within this RFSQ.

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

In conjunction with other material and information requested in the RFSQ, all respondents responding to this solicitation shall provide one (1) original, five (5) identical copies and one (1) identical digital version in .pdf format on USB flash/thumb drive. The digital version must be an identical copy of the fully signed original submission. All required attachments are to be in 8 ½" by 11" format, clearly legible, tabbed and bound in the following order:

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

STATEMENT OF INTEREST
The responding firm will provide a letter, on letterhead, not exceeding two (2) pages, which serves as a statement of interest and introduction to the submittal. The Statement of Interest shall show the RFSQ number and title. This letter must be signed by the person authorized to bind the firm, company, or corporate entity.

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

- Form 9.1 Statement Submittal Checklist
- Form 9.2 Respondent's Acknowledgement
- Form 9.3 Addendum & Change Order Procedure Acknowledgement
- Form 9.4 Drug Free Preference Statement
- Form 9.5 Sworn Statement on Public Entity Crimes
- Form 9.6 Anti-Collusion Form
- Form 9.7 Statement of Qualifications
- Form 9.8 Professional References for Previous Experience
- Form 9.9 Authorized Signatures/Negotiators
- Form 9.10 Scrutinized Company Certification
- Form 9.11 E-Verify Affidavit
- Form 9.12 Debarment, Suspension, and Other Responsibility Matters
- Form 9.13 Non-Disclosure of Confidential Materials
- Exhibit "A" – List of Confidential Materials (if applicable)
- Form 9.14 No Submittal Form (to be returned only if not submitting a Statement of Qualifications)
- Appendix A - 44 C.F.R. Part 18 Certification Regarding Lobbying
- Current Performance & Payment Bond Capacity Letter from Respondent's Surety
- Copy of license to do business in the State of Florida Sunbiz report showing your company registered as "Active".
- Copy of any and all professional licenses and certifications as required to perform the services described herein.

TAB B - COMPANY PROFILE – HISTORY AND QUALIFICATIONS (Weight 45%)

- Provide a brief narrative, not exceeding two (2) pages of the corporate history of the firm. The narrative shall include the location of the Home or Corporate Office for the Firm and the location of the Office(s) that will be directly working on projects for the City.
- Demonstrate respondent's ability, capability and skill to perform the services as described in this RFSQ, not exceeding ten (10) pages total.
    - This section should include the firm's qualifications and capacity to meet the needs of the City of Port Orange. This may take the form of a narrative or chart and may include pictures or graphics which describe the firm's qualifications, work philosophy, as well as the projected commitment of resources to be used in completion of projects for the City.
    - What ability does the firm have to sustain the potential loss of key personnel and still adequately meet the terms of the contract?
    - Include a list, table or graphic along with a short narrative explanation depicting services, disciplines or practice areas in which the firm has exceptional expertise.
- Projects and Experience – Demonstrate experience to perform Construction Manager at Risk projects or services and provide examples of past performance delivering quality projects or service with innovative or cost saving solutions.
- Explain in concept how your firm delivers projects on time and within budget.

TAB C - QUALIFICATIONS, PROFESSIONAL LICENSE, CERTIFICATIONS OF THE FIRM'S KEY PERSONNEL AS PRESENTED BY RESUMES, EDUCATION AND TRAINING (Weight 25%)

- Provide a description, not exceeding five (5) pages, of the proposed project team. This description should provide the following:
    - Names;
    - Titles;
    - Organization structure for the proposed project team;
    - Clearly identify the proposed role and responsibility in the project team for each member.
- For each person named, provide a brief description of qualifications, not exceeding a total of ten (10) pages. The descriptions should include at a minimum:
    - The professional qualifications and experience for each person;
    - A summary of experience on projects like those described in this RFSQ;
    - Resumes of the proposed personnel to be assigned to this project (to include years of experience and years with the company).

TAB D - FINANCIAL STABILITY/LITIGATION and DEBARMENT HISTORY (Weight 20%)

- All Respondents shall submit a financial statement, preferably a certified audit of the last available fiscal year. A third party prepared financial statement and the latest Dun & Bradstreet report will be accepted in lieu thereof. Enclose the financial statement in a separate envelope marked "CONFIDENTIAL pursuant to Florida Statutes Section 119.071(1)(c)".
- This tab shall contain information on the nature and magnitude of any litigation or proceeding whereby, during the past five (5) years, a court or any administrative agency has ruled against the firm in any matter related to the professional activities of the firm.
- Include any class actions within your company where named, industry investigations by Attorneys General, in addition to individual cases.
- This tab shall contain information on the nature and magnitude of any debarment or proceeding during the past five (5) years against the firm in any matter related to the professional activities of the firm.
- This tab shall include any debarment actions against your company by the City or other public entity.
- Respondent must indicate whether any contract awarded by another government agency has been terminated for default or convenience.
- Respondent has a continuing duty to inform the City of any new claims filed against the Respondent.

TAB E – REFERENCES (Weight 10%)

- References listed by Respondent on p. 1 of Form 9.8 (to be included only with TAB A) MUST be verified as current by the Respondent prior to submittal. **If references cannot be verified using the provided contact information, Respondent's points for this criterion will be adversely affected.**
- Below is a sample of the verification questions that may be used:
    1. What type of services did the Firm do for you? What was the scope of the project?
    2. Did they meet the terms of the contract?
    3. Was the project completed on time and within budget?
    4. Did the Firm keep you apprised on any issues with the project? How well did the Firm communicate with you?
    5. Did they respond in a timely manner to calls, requests, etc.?
    6. Did they provide adequate staff to take care of the needs of your company/agency?
    7. Did the Firm manage sub-consultants and/or sub-contractors?
    8. How was your experience in working with this Firm? What frustrations, if any, did you have along the way?
    9. What is your level of confidence in using this Firm in the future? Do you feel the Firm will meet your needs in the next 3-5 years?
    10. Overall, would you recommend this Firm?

The information provided under this tab must be current and the City must be able to contact each reference for verification as part of the evaluation process.

SECTION 8 – EVALUATION OF STATEMENTS OF QUALIFICATIONS

EVALUATION CRITERIA

The Evaluation Committee comprised of City staff will evaluate and rank proposals based on a 10-point weighted score formula. Weights will be assigned to each criterion and will be applied by multiplying the points scored for each criterion by the weighted percentage of each criterion. Scores shall be in whole, half or quarter percent increments. Examples of acceptable scores are 5.25, 5.50 or 6.0 in the 10-point scale. Scores such as 5.10 or 5.80 are NOT acceptable. If an evaluator returns a score for any criterion other than whole, half or quarter percent increments, they will be asked to round up or down based on standard rounding rules. Respondent's resulting weighted scores will be rounded to 2 decimal points also using standard rounding rules.

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

All Statements of Qualifications will be subject to a review and evaluation process. It is the intent of the City that all Respondents to this RFSQ, who meet the requirements, will be ranked in accordance with the criteria established in these documents. The City will consider all responsive and responsible statements received in its evaluation and award process. The committee may choose to conduct an oral interview with each short-listed firm.

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

1. Responsiveness of the statement related to the Scope of Services.
2. The ability, capability, and skill of the Respondent to perform the contract, including the range of services offered.
3. Whether the provider can perform the contract within the time specified without delay or interference.
4. The quality, availability and adaptability of the supplies or contractual services to the particular use required.
5. The character, integrity, reputation, judgment, experience, and efficiency of the Respondent.
6. Professional licensure required when service of a skilled nature is required by law to perform such service and/or skill.
7. The quality of performance of previous contracts.

8. The number and scope of conditions attached to the bid, proposal or statement of qualifications.
9. Responsiveness of client references.

Written Statements of Qualifications will be evaluated and scored based upon the following criteria:

EVALUATION CRITERIA FOR WRITTEN STATEMENTS OF QUALIFICATIONS

TAB B - Company Profile – History and Qualifications: (Weight 45%) ***(0 to 10 points)***

1) *Company History – Size, Location(s) and Primary area of Professional Focus……(5 points)*
2) *Qualifications – Demonstration of firm's ability, capability and skill……(5 points)*

TAB C - Qualifications, Professional License, Certifications of the Firm's Key Personnel: (Weight 25%) ***(0 to 10 points)***

Qualifications, accomplishments and years of experience of firm's key personnel presented by resumes, education and training certifications.

TAB D – Financial Stability/Litigation and Debarment History: (Weight 20%) ***(0 to 10 points)***

1) *Sufficiency of the Financial Resources and Ability of the firm to perform……(5 points)*
   - *10 points – current ratio is strong*
   - *6-9 points – current ratio is moderate*
   - *3-5 points – current ratio is a slight risk*
   - *0-2 points – current ratio is risky*
2) *Litigation and Debarment History……(5 points)*
   - *10 points – No Litigation nor Debarment history in last 5 years*
   - *6-9 points – Litigation and/or Debarment history in last 5 years, no actions taken against firm*
   - *3-5 points – Litigation and/or Debarment history in last 5 years, action was taken against firm, no current active Litigation and/or Debarment history actions*
   - *0-2 points – Current active Litigation and/or Debarment action in current year*

TAB E – References: (Weight 10%) ***(0 to 10 points)***

References must be responsive and contact information provided accurate. A set of questions relating to their experience with your firm will be given to all references. The answers will be provided to the Evaluation Committee so they may apply appropriate scores.

Total Maximum Points (40 points)

Scoring Guidelines (0 – 10 points):

0-2.0 = Did Not Meet: Not responsive to the question or topic; 2.25-4.0 = Below minimum standards: Responsive to the question or topic, but below acceptable standards; 4.25-6.0 = Marginal: Minimal acceptable performance standards and responsive to the question or topic; 6.25-8.0 = Satisfactory: Above minimum performance, effective and responsive to the question or topic; 8.25-10.0 = Exceeds Expectations for effectiveness and responsiveness to the question or topic. The Evaluator's score times the "weighted value" assigned to the criterion outlined above equals the total score for that section. Resulting scores will be rounded to 2 decimal points. For example:

Criterion: Tab D: Financial Stability	***Evaluator's Score*** *10-point scale*	***Weighted Value of Total***	***Resulting Score***
Respondent A	8.50	20%	1.70
Respondent B	6.25	20%	1.25

FORMAL ORAL PRESENTATIONS/INTERVIEWS (If Required)

The City may choose to conduct oral interviews with or receive oral presentations from one or more of the respondents. If the City chooses to allow oral interviews and/or presentations, such interviews or oral presentations will not be open to the public pursuant to the conditions set forth in Florida Statute § 286.0113.

The City's Purchasing Division will establish the schedule and respondents will be notified via www.demandstar.com and the Purchasing Division's webpage www.port-orange.org/bids.aspx, at least seven (7) calendar days in advance of the date, time and place of the presentations. The specific format of each presentation will be provided to the respondents with the notifications.

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

FINAL RANKING AND RECOMMENDATION FOR AWARD

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

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

SECTION 9 – REQUIRED FORMS

FORM 9.1 – RESPONDENTS SUBMITTAL CHECKLIST

____ Form 9.2 – Respondents Acknowledgement

____ Form 9.3 – Addendum and Change Order Procedure Acknowledgement

____ Form 9.4 – Drug Free Preference Statement

____ Form 9.5 – Public Entity Crimes Statement

____ Form 9.6 – Anti-Collusion Form

____ Form 9.7 – Statement of Respondent's Qualifications

____ Form 9.8 – Professional References for Previous Experience

____ Form 9.9 – Authorized Signatures/Negotiators

____ Form 9.10 – Scrutinized Companies Certification

____ Form 9.11 – E-Verify Affidavit

____ Form 9.12 – Debarment, Suspension and Other Responsibility Matters

____ Form 9.13 – Non-Disclosure Agreement for Confidential Materiel

____ Exhibit "A" – Description of Confidential Material

____ Form 9.14 – No Submittal Form

____ Appendix A - 44 C.F.R. Part 18 Certification Regarding Lobbying

____ Copy of license to do business in the State of Florida Sunbiz report showing your company registered as "Active"

____ Copy of any and all professional licenses and certifications as required to perform the services described herein

____ Current Bonding Capacity Letter for Performance & Payment Bond

____ Submission of one (1) original marked 'ORIGINAL', five (5) copies and one (1) digital (USB flash drive) version in PDF format

BY: _____
Name of Business

_____
Authorized Signature

_____
Date

This document must be completed and returned with your Submittal

FORM 9.2 – RESPONDENTS ACKNOWLEDGEMENT FORM

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

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

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

I further certify that this statement is made without prior understanding, contract, connection, discussion or collusion with any person, firm or corporation submitting a statement for the same product or service; no officer, employee or agent of the City of Port orange City Council or of any other Respondent interested in said RFSQ; and that the undersigned executed this Respondents' Acknowledgement with full knowledge and understanding of the matters therein contained and was July 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 RFSQ.

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 statement non-responsive.

NO EXCEPTIONS ALLOWED AFTER THE STATEMENT 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 9.3 – ADDENDUM AND CHANGE ORDER PROCEDURE ACKNOWLEDGEMENT

ADDENDUM ACKNOWLEDGEMENT

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

I acknowledge receipt and incorporation of the following addenda:

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.

By signing below, I acknowledge the above statements regarding issued Addenda 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 9.4 – DRUG-FREE PREFERENCE STATEMENT

IDENTICAL TIE STATEMENTS – 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 statement 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 statements will be followed if none of the tied respondents 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 request, 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 faither 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:

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

_____

Notary Public, State of _____

Printed, typed or stamped name, commission and expiration:

This document must be completed and returned with your Submittal

FORM 9.5 – SWORN STATEMENT 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 Respondent 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

_____
Authorized Signature

STATE OF:_____

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 9.6 – ANTI-COLLUSION FORM

ANTI-COLLUSION STATEMENT FORM:

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

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

IT IS AGREED BY THE UNDERSIGNED RESPONDENT THAT THE SIGNING AND DELIVERY OF THE STATEMENT REPRESENTS THE RESPONDENT'S ACCEPTANCE OF THE TERMS AND CONDITIONS OF THE FOREGOING SPECIFICATIONS, CONTRACT AND PROVISIONS, AND IF AWARDED, THIS CONTRACT WILL REPRESENT THE AGREEMENT BETWEEN THE RESPONDENT 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:_____F.E.I.N.:_____

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

This document must be completed and returned with your Submittal

FORM 9.7 - STATEMENT OF RESPONDENT'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 9.7 is complete, true and correct to the best of his or her knowledge and belief. **If necessary, questions may be answered on a separate paper and attached with any additional information that may be pertinent.**

A. Name of Respondent: _____

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 appropriate 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 SHET & 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: _____

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 compromising the Statement Qualifications.

_____
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 9.8 – PROFESSIONAL REFERENCES FOR PREVIOUS EXPERIENCE

The Respondent 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 9.8 – Professional References for Previous Experience Page 2)

LISTING OF PREVIOUS EXPERIENCE
COMMERCIAL CLIENT LIST

The Respondent 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 to those required under the City's contract as outlined in this package. A minimum of three (3) project shall be listed below. 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 9.9 – AUTHORIZED SIGNATURES/NEGOTIATORS

The Respondent represents that the following person(s) are authorized to sign and/or negotiate contracts and related documents to which the Respondent will be duly bound:

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

_____
Authorized Signature

_____
Print Name of Authorized Signature

This document must be completed and returned with your Submittal

FORM 9.10 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)

_____ does not:
(Company Name)

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

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 must be completed and returned with your Submittal

FORM 9.11 - 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 9.12 - 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 statement be 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 statement/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 Statement.

_____	_____
Organization Name	Request for Statement of Qualifications Number
_____	_____
Name and Title of Authorized Representative	Signature Date

This document must be completed and returned with your Submittal

FROM 9.13 – NON-DISCLOSURE AGREEMENT FOR CONFIDENTIAL MATERIALS

REFERENCE# RFSQ #23-14

RETURN THIS FORM ONLY IF CONFIDENTIAL MATERIALS ARE BEING INCLUDED WITH THE SUBMITTAL. PLEASE READ THE SECTION IN THE REQUEST TO DETERMINE IF THIS APPLIES.

Respondent: _____

Address: _____

This Agreement is entered into as of the date of the last signature set forth below between the City of Port Orange, a political subdivision of the State of Florida (hereinafter the "City"), and the above-named Respondent (hereinafter the ("Respondent"). The City and the Respondent are collectively referred to as the "Parties" and may be referred to individually as a Party.

RECITALS

WHEREAS, the Respondent asserts that it possesses certain confidential trade secret materials that it wishes to disclose to the City for the purpose of responding to a solicitation or otherwise conducting business with the City; and

WHEREAS, the City desires to review such materials in order to evaluate the City's interest in negotiating and concluding an agreement for the purchase of certain products and services, or otherwise conducting business with the Respondent.

NOW THEREFORE, in consideration of the mutual promises and premises contained herein, the receipt and sufficiency of which are hereby acknowledged, the City and the Respondent agree as follows:

1. Confidential Materials. The Respondent warrants and represents to the City that the materials described in the attached Exhibit A (Description of "Confidential Material") constitute trade secrets as defined by Section 812.081(1)(c), Florida Statutes, or financial statements required by the City for projects as defined in 119.071(1)(c), Florida Statutes. Subject to the terms and conditions of this Agreement, the City agrees not to disclose such Confidential Materials to third parties.
2. Additional Materials. During the course of the review or the business relationship with the City, the Respondent may disclose additional confidential or trade secret information to the City in which case the restrictions and obligations on the use and disclosure of the Confidential Materials imposed by this Agreement shall also apply to such additional information to the extent permitted by Florida law. Any such additional confidential or trade secret information shall be duly marked and stamped "confidential" or "trade secret" prior to delivery to the City, and shall be subject to this Agreement and Section 812.081(2), Florida Statutes, only if written receipt is provided by the City acknowledging receipt of such materials.
3. Exclusions. For purposes of this Agreement, the term "Confidential Materials" does not include the following:
    a. Information already known or independently developed by the City;
    b. Information in the public domain through no wrongful act of the City;
    c. Information received by the City from a third party who was legally free to disclose it;
    d. Information disclosed by the Respondent to a third party without restriction on disclosure;
    e. Information disclosed by requirement of law or judicial order, including without limitation Chapter 119 Florida Statutes; or
    f. Information that is disclosed with the prior written consent of the Respondent, but only to the extent permitted by such consent.
4. Non-Disclosure by Respondent. In the event that the City discloses confidential or trade secret information to Respondent, the Respondent agrees to not disclose such information to any third party or copy such information or use it for any purpose not explicitly set forth herein without the City's prior written consent. Further, upon conclusion of discussions or business transactions between the City and the Respondent, or at any time upon request of the City, Respondent agrees to return such information (including any copies) to the City.

5. Duty of Care. Each Party agrees to treat the other Party's confidential or trade secret information with the same degree of care, but not less than reasonable care, as the receiving Party normally takes to preserve and protect its own similar confidential information and to inform its employees of the confidential nature of the disclosing Party's information and of the requirement of nondisclosure. In the event either Party has actual knowledge of a breach of the nondisclosure requirements set forth in this Agreement, the Party acquiring such knowledge shall promptly inform the other Party and assist that Party in curing the disclosure, where possible, and preventing future disclosures.
6. Limitations of Florida Law. Respondent understands and agrees that its assertion that any item is confidential or a trade secret does not, in and of itself, render such material exempt from the Florida Public Records Law, Chapter 119 of the Florida Statutes, and that the City's ability to prevent disclosure of confidential and trade secret information may be subject to determination by a Florida court that such materials qualify for trade secret protection under Florida law. In the event a third party makes a public records request for the Confidential Materials or other materials deemed by Respondent to be confidential or a trade secret, the City may submit the materials to the court for inspection in camera as set forth in Section 119.07(1)(g) Florida Statutes. Respondent further understands that the City may be required to disclose such information if directed by a court of competent jurisdiction.
7. Indemnification by Respondent. In the event of any litigation instituted by a third party to compel the City to disclose such materials, Respondent shall, at its sole cost and expense, provide assistance to the City in defending the denial of the records request, and shall hold the City harmless from any claim for statutory costs and attorney's fees arising from the City's refusal to disclose such materials.
8. No Additional Obligations. This Agreement shall not be construed in any manner to be an obligation for either Party to enter into any subsequent contract or agreement.
9. Sovereign Immunity. Nothing in this Agreement 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 has been or which may be adopted by the Florida Legislature, regardless of the nature of any claim which may arise, including but not limited to a claim sounding in tort, equity or contract. In no event shall the City be liable for any claim or claims for breach of contract, including without limitation the wrongful disclosure of confidential or trade secret information for an amount which exceeds, individually and collectively, the then current statutory limits of liability for tort claims. Nothing in this Agreement 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 by operation of law.
10. Notice. Whenever either Party desires to give notice unto the other, it must be given by written notice, sent by registered United States mail, with return receipt requested, addressed to the party for whom it is intended, at the place last specified, and the place for giving of notice in compliance with the provisions of this paragraph. For the present, the Respondent designates the address set forth above as its place for receiving notice, and the City designates the following address for such notice:

    The City of Port Orange, Florida
    Purchasing Manager
    1000 City Center Circle
    Port Orange, FL 32129

11. Governing Law. This Agreement shall be governed by the laws of the State of Florida, and venue for any action arising out of or relating to the subject matter of this Agreement shall be exclusively in Volusia County, Florida, or the Federal City Court for the Middle City of Florida, Jacksonville Division.
12. Respondent and the City hereby expressly waive any rights either may have to a trial by jury of any civil litigation related to this Agreement for any litigation related to or arising from this solicitation and resulting agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers the day and year as set forth below.

The City of Port Orange, FL

BY: _____

NAME: _____

TITLE: _____

DATE: _____

Respondent

BY: _____

NAME: _____

TITLE: _____

DATE: _____

ATTEST:

BY: _____

NAME: _____

TITLE: _____

DATE: _____

EXHIBIT A - DESCRIPTION OF CONFIDENTIAL MATERIAL

FORM 9.14 – NO SUBMITTAL FORM

If your company will not be submitting a statement 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: RFSQ #23-14 Construction Manager At Risk for Construction of Public Utilities Operations Facility

Company Name: _____

Contact Person Name & Title: _____

Address: _____

Telephone: _____ Email Address: _____

Please check a reason for a "no statement".

☐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: _____

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

AFFIDAVIT REGARDING WORKER'S COMPENSATION (FOR INFORMATIONAL PURPOSES ONLY)

State of _____ County of _____

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

WITNESS:

By: _____

Company: _____

CONTRACTOR:

By: _____

Company: _____

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 _____

Printed, typed or stamped name, commission and expiration:

IMPORTANT: This certificate must be completed and returned by the Awarded Respondent, upon issuance of a Notice of Intent to Award by the Purchasing Department of the City of Port Orange.

LEASED EMPLOYEE AFFIDAVIT (FOR INFORMATIONAL PURPOSES ONLY)

EXHIBIT CONTRACT #_____

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

OR

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

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

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

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

Name of Employee Leasing Company: _____

Worker' Compensation Carrier: _____

A.M. Best Rating Carrier: _____

Inception Date of Leasing Agreement: _____

☐ **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.**

Signature of Contractor: _____

Signature of Owner/Officer: _____

Title: _____ Date: _____

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:

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_____, 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 bindourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

THE CONDITION OF THIS BOND is that if Principal:

1. Performs the terms of that certain AIA Contract for Services, having an effective date of _____, entered into by and between the Principal and the City, for Police Department Duct/HVAC Mold Remediation, 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)

_____ By:_____

(As to Corporate Principal) Secretary

_____ *(Corporate Seal)*

(Witness to Principal)

_____

(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 executeBOND. 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 asamended) and be authorized to transact business in the State of Florida.

DRAFT

AIA® Document A133® – 2019

Standard Form of Agreement Between Owner and Construction Manager as Constructor *where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price*

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

BETWEEN the Owner:
(Name, legal status, address, and other information)

«City of Port Orange, a Florida Municipal Corporation»
«1000 City Center Circle»
«Port Orange, Florida 32129»
«(386) »

and the Construction Manager:
(Name, legal status, address, and other information)

« »« »
« »
« »
« »

for the following Project:
(Name, location, and detailed description)

« »
« »
« »

The Architect:
(Name, legal status, address, and other information)

« »« »
« »
« »
« »

The Owner and Construction Manager agree as follows.

ADDITIONS AND DELETIONS: The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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

AIA Document A201™–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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DRAFT

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.
(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project, as described in Section 4.1.1:
(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

« »

§ 1.1.2 The Project's physical characteristics:
(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

« »

§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6:
(Provide total and, if known, a line item breakdown.)

« »

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§ 1.1.4 The Owner's anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any:

« »

.2 Construction commencement date:

« »

.3 Substantial Completion date or dates:

« »

.4 Other milestone dates:

« »

§ 1.1.5 The Owner's requirements for accelerated or fast-track scheduling, or phased construction, are set forth below:
(Identify any requirements for fast-track scheduling or phased construction.)

« »

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

« »

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Construction Manager shall complete and incorporate AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E234–2019 is incorporated into this agreement, the Owner and Construction Manager shall incorporate the completed E234–2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.7 Other Project information:
(Identify special characteristics or needs of the Project not provided elsewhere.)

« »

§ 1.1.8 The Owner identifies the following representative in accordance with Section 4.2:
(List name, address, and other contact information.)

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§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Construction Manager's submittals to the Owner are as follows:
(List name, address and other contact information.)

« »

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§ 1.1.10 The Owner shall retain the following consultants and contractors:
(List name, legal status, address, and other contact information.)

.1 Geotechnical Engineer:

« »« »
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.2 Civil Engineer:

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.3 Other, if any:
(List any other consultants retained by the Owner, such as a Project or Program Manager.)

« »

§ 1.1.11 The Architect's representative:
(List name, address, and other contact information.)

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§ 1.1.12 The Construction Manager identifies the following representative in accordance with Article 3:
(List name, address, and other contact information.)

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§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1.9:
(List any Owner-specific requirements to be included in the staffing plan.)

« »

§ 1.1.14 The Owner's requirements for subcontractor procurement for the performance of the Work:
(List any Owner-specific requirements for subcontractor procurement.)

« »

§ 1.1.15 Other Initial Information on which this Agreement is based:

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§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager shall appropriately adjust the Project schedule, the Construction Manager's services, and the Construction Manager's compensation. The Owner shall adjust the Owner's budget for the Guaranteed Maximum Price and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

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

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

§ 2.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner to furnish efficient construction administration, management services, and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™–2017, General Conditions of the Contract for Construction, shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

§ 2.3.2 For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2017, which document is incorporated herein by reference. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant

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or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

§ 3.1.2 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

§ 3.1.3 Consultation

§ 3.1.3.1 The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.3.2 The Construction Manager shall advise the Owner and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; prefabrication; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. The Construction Manager shall consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase.

§ 3.1.3.3 The Construction Manager shall assist the Owner and Architect in establishing building information modeling and digital data protocols for the Project, using AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 3.1.4 Project Schedule

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner.

§ 3.1.5 Phased Construction

The Construction Manager, in consultation with the Architect, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues.

§ 3.1.6 Cost Estimates

§ 3.1.6.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare, for the Architect's review and the Owner's approval, preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume, or similar conceptual estimating techniques. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 3.1.6.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action.

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§ 3.1.6.3 If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Construction Manager and the Architect shall work together to reconcile the cost estimates.

§ 3.1.7 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make recommendations regarding constructability and schedules, for the Architect's review and the Owner's approval.

§ 3.1.8 The Construction Manager shall provide recommendations and information to the Owner and Architect regarding equipment, materials, services, and temporary Project facilities.

§ 3.1.9 The Construction Manager shall provide a staffing plan for Preconstruction Phase services for the Owner's review and approval.

§ 3.1.10 If the Owner identified a Sustainable Objective in Article 1, the Construction Manager shall fulfill its Preconstruction Phase responsibilities as required in AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 3.1.11 Subcontractors and Suppliers

§ 3.1.11.1 If the Owner has provided requirements for subcontractor procurement in section 1.1.14, the Construction Manager shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review and approval.

§ 3.1.11.2 The Construction Manager shall develop bidders' interest in the Project.

§ 3.1.11.3 The processes described in Article 9 shall apply if bid packages will be issued during the Preconstruction Phase.

§ 3.1.12 Procurement

The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 3.1.13 Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities.

§ 3.1.14 Other Preconstruction Services

Insert a description of any other Preconstruction Phase services to be provided by the Construction Manager, or reference an exhibit attached to this document

(Describe any other Preconstruction Phase services, such as providing cash flow projections, development of a project information management system, early selection or procurement of subcontractors, etc.)

« »

§ 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2.

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§ 3.2.2 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.

§ 3.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

.1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;

.2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2;

.3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee;

.4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and

.5 A date by which the Owner must accept the Guaranteed Maximum Price.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order.

§ 3.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 3.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 3.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of the Guaranteed Maximum Price Amendment, unless the Owner provides prior written authorization for such costs.

§ 3.2.8 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish such revised Contract Documents to the Construction Manager. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the revised Contract Documents.

§ 3.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

§ 3.3 Construction Phase

§ 3.3.1 General

§ 3.3.1.1 For purposes of Section 8.1.2 of A201–2017, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 3.3.1.2 The Construction Phase shall commence upon the Owner's execution of the Guaranteed Maximum Price Amendment or, prior to acceptance of the Guaranteed Maximum Price proposal, by written agreement of the parties.

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The written agreement shall set forth a description of the Work to be performed by the Construction Manager, and any insurance and bond requirements for Work performed prior to execution of the Guaranteed Maximum Price Amendment.

§ 3.3.2 Administration

§ 3.3.2.1 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and Architect.

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201–2017.

§ 3.3.2.3 Monthly Report

The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner.

§ 3.3.2.4 Daily Logs

The Construction Manager shall keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 3.3.2.5 Cost Control

The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect, and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.3.2.3 above.

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

§ 4.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

§ 4.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. After execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request such information as set forth in A201-2017 Section 2.2.

§ 4.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 4.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

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§ 4.1.4.1 The Owner shall furnish tests, inspections, and reports, required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 4.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 4.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 4.1.5 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

§ 4.1.6 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 4.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201–2017, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 4.2.1 Legal Requirements. The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 4.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133™–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager with a copy of the scope of services in the executed agreement between the Owner and the Architect, and any further modifications to the Architect's scope of services in the agreement.

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

§ 5.1.1 For the Construction Manager's Preconstruction Phase services described in Sections 3.1 and 3.2, the Owner shall compensate the Construction Manager as follows:

(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

« »

§ 5.1.2 The hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager's Consultants and Subcontractors, if any, are set forth below.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

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« »

Individual or Position	Rate

§ 5.1.2.1 Hourly billing rates for Preconstruction Phase services include all costs to be paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, and shall remain unchanged unless the parties execute a Modification.

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within « » (« ») months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 5.2 Payments

§ 5.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid « » (« ») days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.
(Insert rate of monthly or annual interest agreed upon.)

« » % « »

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 6.1 Contract Sum

§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager's Fee.

§ 6.1.2 The Construction Manager's Fee:
(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

« »

§ 6.1.3 The method of adjustment of the Construction Manager's Fee for changes in the Work:

« »

§ 6.1.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

« »

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed « » percent (« » %) of the standard rental rate paid at the place of the Project.

§ 6.1.6 Liquidated damages, if any:
(Insert terms and conditions for liquidated damages, if any.)

« »

§ 6.1.7 Other:
(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)

« »

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§ 6.2 Guaranteed Maximum Price

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

§ 6.3 Changes in the Work

§ 6.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 6.3.1.1 The Architect may order minor changes in the Work as provided in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.3 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201–2017, as they refer to "cost" and "fee," and not by Articles 6 and 7 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in Article 7 of AIA Document A201–2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 6.1.2 of this Agreement.

§ 6.3.5 If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7.

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost.

§ 7.1.3 Costs shall be at rates not higher than the standard rates paid at the place of the Project, except with prior approval of the Owner.

§ 7.2 Labor Costs

§ 7.2.1 Wages or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ 7.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site and performing Work, with the Owner's prior approval.

§ 7.2.2.1 Wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:

(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)

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§ 7.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 7.2.4 Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

§ 7.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

§ 7.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and this Agreement.

§ 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 7.4.1 Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction.

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 7.5.1 Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.

§ 7.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 7.5.4 Costs of the Construction Manager's site office, including general office equipment and supplies.

§ 7.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

§ 7.6 Miscellaneous Costs

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.

§ 7.6.1.1 Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

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§ 7.6.1.2 Costs for insurance through a captive insurer owned or controlled by the Construction Manager, with the Owner's prior approval.

§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Construction Manager is liable.

§ 7.6.3 Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Construction Manager is required by the Contract Documents to pay.

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201–2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

§ 7.6.5.1 The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Construction Manager had reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Construction Manager failed to promptly furnish such information to the Architect as required by Article 3 of AIA Document A201–2017. The costs of legal defenses, judgments, and settlements shall not be included in the Cost of the Work used to calculate the Construction Manager's Fee or subject to the Guaranteed Maximum Price.

§ 7.6.6 Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior approval.

§ 7.6.7 Costs of document reproductions and delivery charges.

§ 7.6.8 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 7.6.9 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ 7.6.10 Expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work, with the Owner's prior approval.

§ 7.6.11 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work, with the Owner's prior approval.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201–2017.

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Construction Manager, and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

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§ 7.7.4 The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2017 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 7.9.

§ 7.8 Related Party Transactions

§ 7.8.1 For purposes of this Section 7.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Construction Manager; (2) any entity in which any stockholder in, or management employee of, the Construction Manager holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Construction Manager; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Construction Manager.

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

§ 7.9 Costs Not To Be Reimbursed

§ 7.9.1 The Cost of the Work shall not include the items listed below:

- **.1** Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
- **.2** Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- **.3** Expenses of the Construction Manager's principal office and offices other than the site office;
- **.4** Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- **.5** The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- **.6** Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- **.7** Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- **.8** Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- **.9** Costs for services incurred during the Preconstruction Phase.

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

§ 8.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 8.2 Amounts that accrue to the Owner in accordance with the provisions of Section 8.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or

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equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 9.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 9.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, the Construction Manager shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Article 10.

ARTICLE 10 ACCOUNTING RECORDS

The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

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

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

« »

§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the « » day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the « » day of the « » month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than « » (« ») days after the Architect receives the Application for Payment.
(Federal, state or local laws may require payment within a certain period of time.)

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee.

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§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee.

§ 11.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 11.1.5.2 The allocation of the Guaranteed Maximum Price under this Section 11.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

§ 11.1.5.3 When the Construction Manager allocates costs from a contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the Architect.

§ 11.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work and for which the Construction Manager has made payment or intends to make payment prior to the next Application for Payment, by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

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

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

- **.1** That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;
- **.2** That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- **.3** That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and
- **.4** The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

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

- **.1** The aggregate of any amounts previously paid by the Owner;
- **.2** The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- **.3** Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;
- **.4** For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;
- **.5** The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- **.6** Retainage withheld pursuant to Section 11.1.8.

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§ 11.1.8 Retainage

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

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

«5%»

§ 11.1.8.1.1 The following items are not subject to retainage:

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

« »

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

~~*(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)*~~

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

§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)

« »

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

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

§ 11.1.11 The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

§ 11.1.12 In taking action on the Construction Manager's Applications for Payment the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and such action shall not be deemed to be a representation that (1) the Architect has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 11.1.4 or other supporting data; (2) that the Architect has made exhaustive or continuous on-site inspections; or (3) that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 11.2 Final Payment

§ 11.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

.1 the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;

.2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and

.3 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2.

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§ 11.2.2 Within 30 days of the Owner's receipt of the Construction Manager's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit.

§ 11.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors' findings to the Architect.

§ 11.2.2.2 Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201–2017. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201–2017. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 11.2.2.3 If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201–2017. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

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

« »

§ 11.2.4 If, subsequent to final payment, and at the Owner's request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, and not excluded by Section 7.9, to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 6.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 11.2.4 in determining the net amount to be paid by the Owner to the Construction Manager.

§ 11.3 Interest

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

« » % « »

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

§ 12.1.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201–2017. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 12.1.2 of this Agreement shall not apply.

§ 12.1.2 The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.
(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

« »

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« »
« »
« »

§ 12.2 Binding Dispute Resolution

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

[« »] Arbitration pursuant to Article 15 of AIA Document A201–2017

[« »] Litigation in a court of competent jurisdiction

[« »] Other: *(Specify)*

« »

If the Owner and Construction Manager do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination Prior to Execution of the Guaranteed Maximum Price Amendment

§ 13.1.1 If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner.

§ 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.3 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Article 14 of A201–2017.

§ 13.1.4 In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.5 If the Owner terminates the Contract pursuant to Section 13.1.3 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.4:

.1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;

.2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and

.3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

§ 13.1.6 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a

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condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

§ 13.1.6.1 If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

§ 13.2 Termination or Suspension Following Execution of the Guaranteed Maximum Price Amendment

§ 13.2.1 Termination

The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of AIA Document A201–2017.

§ 13.2.2 Termination by the Owner for Cause

§ 13.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

.1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;

.2 Add the Construction Manager's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager' Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;

.3 Subtract the aggregate of previous payments made by the Owner; and

.4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

§ 13.2.2.2 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

§ 13.2.3 Termination by the Owner for Convenience

If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Construction Manager a termination fee as follows:

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

« »

§ 13.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document A201–2017, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 6.1 and 6.3.5 of this Agreement.

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ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Terms in this Agreement shall have the same meaning as those in A201–2017. Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 14.2 Successors and Assigns

§ 14.2.1 The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of A201–2017, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 14.2.2 The Owner may, without consent of the Construction Manager, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Construction Manager shall execute all consents reasonably required to facilitate the assignment.

§ 14.3 Insurance and Bonds

§ 14.3.1 Preconstruction Phase

The Construction Manager shall maintain the following insurance for the duration of the Preconstruction Services performed under this Agreement. If any of the requirements set forth below exceed the types and limits the Construction Manager normally maintains, the Owner shall reimburse the Construction Manager for any additional cost.

§ 14.3.1.1 Commercial General Liability with policy limits of not less than « » ($ « ») for each occurrence and « » ($ « ») in the aggregate for bodily injury and property damage.

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than « » ($ « ») per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 14.3.1.3 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 14.3.1.1 and 14.3.1.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than « » ($ « ») each accident, « » ($ « ») each employee, and « » ($ « ») policy limit.

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than « » ($ « ») per claim and « » ($ « ») in the aggregate.

§ 14.3.1.6 Other Insurance

(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)

Coverage	Limits

§ 14.3.1.7 Additional Insured Obligations. To the fullest extent permitted by law, the Construction Manager shall cause the primary and excess or umbrella polices for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 14.3.1.8 The Construction Manager shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 14.3.1.

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§ 14.3.2 Construction Phase
After execution of the Guaranteed Maximum Price Amendment, the Owner and the Construction Manager shall purchase and maintain insurance as set forth in AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, Exhibit B, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 14.3.2.1 The Construction Manager shall provide bonds as set forth in AIA Document A133™–2019 Exhibit B, and elsewhere in the Contract Documents.

§ 14.4 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:
(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

« »

§ 14.5 Other provisions:

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

§ 14.5.2 RECORDS
The design, permits and all other records prepared by the Contractor, assembled for the City, subcontracted for the City, and any other records related to the scope of work in the possession of the Contractor shall be retained by the Contractor for the requisite time set forth in Florida Administration Code Rule 1 b-24 http://dos.myflorida.com/library-archives/records-management/. Contractor may dispose of the records in accordance with Florida law, upon receipt of a signed written release signed by the City Attorney. Contractor agrees to indemnify the City for failure to comply with the requirements of this paragraph including costs of litigation and legal fees incurred through all appeals. City reserves the right to select and approve the defense attorney.

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

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

§ 14.5.5 FINANCIAL DISCLOSURES
During the term of this Contract, Contractor covenants and agrees that it will keep adequate books and records of accounts inaccordance 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 whe they become due, Contractor shall so advise Owner of

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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.

§ 14.5.6 WAIVER OF JURY TRIAL
All parties hereby waive any and all right to any trial by jury in any action or proceeding arising directly or indirectly hereunder.

« »

ARTICLE 15 SCOPE OF THE AGREEMENT

§ 15.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 15.2 The following documents comprise the Agreement:

.1 AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

.2 AIA Document A133™-2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed

.3 AIA Document A133™–2019, Exhibit B, Insurance and Bonds

.4 AIA Document A201™–2017, General Conditions of the Contract for Construction

.5 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
(Insert the date of the E203-2013 incorporated into this Agreement.)

« »

.6 Other Exhibits:
(Check all boxes that apply.)

[« »] AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, dated as indicated below:
(Insert the date of the E234-2019 incorporated into this Agreement.)

« »

[« »] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

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

« »

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

OWNER *(Signature)*	**CONSTRUCTION MANAGER** *(Signature)*
« »« »	« »« »
(Printed name and title)	*(Printed name and title)*

DRAFT

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AIA® Document A201® – 2017

General Conditions of the Contract for Construction

for the following PROJECT:
(Name and location or address)

« »
« »

THE OWNER:
(Name, legal status and address)

« »« »
« »

THE ARCHITECT:
(Name, legal status and address)

« »« »
« »

TABLE OF ARTICLES

1 GENERAL PROVISIONS

2 OWNER

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ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

§ 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

§ 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In

such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

§ 2.2.3 After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.3.2 The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.3 ~~If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.~~ (Intentionally omitted).

§ 2.3.4 The Owner shall furnish surveys to the extent available to the Owner (without being responsible for the accuracy or completeness of the same) describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. ~~The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.~~

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§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.4 Owner's Right to Stop the Work

§ 2.4.1 If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3. The Owner shall incur no liability for delays occasioned by any stop-work order issued in accordance with this paragraph.

§ 2.4.2 If, after consultation with the Architect, suspension of the Work is warranted by reason of unforeseen conditions which may adversely affect the quality of the Work if such Work were continued, the Owner may suspend the Work by written notice to the Contractor. In such event, the Contract Time shall be adjusted accordingly, and the Contract Sum shall be adjusted to the extent, if any, that additional costs are incurred by reason of such suspension. If the Contractor, in its reasonable judgment, believes that a suspension is warranted by reason of unforeseen circumstances which may adversely affect the quality of the Work if the Work were continued, the Contractor shall immediately notify the Owner and the Architect of such belief and describe with particularity the reasons therefor.

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, ~~correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect~~ commence and continue to carry out the Work. ~~t~~The Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. ~~If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.~~ The right of Owner to stop the Work pursuant to this Section 2.5 shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions

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related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention and in accordance with all local and Florida licensing requirements and Florida Building Code. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors. The Contractor aggrees to remove from the Project any 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.

§ 3.3.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons canying out the Work. Contractor shall not pern1it 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. Shi1ts, h·ousers 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 ofradios, 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 sanitaiy facilities within the Owner's existing buildings or on-site facilities.

§ 3.3.4 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work. Neither the presence or absence of the Owner or Architect shall relieve the Contractor from any requirements of the Contract Documents.

§ 3.3.5 The Contractor will be responsible for all building grades, lines, levels, etc., required for layout of the Work.

§ 3.3.6 If required by Owner on a project where applicable, at the earliest possible time after the commencement of the Work on the Project site, the Contractor shall have all property corners and benchmarks verified or established by a state-licensed land surveyor, shall locate the Project on the Project site, establishing necessaiy reference marks and axes from which the work accurately can progress, shall furnish Architect evidence of such verification and shall report at once any errors discovered during the process of such verification.

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§ 3.3.7 If any of the Work is required to be inspected or approved by any public authority, the Contractor shall cause such inspection or approval to be performed. No inspection performed or failed to be performed by the Owner hereunder shall be a waiver of any of the Contractor's obligations hereunder or be construed as an approval or acceptance of the Work or any part thereof.

§ 3.3.8 The Contractor acknowledges that it is the Contractor's responsibility to hire all personnel for the proper and diligent prosecution of the Work and the Contractor shall use its best efforts to maintain labor peace for the duration of the Project. In the event of a labor dispute of the Contractor, its subcontractors or suppliers, the Contractor shall not be entitled to any increase in the Contract Sum.

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Equal Opportunity

§ 3.4.2.1 ~~Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.~~ The Contractor shall maintain policies of employment as follows: (1) the Contractor and the Contractors Subcontractors shall not discriminate against any employer or applicant for employment because of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability (2) the Contractor and the Contractors Subcontractors shall, in all solicitations or advertisements for employers placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, gender, religion, national origin, ethinicuty, sexual orientation, age, or disability.

§ 3.4.3 The Contractor may make substitutions only with the consent of the Owner, after evaluation bu the Architect and in accordance with a Change Order of other appropriate written directive by the Owner. ~~shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.~~

§ 3.4.4 Value Engineering Incentive

§ 3.4.4.1 Any proposal initiated and developed by the Contractor for variation from conh·actual requirements, which to be acceptable under the Contract would necessitate issuance of a conh·actual change and which reduces the cost of performing the Contract, without degrading operational functions: e.g., performance, reliability or maintainability of the item. Such proposals would be submitted by the Contractor to the Architect in the same form as prescribed for any other proposal, which would likewise necessitate a change in the contractual requirements but would include a statement that they are a proposed Value Engineering Change subject to the operation of this clause.

§ 3.4.4.2 The Architect will be the sole judge of acceptability, and no substitute will be ordered, installed, used or initiated without the Architect's prior written acceptance which will be evidenced by Change Order. However, any Value Engineering Change accepted by the Architect shall not result in any increase in the Contract Price or Contract Time. By making a request for a Value Engineering Change, the Contractor agrees to pay directly to the Architect all Architect's fees and charges related to the Architect's review of the request for Value Engineering Change, whether or not the Architect accepts the request. The Owner may require the Contractor to furnish at the Contractor's expense a special performance guarantee or other surety with respect to any substitute approved after award of the Contract.

§ 3.4.5 Owner Direct Purchase

§ 3.4.5.1 The Owner is tax exempt and may wish to exercise its right to purchase directly various construction materials, supplies and equipment that may be part of the Contract. The Owner will, via its purchase orders, purchase that material and the Contractor shall assist the Owner in the preparation of purchase orders. The Owner may direct the Contractor to prepare the purchase order on the Owner's form and make ready for verification and execution by the Owner. The materials shall be purchased from the vendors and or suppliers originally selected by the Contractor, for the price originally negotiated by the Contractor. Within thirty (30) days of the Notice to Proceed (NTP) the Contractor shall prepare a complete list of materials, supplies and equipment, including the cost of each item, for the Project and the Owner will advise the Contractor in writing which items from the list the Owner wishes to purchase directly.

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§ 3.4.5.2 At a time deemed acceptable to the Owner, the Contract amount shall be reduced by the net, undiscounted amount of the purchase order, plus all sales taxes and surtax as levied. Issuance of the purchase orders by the Owner does not change any of the Contractor's responsibilities regarding material purchases, or installations, with the exception of the payments for the materials purchased. The Contractor remains responsible for coordination, correct quantities ordered, submittals, protection, storage, scheduling, shipping, security, expedition, receiving and unloading, certifying the accuracy of shipping tickets and invoices, installation, cleaning, all applicable warranties and that all materials purchased meet the requirements of the Contract Documents. The Contractor shall certify all invoices as accurate and acceptable and forward to the Owner the certified invoices for payment by the Owner.

§ 3.4.5.3 In the event that materials, supplies or equipment purchased under this option are defective or rejected for any reason whatsoever, and it becomes necessaiy in the opinion of the Contractor to initiate legal action against the responsible party, the Owner agrees to assign and subordinate to the Contractor any claims the Owner has against the responsible party resulting from the purchase order and to execute any legal documents necessaty to accomplish the assignment, subordination or subrogation of such claims, and to cooperate with the Contractor in such legal action.

§ 3.4.5.4 The Contrnctor agrees to execute the Owner's document "Contractor's Direct Material Purchase Affidavit" and to submit the affidavit to the Owner along with the above described list of materials, supplies and equipment, as agreed to between the Owner and Contractor. Tax savings will be returned to the Owner via Change Order.

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§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

§ 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. Contractor shall comply with all applicable federal, state, and city statutes, safety regulations, codes, ordinances and orders, including the Occupational Safety and Health Administration Acot of 1970 (OSHA), as amended from time to time.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions (Excluding Claims for Unsuitable Soils)

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect

determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. No adjustment in Contract Sum or Contract Time shall be allowed pursuant to this Article to the extent the concealed or unknown condition should have been reasonably discovered by the Contractor during the pre-bid site inspections, review, or preconstruction services. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.7.6 Claims for Unsuitable Soils "Unsuitable soil" does not include soil with high or low moisture content or soil adversely affected by weather conditions and no claim for additional cost will be accepted based solely on the moisture content of excavated material. If the excavated material is unsatisfacto1y for the specified use on the project solely because of either high or low moisture content or the soil is adversely affected by weather conditions, the Contractor may, in its discretion, either (1) process the material to adjust the moisture content to the specified condition or an acceptable condition if not specified, or (2) remove the material and replace it with satisfactory material. Contractor's election of either option will be at Contractor's expense with no additional cost to the Owner.

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§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- **.1** allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- **.2** Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- **.3** whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during all performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communication shall be similarly confirmed on written request in each case. The superintendent shall be satisfactory to the Owner in all respects, and Owner shall have the right to require Contractor to dismiss from the Project any superintendent whose performance is not satisfactory to Owner, and to replace such superintendent with a superintendent satisfactory to the Owner. The Contractor shall not replace the superintendent without the written consent of the Owner.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed

superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.9.4 The list of all supervisory personnel. including the project manager and superintendent, that the Contractor intends to use on the Project and a chain-of-command organizational chart shall be submitted to the Owner for approval. The Contractor shall not engage superviso1y personnel or utilize an organization and chain-of-command other than as approved by Owner in writing, and shall not change such personnel or form of organization without the written approval of the Owner.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

§ 3.10.2 ~~The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.~~Within thirty (30) days of Notice to Proceed (NTP), the Contractor shall prepare, for the Architect's approval and thereafter keep current, a schedule of submittals which is coordinated with the Contractor's construction schedule and allows the Architect reasonable time to review submittals. No payment shall be due until this schedule is submitted and approved.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.10.4 If the 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 approve such schedule.

§ 3.10.5 At the Owner's option, the Contractor shall provide a schedule utilizing critical path techniques to measure the progress of the Work. Such schedules shall be subject to the Owner's and Architect's written approval.

§ 3.10.6 Float or slack is not for the exclusive use or benefit of either the Owner or the Contractor. Extensions of time for performance will be granted only to the extent that the equitable time adjustments for the activity or activities affected exceed the total float along the activity chain involved at the time the change was ordered or the delay occurred. Notwithstanding the above, the Contractor shall only be entitled to an extension of the time for an excusable delay to the critical path of the Work that delays completion of the Project beyond the completion date stated in the Agreement.

§ 3.10.7 The Contractor acknowledges that the Owner may retain the services ofa 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.

§ 3.11 As Built Drawings and Documents and Samples at the Site

§ 3.11.1 As Built drawings shall be updated monthly, which shall be a condition precedent to all Progress Payments, and shall provide as much accuracy as possible. Complete as-built drawings shall be submitted to and accepted by the Architect and are a condition precedent to Final Payment. Completed as-built drawings shall be submitted as paper documents and in PDF format (scan document file acceptable) for approval by the Owner.

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§ 3.11.2 The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.11.3 The Contractor shall maintain all approved permit drawings in a manner so as to make them accessible to governmental inspectors and other authorized agencies. All approved drawings shall be wrapped, marked with appropriate identification and delivered to the Owner within sixty (60) days of final completion of the Work.

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§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of

the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

§ 3.13 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. The Contractor shall be responsible for the permitting, erection. maintaining and removal of all construction signage. The Contractor must submit all sign copy for approval prior to erecting or displaying. The Contractor and Owner shall meet promptly after execution of the Agreement to determine reasonable requirements for ingress and egress from the site. Reasonable locations for staging, parking and a single construction entrance shall be designated by the Contractor, subject to the Owner"s approval.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. The Contractor shall prevent paint, mortar and concrete splatter on concrete sidewalks and stair tower floors. 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. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.15.3 Immediately prior to the Architect's inspection for Substantial Completion, the Contractor shall completely clean the premises utilizing a licensed cleaning service. Concrete and ceramic surfaces shall be cleaned and washed. Woodwork and resilient 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.

§ 3.16 Access to Work

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

§ 3.18 Indemnification

§ 3.18.1 ~~To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.~~ For one hundred dollars ($100.00), which is included in the contract price, the other good and valuable considerations, receipt of which is hereby acknowledged by the Contractor as consideration for the indemnity herein; said Contractor hereby agrees to defend and indemnify the Owner and the Architect/Engineer and their Agents and employees, from and against all claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from the performance of Work, provided that any such claim, damage, loss or expense is (1) attributed to bodily injury, sickness, disease or death, or to injury to, or destruction of tangible property, other than the Work itself, including the loss os use resulting therefrom, and (2) 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 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 exist as to any part or person described in this Article.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

§ 3.18.3 The Contractor acknowledges that for one hundred dollars ($100.00) of the Contract Price, as recited in Paragraph 3.18.1 above, and other good and valuable consideration from the Owner and Architect/Engineer, constitutes consideration for giving the Owner and the Architect/Engineer, respectively, the indemnifications required in this Agreement and the Contract Documents. The limit of dollar amount of Contractor's indemnity obligations required by the Agreement and the Contract Documents specifically for those claims caused in whole or in part by the Owner and Architect/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 Agreement and is incorporated by this reference into the Project specifications and bid documents. if any

§ 3.18.4 Notwithstanding the above and without monetary limitation, the Conh·actor 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 the negligence, recklessness, or intentional wrongful misconduct of the Contractor and persons employed or utilized by the Contractor in the performance of the construction Contract.

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ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

§ 4.1.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until final payment is due and with the Owner's authorization, from time to time during the one-year period for correction of Work described in Section 12.2~~the date the Architect issues the final Certificate for Payment~~. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

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§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as

required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.2.5 The Contractor shall disclose the existence and extent of any financial interest, whether direct or indirect, it has in any subcontractors or material suppliers which it proposes for the Project.

§ 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- **.1** assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 or Termination for Convenience by the Owner pursuant to Paragraph 14.4 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- **.2** assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract subsequent to the date of acceptance of the assignment; however, in no event shall the Owner's acceptance of such an assignment release the Contractor from its obligations under the subcontract agreement or this Agreement. Subcontracts between the Contractor and its Subcontractors shall provide for the assignment of those subcontracts from the Contractor to the Owner at election of the Owner upon termination of the Contractor.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be ~~equitably~~ adjusted for increases in direct cost resulting from the suspension beyond the thirty (30) days.

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~~**§ 5.4.3** Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.~~

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ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, ~~Construction Change Directive~~ or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents. Agreement on and execution

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of any Change Order shall constitute a final settlement and a full accord and satisfaction of all matters relating to the change and to the impact of the change on unchanged Work, including all direct and indirect costs of whatever nature, and all adjustments to the Contract Schedule.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, ~~Construction Change Directive~~, or order for a minor change in the Work. A change in Contract Sum or Contract Time shall be accomplished only by Change Order. No course of conduct, verbal discussions or dealings between the parties shall be the basis of claims by the Contractor to any change in the Contract Sum or Contract Time.

§ 7.1.4 If the Architect determines that a change or changes in the Work might be or are necessary or desirable, the Architect shall issue a proposal request to the Contractor in which the Architect describes the proposed change or changes in the Work. The Contractor shall respond to each such proposal request in writing within a reasonable time, but in no event more the fout1een (14) days after receipt, such response to contain (1) the amount of any increase or decrease in the Contract Price or Guaranteed Maximum Price for effecting the proposed change or changes in the Work (2) a written comprehensive and itemized cost breakdown of the estimated reasonable additional or reduced costs to the Contractor of all labor, materials and equipment required by such proposal requests and (3) the length of any extension or reduction of the Contract Time for effecting the proposed change or changes in the Work.

§ 7.1.5 If any Change Order, signed by the Owner and the Contractor, results in or contains an adjustment to the Contract Price, the amount of such adjustment shall be conclusively deemed and held to include the Contractor's applicable profit, Fee and costs of and for all applicable taxes, bond premiums, insurance premiums, supervision, overhead, profit, labor, labor impact and materials related to the Change Order and the additional Work required and/or contemplated thereby, and the Contractor shall be conclusively deemed and held to have waived any claim for any additional sum or time extension for delays, disruption, acceleration, loss of productivity, ripple effect, inefficiency or any other matter arising out of or in any way related to such Change Order and the additional Work contemplated thereby.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

.1 The change in the Work;
.2 The amount of the adjustment, if any, in the Contract Sum; and
.3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 If the Change Order provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

.1 Mutual acceptance of a lump sum properly itemized and supp011ed by sufficient substantiating data to permit evaluation;
.2 Unit prices stated in the Contract Documents or subsequently agreed upon;
.3 Cost to be determined in a manner agreed upon by the patties and a mutually acceptable fixed or percentage fee; or
.4 As provided in Section 7.2.3.

§ 7.2.3 Ifthe Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work ath·ibutable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.2.2, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.2.3 shall be limited to the following:

.1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
.2 Costs of materials, supplies, and equipment, including cost of transpo11ation, whether incorporated or consumed;

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.3 Rental costs ofmachine1y and equipment, exclusive of hand tools, whether rented from the Contractor or others;

.4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and

.5 Costs of supervision and field office personnel directly ath·ibutable to the change.

§ 7.2.4 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15

§ 7.2.5 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.2.6 In subparagraph 7.2.3 above, the reasonable allowance for overhead and profit, including the Contractor's Fee, if any, included in the total cost to the Owner, shall be based on the following schedule, which shall be full compensation for all overhead and profit of whatever nature associated with the Change:

.1 For the Contractor, for any Work performed by the Contractor's own forces, ten percent (10%) of the cost.

.2 For the Contractor, for Work performed by its Subcontractor, five percent (5%) of the amount due the Subcontractor.

.3 For each Subcontractor or Sub-subcontractor, for any Work performed by that Subcontractor's or Sub- subcontractor's own forces, ten percent (10%) of the cost.

.4 For each Subcontractor, for Work performed by its Sub-subcontractor, five percent (5%) of the amount due the Sub-subcontractor.

.5 Costs to which overhead and profit are to be applied shall be determined in accordance with subparagraphs 7.2.3.1 through 7.2.3.5.

.6 In order to facilitate checking of quotations for exh·as or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of all increased and decreased costs to both Contractor and its Subcontractors as follows:

.1 Material quantities and unit costs.

.2 Labor costs identified with the specific item of material to be placed or operation to be performed.

.3 Construction equipment

.4 Workmen's Compensation and Public Liability Insurance.

.5 Overhead and Profit.

.6 Employment taxes under FICA and FUTA.

.7 In no case will a change over $500.00 be approved without such itemization.

~~**§ 7.3 Construction Change Directives**~~

~~**§ 7.3.1** A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.~~

~~**§ 7.3.2** A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.~~

~~**§ 7.3.3** If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:~~

~~.1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;~~

~~.2 Unit prices stated in the Contract Documents or subsequently agreed upon;~~

~~.3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or~~

~~.4 As provided in Section 7.3.4.~~

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~~**§ 7.3.4** If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:~~

- ~~**.1** Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;~~
- ~~**.2** Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;~~
- ~~**.3** Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;~~
- ~~**.4** Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and~~
- ~~**.5** Costs of supervision and field office personnel directly attributable to the change.~~

~~**§ 7.3.5** If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.~~

~~**§ 7.3.6** Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.~~

~~**§ 7.3.7** A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.~~

~~**§ 7.3.8** The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.~~

~~**§ 7.3.9** Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.~~

~~**§ 7.3.10** When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.~~

§ 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

ARTICLE 8 TIME

§ 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

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§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day including weekends and legal holidays unless otherwise specifically defined.

§ 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 ~~If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may~~ determine Except as provided in Subparagraph 8.3.2, no adjustment in Contract Sum shall be made for any delays hereunder and no damages shall be paid by the Owner for such delay. The Contractor shall delay or suspend the progress hereunder and no damages shall be paid by the Owner for such delay. The Contractor shall delay or suspend the progress of the Work, or of any part thereof, whenever he shall be so required by written order of the Owner, and for such periods of time as the Owner may order, providing that in the event of such delay or delays or of such suspension or suspensions of the progress of the Work, or any part thereof, the Contract Time for the Work so suspended or of Work delayed by such suspension shall be extended for a period equivalent to the time lost by reason of the suspension(s), except when the Contractor is notified to suspend Work on account of faulty consh·uction or consh·uction methods that endanger the Work. Such order of the Owner shall not otherwise modify or invalidate in any way any of the provisions of this Conh·act, and the Contractor shall not be entitled to any damages or compensation from the Owner on account of such delay or delays, suspension or suspensions, except as provided below.

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§ 8.3.2 ~~Claims relating to time shall be made in accordance with applicable provisions of Article 15.~~ When alterations or additions on the critical path are made to the Work, and such alterations or additions increase the overall completion date, the Contractor shall submit to the Architect in writing any resultant claim for an extension in the Contract Time, and shall deliver such claims to the Architect within ten (10) days after the occurrence of the event giving rise to the claim. The recommendation of the Architect regarding extension of Contract Time shall be submitted to the Owner for approval.

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§ 8.3.2.1 Any approved changes in Contract Time shall be incorporated in a Change Order. No changes in Contract Time shall be made for any alterations or additions to the Work which are not demonsh·ated to affect the overall completion of the job. The provision of this Article 8 shall in no way alter, change or invalidate the provisions of the Contract Documents with respect to liquidated damages. The Contractor shall not be entitled to any delay damages or other compensation solely on account of an increase in Contract Time except in accordance with Section 8.3.4 below.

§ 8.3.3. Notwithstanding Subparagraph 8.3.1, if the Work is delayed due to the fault or neglect of the Owner, and such delays have a cumulative total impact of more than fifteen (15) calendar days to the critical path, the Contractor may make claim pursuant to Article 4 for its actual and direct costs arising out of the delay. The Contract Sum shall be adjusted for such actual and direct costs, but in no event shall indirect, impact, inefficiency, offsite or home office overhead, loss of productivity, consequential damages, legal or consulting costs be paid on account of such delays. The Contractor hereby expressly waives its right to such delay or time-related costs or damages.

§ 8.3.4 ~~3~~ In the event the Contractor accelerates its Work, without written authorization of the Owner, the Owner shall pay no ove1time inefficiencies to the Contractor for such acceleration and the Contractor hereby expressly waives its

right to recover such overtime inefficiencies. ~~This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.~~

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§ 8.3.5 The Contractor's written claims for extension of Contract Time shall be accompanied by detailed dates, correspondence, notices and any other data which provides proof of the events which are the basis for the claim, including a network analysis justifying the time extension. Said network analysis shall specifically detail the extension of the critical path of the Project caused by the events, which underlie the time extension request. Any claim not including said data and network analysis shall be deemed waived.

§ 8.3.6 Should the Contractor be obstructed or delayed in the commencement, prosecution or completion of any part of the Work by any act or delay of the Owner; or by any acts or neglect by any separate conh·actor employed by the Owner; material or appurtenances for the Work; or by riot, insurrection, war (excluding wars involving the United States in the Mid-Eastern portion of the World), pestilence, fire, earthquakes, cyclones, floods, epidemics; or through any act, default or delay of other parties under contract with the Owner; then the Contract Time for the Work so delayed shall be extended for a period equivalent to the time lost. Such allowance shall not be made unless a claim for extension of time is made by the Contractor to the Owner and Architect in writing within ten (10) days from the time when the alleged cause for delay occurs.

§ 8.3.7 It is further expressly agreed that the Contractor shall not be entitled to any damages or compensation from the Owner on account of any delays resulting from any of the causes specified above except those circumstances where delays are caused by the Owner or by parties under contract with the Owner, in which circumstances the Contractor shall be entitled to compensation (1) for Contractor's actual costs of increased direct jobsite wages resulting from the extended completion date caused by Owner; and (2) for extra premiums on bonds actually paid by the Contractor on account of the additional time required to complete all Work hereunder. Any change in the Contract Time resulting from any claims for delays shall be incorporated in a signed Change Order upon approval of the change by the Owner.

§ 8.3.8 Except for weather events listed in Section 8.3.6 above, Contractor expressly assumes the risk for all weather delays of every kind and nature.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. The schedule of values shall be prepared in such manner that each major item of the Work and each subcontracted item of the Work is shown as a separate line item on AIA Document G703, Application and Certificate for Payment, Continuation Sheet, or other form acceptable to the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment. The Contractor shall not make changes in the Schedule of Values without prior approval of the Architect and Owner. The form for the Application for Payment shall be AIA Document G702, supported by AIA Document G703, or other Owner approved form. The Schedule of Values shall be prepared in such a manner that each major item of Work and each subcontracted item of Work is shown as a single item on AIA Document G703 Application and Certificate for Payment Continuation Sheet, or other Owner approved form.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of

requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing and bonded or insured as required by the Owner. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site. The Contractor shall submit, within 30 days after the date of commencement of the Work and thereafter as the Owner requires, schedules of materials and equipment for each category or subcontract for which application for payment under this Section 9.3.2 will be made, which schedules shall include items, quantities, value of unit prices with extensions and the month in which Application for Payment with respect thereto is expected to occur. Schedules shall be updated on a monthly basis and submitted as an attachment to the Contractor's Application for Payment.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to

make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

.1 defective Work not remedied;
.2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
.3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
.5 damage to the Owner or a Separate Contractor;
.6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
.7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When ~~either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15~~ the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

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§ 9.5.3 ~~When the reasons for withholding certification are removed, certification will be made for amounts previously withheld~~ If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

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§ 9.5.4 ~~If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment~~ If the Contractor disputes any determination by the Architect and/or Owner with respect to any Certificate of Payment, the Contractor nevertheless expeditiously shall continue to complete the Work.

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§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.7 Failure of Payment

If the ~~Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the~~ Owner does not pay the Contractor within ~~seven~~ fourteen (14) days after the date established in the Contract Documents, the amount certified by the Architect ~~or awarded by binding dispute resolution~~, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount ~~owing~~not in dispute has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable direct costs of shutdown~~, delay~~ and start-up, plus interest as provided for in the Contract Documents. Notwithstanding the preceding sentence, the Contractor shall not stop the Work during the pendency of a bona fide dispute between the Owner and the Contractor, provided all sums not in dispute claimed by the Contractor are paid.

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§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. For the Work or any designated portion thereof to be "Substantially Complete," the Work must also satisfy all of the following conditions, except to the extent the same shall be specifically waived or modified in writing by the Owner:

.1 the Work has been completed in accordance with the Contract Documents, except for Punch List Work, to the extent required for the Owner to obtain an occupancy permit and such permit(s) shall have been granted by the appropriate authorities for all of the Work; and

.2 all HVAC, plumbing and electrical systems included in the Work are functioning substantially in accordance with the Conh·act Documents; and

.3 all life safety systems included in the Work are functioning in accordance with the Contract Documents;
and

.4 a Certificate of Substantial Completion has been issued by the Architect as required under Paragraph
9.8; and

.5 all elevators, if any, included in the Work are functioning in accordance with the Contract Documents; and

.6 all offices, rooms and public areas are ready to receive, or have received if required for issuance of a Certificate of Occupancy, furniture, fixtures and equipment supplied by the Owner.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification

by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.8.6 The Owner shall have the right to take possession of and use any completed or partially completed portions of the Work, notwithstanding that the time for completing the entire Work or such portions of the Work may not yet have expired. However, such action on the part of the Owner shall not be deemed to be an acceptance of any Work not completed in accordance with the Contract Documents. Likewise, absent the issuance of a Certificate of Substantial Completion by the Project Architect, no portion of the Work shall be subject to the running of the Contractor's bonded one (1) year guarantee on workmanship and materials, despite the fact that the building may be partially utilized. Where mechanical equipment is used prior to final inspection, the Owner shall perform routine maintenance and furnish those supplies that normally wear out in use, such as seals, packings, lubricants, etc. However, any major failure or breakdown of equipment not attributable to lack of maintenance or improper use or abuse of the equipment by Owner shall be made good by the Contractor under terms of its contract warranty, guarantee, bonds, etc.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work. A reasonable sum may be withheld until the Contractor delivers to the Owner record Drawings, Specifications, Addenda, Change Orders and other Modifications maintained at the site; the warranties, instructions and maintenance manuals required to be furnished; and a final statement of the cost of the Work allocated in accordance with the budget and in a form approved by Owner's lender.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) ~~if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract,~~ Contractor's Final Payment Affidavit, Contractor's Affidavit of Outstanding Accounts, Final Waiver and Release of Lien from Contractor and Final Waivers and Releases of Liens form Contractor's Subcontractors, Sub-subcontractors, suppliers and materialmen or any party with lien rights, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees. As a condition precedent to Final Payment, and as part of the Application for Payment, the Contractor shall deliver to the Owner all warranties, guarantees and other close out documents required under the Contract Documents. Copies of the required ***Contractor's Final Payment Affidavit, Contractor's Affidavit of Outstanding Accouuts, Final Waiver aud Release of Lien from Contractor and Final Waivers and Releases of Liens from Contractor's Subcontractors, Sub-subcontractors, suppliers and materialmen or any party with lien rights*** shall be set forth in an exhibit to be incorporated in the Contract Documents.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- **.1** liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- **.2** failure of the Work to comply with the requirements of the Contract Documents;
- **.3** terms of special warranties required by the Contract Documents; or
- **.4** audits performed by the Owner, if permitted by the Contract Documents, after final payment.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

§ 9.10.6 After execution of the Certificate of Substantial Completion, and prior to the submittal of the Final Certificate and Application for Payment, the Contractor shall submit to the Architect, along with the affidavits and other documents set forth in Section 9.10.2 above:

.1 Validated warranties and notarized copies of all guarantees for equipment and materials as required by the Construction Documents, and as referred to in the Supplementary Conditions;

.2 Copies of all approved Shop Drawings or installation diagrams and three (3) copies of all brochures, manuals, etc. of all equipment as offered by the manufacturers;

.3 List of subcontractors and major material suppliers (shall include address, telephone number and name of individual to contact regarding this Project);

.4 As-built drawings of the completed Project. The Contractor shall provide to the Owner two

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(2) copies of all electronic drawing files of all as-built drawings in a format compatible with the AutoCAD release version designated by Owner. This shall include an organized, rational file/drawing nami11g system that would refer directly to the actual hard copy drawings. For example, drawings shall be named A-1.dwg, A-2.dwg, M-1.dwg, M-2.dwg etc. Each drawing file shall be processed through AutoCad's XREF Manager utilizing the "bind process" prior to submittal to the Owner to combine the files and eliminate the need for attached files. Text documents such as specification books shall be presented in Microsoft Word or pdf format. Such electronic files shall be delivered to the Owner within ten (I 0) days after requested by the Owner or, if not specifically requested, prior to final payment from Owner; and

.5 The Contractor shall obtain an electronic version of the Site Master Survey from the Owner and insert an as-built survey of the project into the Site Master Survey via the addition of another CADD layer added to the file in a format compatible with the AutoCAD release version designated by Owner. The CADD layer shall include an organized, rational file/drawing naming system that refers specifically to the precise name of the project constructed. The Contractor will establish permanent control monuments (hub set in concrete, iron pin in ground, etc.), or use existing monuments when approved by the Owner, to tie the location of the project to the overall facility Site Master Survey. The permanent control monument(s) shall be identified in the CADD layer such that the Owner will be able to utilize the monument for future design and development projects. Such electronic files shall be delivered to the Owner within ten (10) clays after requested by the Owner or, if not specifically requested, prior to final payment from Owner

§ 9.10.6.6 These items shall be packaged in a suitable metal file box, supplied for the Project as approved by the Architect, and shall be properly indexed. Individual submission of these items will not be acceptable.

§ 9.10.7 Prior to submission of the Final Certificate and Application for Payment, Contractor and manufacturer's representatives shall provide free instruction in the proper use of installed equipment to representatives of the Owner as designated by the Architect. Instruction shall be given in presence of the Architect.

§ 9.10.7.1 Instruction of the Owner's designated Maintenance Supervisor in the proper methods of cleaning and maintaining all of the finished surfaces and the proper methods of replacement of the consumable items such as filters, light bulbs, washers, etc. shall be the responsibility of the Contractor.

§ 9.10.8 Prior to submission of the Final Certificate and Application for Payment, the Contractor shall start up, test, adjust, balance and otherwise place in a satisfactory working condition all items of mechanical and electrical systems and shall fully instruct representatives of the Owner in the care and operation of such systems

§ 9.10.8.1 Contractor shall submit to the Architect, along with final requisition for payment, three (3) copies of a manual for the Project, assembled and bound, presenting for the Owner's guidance full details for care and maintenance of equipment included in the Contract

§ 9.10.8.2 Contractor shall, for this manual, obtain from subcontractors literature of manufacturers relating to equipment, including motors; also furnish cuts, wiring diagrams, instruction sheets and other information pertaining to same in overall operation and maintenance.

§ 9.10.9 During a valid warranty period, if the Contractor is unable or unwilling to respond immediately to make emergency repairs under conditions which the Owner may determine to be an emergency situation, the Owner reserves the right to make such emergency repaiJs and then to bill the Contractor for a fair and reasonable amount in the reimbursement for such repair

§ 9.10.10 At closeout, Contractor shall complete the *Contract Completion Checklist*, a copy of which is to be incorporated as an exhibit to the Contract Documents, and shall provide to the Owner all items required thereon as a condition precedent to final payment being due from the Owner.

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ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- **.1** employees on the Work and other persons who may be affected thereby;
- **.2** the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- **.3** other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss. Contractor shall comply with all applicable federal, state and county, and city statutes, safety regulations, codes, ordinances and orders, including the Occupational Safety and Health Adminish·ation Act of 1970 (OSHA).

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.2.9 Contractor shall protect adjoining private or municipal property and shall provide barricades, temporary fences, and covered walkways required to protect the safety of passers-by, as required by prudent consh·uction practices, local building codes, ordinances or other laws, or the Contract Documents

§ 10.2.10 Contractor shall maintain Work, materials and apparatus free from injury or damage from rain, wind, storms, frost or heat. lf adverse weather makes it impossible to continue operations safely in spite of weather

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precautions, the Contractor shall cease Work and notify the Owner and the Architect of such cessation. The Contractor shall not permit open fires on the Project site.

§ 10.2.11 In addition to its other obligations pursuant to this Article 10, the Contractor shall, at its sole cost and expense, promptly repair any damage or disturbance to walls, utilities, sidewalks, curbs and the property of third parties (including municipalities) resulting from the performance of the Work, whether by it, or by its Subcontractors at any tier. The Contractor shall maintain streets in good repair and traversable condition.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Owner has on file the following information: (I) Asbestos Management Plan, and (2) Asbestos Survey Report. These documents are available for the Contractor's review at the above locations. The Contractor shall determine if the information contained therein is relevant to the Project. The Contractor shall execute the Owner's "Contractor Acknowledgement Form" of these documents. ~~The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.~~

§ 10.3.1.1 If during the construction of the Project any known hazardous material, or friable asbestos is suspected or encountered, Work in that area shall be suspended and the Owner's Representative shall be notified immediately.

§ 10.3.1.2 The Owner shall be responsible for investigation, removal and disposition of any such material in accordance with applicable laws and regulations. The Contractor will be directed by the Owner on further procedures concerning the project as a result of investigation, removal and disposition of such material.

§ 10.3.2 In the event the Contractor encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the Owner's Representative in writing. The Work in the affected area shall not thereafter be resumed except by written agreement of the Owner and Contractor if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless. The Work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB), or when it has been rendered harmless, by written agreement of the Owner and Contractor, or in accordance with final determination by the Architect. ~~Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.~~

§ 10.3.3 The Contractor hall not be required, pursuant to Article 13, perform without consent any Work relating to asbestos or polychlorinated biphenyl (PCB). ~~To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.~~

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§ 10.3.4 To the fullest extent permitted by law, the Owner shall defend and indemnify and hold harmless the Contractor and its agents and employees from and against claims, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the Work in the affected area if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, other than the Work itself, including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of the Owner, anyone directly or indirectly employed by the Owner, or anyone for whose acts the Owner may be liable. ~~The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.~~

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS – See Exhibits "B" and "B-1"

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 ~~The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.~~(Intentionally omitted.)

§ 11.1.3 ~~Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.~~(Intentionally omitted.)

§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.2 Owner's Insurance

§ 11.2.1 ~~The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.~~(Intentionally omitted.)

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§ 11.2.2 Failure to Purchase Required Property Insurance. ~~If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.~~(Intenionally omitted.)

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§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance. ~~Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.~~(Intentionally omitted.)

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§ 11.3 Waivers of Subrogation

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.3.2 If ~~during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.~~required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

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§ 11.3.3 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within ten days after occurrence ofloss to the Owner's exercise of this power. If such objection be made, the Owner shall not make any settlement with respect to such loss until a resolution has been reached by agreement between such parties in interest and the insurers or by a court of competent jurisdiction.

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§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

The Owner, at the Owner's option, may require the Contractor to purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. Except for losses caused by Contractor or resulting from Contractor's negligence, ~~T~~the Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

§11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the ~~Owner~~ Contractor as fiduciary and made payable to the ~~Owner~~ Contractor as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The ~~Owner~~ Contractor shall pay the Architect and ~~Contractor~~Owner their just shares of insurance proceeds, if any, received by the ~~Owner~~Contractor, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.5.2 Prior to settlement of an insured loss, the ~~Owner~~Contractor shall notify the ~~Contractor~~Owner of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The ~~Contractor~~Owner shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the ~~Contractor~~Owner does not object, the ~~Owner~~Contractor shall settle the loss and the ~~Contractor~~Owner shall be bound by the settlement and allocation. Upon receipt, the ~~Owner~~Contractor shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the ~~Contractor~~Owner timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the ~~Owner~~Contractor may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. ~~Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.~~

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

~~The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.~~ The Contractor shall promptly correct Work rejected by the Architect for failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessaiy thereby, shall be at the Contractor's expense.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. ~~During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the~~

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~~Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty.~~ If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work nor to Owner's right to make claim with respect to latent defects.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.1.2 Historical lack of enforcement of any local law shall not constitute a waiver of Contractor's responsibility for compliance with such law in a manner consistent with the Contract Documents unless and until the Contractor has received written consent for the waiver of such compliance from the Owner and the agency responsible for the local law enforcement.

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. ~~Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.~~ If Contractor attempts to make such an assignment, it shall never the less remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

§ 13.3 Rights and Remedies

§ 13.3.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

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§ 13.3.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.1.1 During construction, periodic building code compliance inspections are required and will be performed by the Owner's building department inspectors when requested by the Contractor. It is the responsibility of the Contractor to properly request such code inspections and no Work shall be covered until such Work has been inspected for code compliance.

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§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.2.1 The Owner reserves the right to perform additional tests of materials, work and equipment provided under this Contract and will pay all costs involved in such additional tests. In the event one or more test results indicate a failure of materials, work and/or equipment to meet the requirements of the Contract Documents, the Contractor agrees to correct all identified deficiencies, arrange for and pay the cost of all re-testing and repeat the process until re-test reports indicate all deficiencies have been corrected.In all cases, re-tests shall be performed by the same testing agency who performed the initial test.

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§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense, including the cost of retesting for verification of compliance if necessaty, until the Architect certifies that the Work in question does comply with the requirements of the Contract Documents, and all such costs shall not be included in computing the Contract Sum.

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§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.5 Interest

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

§ 13.6 Time Limits on Claims

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law.

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§ 13.7 Financial Disclosures

§ 13.7.1 During the term of this Contract, Contractor covenants and agrees that it will keep adequate books and records of accounts in accordance with Generally Accepted Accounting Principles (GAAP). Contractor further covenants and agrees that, upon request from Owner, Contractor shall provide to Owner financial statements of Contractor, including current income and expense statements of Contactor, consolidated balance sheets signed by a financial officer of Contractor, and audited reports provided to Contractor's Surety, audited financial statements certified by a Certified Public Accountant concerning the financial affairs of Contractor and all affiliates of Contractor, and such other financial information requested by Owner. All such financial information shall comply with GAAP.

§ 13.7.2 In the event that Contractor becomes insolvent and/or fails to pay its current obligations when they become due, Contractor shall so advise Owner of such situation. Contractor hereby authorizes its sureties, lenders, financial institutions and other third parties to release to Owner financial information requested by Owner, including, but not limited to, the financial information described in the preceding Section 13.7.1.

§ 13.8 Waiver of Jury Trail

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

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of ~~30~~60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

.1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;

.2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped; or

.3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents ~~; or~~

~~**.4** The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.~~

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, ~~as well as reasonable overhead and profit on Work not executed,~~ and costs incurred by reason of such termination excluding profit on unexecuted Work.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

.1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;

.2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;

.3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; ~~or~~

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.4 otherwise is guilty of substantial breach of a provision of the Contract Documents~~.~~ or

.5 is adjudged a bankrupt or insolvent, or if it makes a general assignment for the benefit of its creditors, or if a trustee or receiver is appointed for the Contractor or for any of its property, or if it files a petition to take advantage of any debtor's loss, or to reorganize under the bankruptcy or similar laws.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

.1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;

.2 Accept assignment of subcontracts pursuant to Section 5.4; and

.3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

.1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or

.2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

.1 cease operations as directed by the Owner in the notice;

.2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and

.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; ~~and the termination fee, if any, set forth in the Agreement~~along with reasonable overhead and profit on the Work performed to date, but in no event shall the Contractor be entitled to anticipated profits on unperformed Work.

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ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

~~The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.~~Any statutes of limitations shall commence to run, and all causes of action shall be deemed to have accrued, in accordance with applicable Florida law.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 ~~Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.~~Claims by either party must be made within 21 days after occurrence of the event giving rise to such Claim or within 21 clays after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be made by written notice to the Architect and the other party. Claims must specifically detail all facts and issues substantiating the Claim, including all costs and expenses incurred. Contractor Claims must be made in writing and timely filed in accordance with the specific requirements of the Contract Documents and under no circumstances whatsoever be based upon actual or verbal notice or lack of prejudice to the other party. An additional Contractor Claim after the initial Claim has been implemented by Change Order will not be considered unless submitted in a timely manner.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.5.1 If the Contractor believes additional cost is involved for reasons including but not limited to (I) a written interpretation from the Architect, (2) an order by the Owner to stop the Work where the Contractor was not at fault,
(3) a written order for a minor change in the Work issued by the Architect, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension or (7) other reasonable grounds, Claim shall be filed in accordance with this Section 15.1.

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§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

§ 15.1.7 Waiver of Claims for Consequential Damages

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

.2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Initial Decision

§ 15.2.1 ~~Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.~~Decision of the Architect. Claims, including those alleging an error or omission by the Architect but excluding those arising under Section 10.3 shall be referred initially to the Architect for decision. An initial decision by the Architect shall be required as a condition precedent to mediation or litigation of all Claims between the Contractor and Owner arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Architect with no decision having been rendered by the Architect. The Architect will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

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§ 15.2.5 ~~The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution~~The Architect will approve or reject Claims by written decision, which shall state the reasons therefore and which shall notify the parties of any change in the Contract Sum or Contract Time or both. The approval or rejection of a Claim by the Architect shall be final and binding on the parties but subject to mediation and litigation.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 ~~The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.~~Claims, disputes or other matters in question between the parties to this Agreement shall be first subject to pre-suite mediation prior to the filing of any legal claims or litigation. Completion of pre-suite mediation is a condition precedent to litigation. The obligation to mediate is a material and essential provision of the Agreement.

§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

§ 15.3.4 ~~The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.~~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.

§ 15.3.5 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 15.3.1, but in no event after the expiration of the applicable statute of limitations.

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§ 15.3.6 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.

§ 15.3.7 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.

§ 15.3.8 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.

§ 15.3.9 All references to Arbitration in the Contract Documents are deleted.

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§ 15.4 Arbitration

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.

AIA® Document A133® – 2019 Exhibit A

Guaranteed Maximum Price Amendment

This Amendment dated the _____ day of _____ in the year _____, is incorporated into the accompanying AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price dated the _____ day of _____ in the year _____ (the "Agreement")
(In words, indicate day, month, and year.)

for the following **PROJECT**:
(Name and address or location)

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

AIA Document A201™–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

THE OWNER:
(Name, legal status, and address)

THE CONSTRUCTION MANAGER:
(Name, legal status, and address)

TABLE OF ARTICLES

A.1 GUARANTEED MAXIMUM PRICE

A.2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

A.4 CONSTRUCTION MANAGER'S CONSULTANTS, CONTRACTORS, DESIGN PROFESSIONALS, AND SUPPLIERS

ARTICLE A.1 GUARANTEED MAXIMUM PRICE

§ A.1.1 Guaranteed Maximum Price

Pursuant to Section 3.2.6 of the Agreement, the Owner and Construction Manager hereby amend the Agreement to establish a Guaranteed Maximum Price. As agreed by the Owner and Construction Manager, the Guaranteed Maximum Price is an amount that the Contract Sum shall not exceed. The Contract Sum consists of the Construction Manager's Fee plus the Cost of the Work, as that term is defined in Article 6 of the Agreement.

§ A.1.1.1 The Contract Sum is guaranteed by the Construction Manager not to exceed _____ ($ ___), subject to additions and deductions by Change Order as provided in the Contract Documents.

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§ A.1.1.2 Itemized Statement of the Guaranteed Maximum Price. Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, including allowances; the Construction Manager's contingency; alternates; the Construction Manager's Fee; and other items that comprise the Guaranteed Maximum Price as defined in Section 3.2.1 of the Agreement.
(Provide itemized statement below or reference an attachment.)

§ A.1.1.3 The Construction Manager's Fee is set forth in Section 6.1.2 of the Agreement.

§ A.1.1.4 The method of adjustment of the Construction Manager's Fee for changes in the Work is set forth in Section 6.1.3 of the Agreement.

§ A.1.1.5 Alternates
§ A.1.1.5.1 Alternates, if any, included in the Guaranteed Maximum Price:

Item	Price

§ A.1.1.5.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Exhibit A. Upon acceptance, the Owner shall issue a Modification to the Agreement.
(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item	Price	Conditions for Acceptance

§ A.1.1.6 Unit prices, if any:
(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit ($0.00)

ARTICLE A.2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
§ A.2.1 The date of commencement of the Work shall be:
(Check one of the following boxes.)

☐ The date of execution of this Amendment.

☐ Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)

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

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§ A.2.2 Unless otherwise provided, the Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work. The Contract Time shall be measured from the date of commencement of the Work.

§ A.2.3 Substantial Completion

§ A.2.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Construction Manager shall achieve Substantial Completion of the entire Work:
(Check one of the following boxes and complete the necessary information.)

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

☐ By the following date:

§ A.2.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Construction Manager shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date

§ A.2.3.3 If the Construction Manager fails to achieve Substantial Completion as provided in this Section A.2.3, liquidated damages, if any, shall be assessed as set forth in Section 6.1.6 of the Agreement.

ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

§ A.3.1 The Guaranteed Maximum Price and Contract Time set forth in this Amendment are based on the Contract Documents and the following:

§ A.3.1.1 The following Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

§ A.3.1.2 The following Specifications:
(Either list the Specifications here, or refer to an exhibit attached to this Amendment.)

Section	Title	Date	Pages

§ A.3.1.3 The following Drawings:
(Either list the Drawings here, or refer to an exhibit attached to this Amendment.)

Number	Title	Date

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§ A.3.1.4 The Sustainability Plan, if any:
(If the Owner identified a Sustainable Objective in the Owner's Criteria, identify the document or documents that comprise the Sustainability Plan by title, date and number of pages, and include other identifying information. The Sustainability Plan identifies and describes the Sustainable Objective; the targeted Sustainable Measures; implementation strategies selected to achieve the Sustainable Measures; the Owner's and Construction Manager's roles and responsibilities associated with achieving the Sustainable Measures; the specific details about design reviews, testing or metrics to verify achievement of each Sustainable Measure; and the Sustainability Documentation required for the Project, as those terms are defined in Exhibit C to the Agreement.)

Title	Date	Pages

Other identifying information:

§ A.3.1.5 Allowances, if any, included in the Guaranteed Maximum Price:
(Identify each allowance.)

Item	Price

§ A.3.1.6 Assumptions and clarifications, if any, upon which the Guaranteed Maximum Price is based:
(Identify each assumption and clarification.)

§ A.3.1.7 The Guaranteed Maximum Price is based upon the following other documents and information:
(List any other documents or information here, or refer to an exhibit attached to this Amendment.)

ARTICLE A.4 CONSTRUCTION MANAGER'S CONSULTANTS, CONTRACTORS, DESIGN PROFESSIONALS, AND SUPPLIERS

§ A.4.1 The Construction Manager shall retain the consultants, contractors, design professionals, and suppliers, identified below:
(List name, discipline, address, and other information.)

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

OWNER *(Signature)*	**CONSTRUCTION MANAGER** *(Signature)*
(Printed name and title)	*(Printed name and title)*

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AIA® Document A133® – 2019 Exhibit B

Insurance and Bonds

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Construction Manager, dated the _____ day of _____ in the year _____
(In words, indicate day, month and year.)

for the following **PROJECT**:
(Name and location or address)

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

This document is intended to be used in conjunction with AIA Document A201™–2017, General Conditions of the Contract for Construction. Article 11 of A201™–2017 contains additional insurance provisions.

THE OWNER:
(Name, legal status, and address)

THE CONSTRUCTION MANAGER:
(Name, legal status, and address)

TABLE OF ARTICLES

B.1 GENERAL

B.2 OWNER'S INSURANCE

B.3 CONSTRUCTION MANAGER'S INSURANCE AND BONDS

B.4 SPECIAL TERMS AND CONDITIONS

ARTICLE B.1 GENERAL

The Owner and Construction Manager shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A201™–2017, General Conditions of the Contract for Construction.

ARTICLE B.2 OWNER'S INSURANCE

§ B.2.1 General

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article B.2 and, upon the Construction Manager's request, provide a copy of the property insurance policy or policies required by Section B.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

§ B.2.2 Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual general liability insurance.

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§ B.2.3 Required Property Insurance

§ B.2.3.1 Unless this obligation is placed on the Construction Manager pursuant to Section B.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section B.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Construction Manager, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

§ B.2.3.1.1 Causes of Loss. The insurance required by this Section B.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials. Sub-limits, if any, are as follows:
(Indicate below the cause of loss and any applicable sub-limit.)

Cause of Loss	Sub-Limit

§ B.2.3.1.2 Specific Required Coverages. The insurance required by this Section B.2.3.1 shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect's and Construction Manager's services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows:
(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)

Coverage	Sub-Limit

§ B.2.3.1.3 Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section B.2.3.1 or, if necessary, replace the insurance policy required under Section B.2.3.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.

§ B.2.3.1.4 Deductibles and Self-Insured Retentions. If the insurance required by this Section B.2.3 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

§ B.2.3.2 Occupancy or Use Prior to Substantial Completion. The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section B.2.3.1 have consented in writing to the continuance of coverage. The Owner and the Construction Manager shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

§ B.2.3.3 Insurance for Existing Structures

If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section B.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

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§ B.2.4 Optional Extended Property Insurance.
The Owner shall purchase and maintain the insurance selected and described below.
(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)

☐ **§ B.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance**, to reimburse the Owner for loss of use of the Owner's property, or the inability to conduct normal operations due to a covered cause of loss.

☐ **§ B.2.4.2 Ordinance or Law Insurance**, for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project.

☐ **§ B.2.4.3 Expediting Cost Insurance**, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.

☐ **§ B.2.4.4 Extra Expense Insurance**, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.

☐ **§ B.2.4.5 Civil Authority Insurance**, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.

☐ **§ B.2.4.6 Ingress/Egress Insurance**, for loss due to the necessary interruption of the insured's business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.

☐ **§ B.2.4.7 Soft Costs Insurance**, to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.

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§ B.2.5 Other Optional Insurance.
The Owner shall purchase and maintain the insurance selected below.
(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance.)

☐ **§ B.2.5.1 Cyber Security Insurance** for loss to the Owner due to data security and privacy breach, including costs of investigating a potential or actual breach of confidential or private information.
(Indicate applicable limits of coverage or other conditions in the fill point below.)

☐ **§ B.2.5.2 Other Insurance**
(List below any other insurance coverage to be provided by the Owner and any applicable limits.)

Coverage	**Limits**

ARTICLE B.3 CONSTRUCTION MANAGER'S INSURANCE AND BONDS
§ B.3.1 General
§ B.3.1.1 Certificates of Insurance. The Construction Manager shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section B.3.2.1 and Section B.3.3.1. The certificates will show the Owner as an additional insured on the Construction Manager's Commercial General Liability and excess or umbrella liability policy or policies.

§ B.3.1.2 Deductibles and Self-Insured Retentions. The Construction Manager shall disclose to the Owner any deductible or self- insured retentions applicable to any insurance required to be provided by the Construction Manager.

§ B.3.1.3 Additional Insured Obligations. To the fullest extent permitted by law, the Construction Manager shall cause the commercial general liability coverage to include (1) the Owner, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Construction Manager's negligent acts or omissions during the Construction Manager's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, CG 20 32 07 04.

§ B.3.2 Construction Manager's Required Insurance Coverage
§ B.3.2.1 The Construction Manager shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:
(If the Construction Manager is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)

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§ B.3.2.2 Commercial General Liability

§ B.3.2.2.1 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than _____ ($__) each occurrence, _____ ($__) general aggregate, and _____ ($__) aggregate for products-completed operations hazard, providing coverage for claims including

.1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;

.2 personal injury and advertising injury;

.3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;

.4 bodily injury or property damage arising out of completed operations; and

.5 the Construction Manager's indemnity obligations under Section 3.18 of the General Conditions.

§ B.3.2.2.2 The Construction Manager's Commercial General Liability policy under this Section B.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

.1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.

.2 Claims for property damage to the Construction Manager's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.

.3 Claims for bodily injury other than to employees of the insured.

.4 Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured

.5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.

.6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.

.7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.

.8 Claims related to roofing, if the Work involves roofing.

.9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.

.10 Claims related to earth subsidence or movement, where the Work involves such hazards.

.11 Claims related to explosion, collapse, and underground hazards, where the Work involves such hazards.

§ B.3.2.3 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager, with policy limits of not less than _____ ($__) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.

§ B.3.2.4 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section B.3.2.2 and B.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ B.3.2.5 Workers' Compensation at statutory limits.

§ B.3.2.6 Employers' Liability with policy limits not less than _____ ($__) each accident, _____ ($__) each employee, and _____ ($__) policy limit.

§ B.3.2.7 Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks

§ B.3.2.8 If the Construction Manager is required to furnish professional services as part of the Work, the Construction Manager shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than _____ ($__) per claim and _____ ($__) in the aggregate.

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§ B.3.2.9 If the Work involves the transport, dissemination, use, or release of pollutants, the Construction Manager shall procure Pollution Liability insurance, with policy limits of not less than _____ ($__) per claim and _____ ($__) in the aggregate.

§ B.3.2.10 Coverage under Sections B.3.2.8 and B.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than _____ ($__) per claim and _____ ($__) in the aggregate.

§ B.3.2.11 Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than _____ ($__) per claim and _____ ($__) in the aggregate.

§ B.3.2.12 Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than _____ ($__) per claim and _____ ($__) in the aggregate.

§ B.3.3 Construction Manager's Other Insurance Coverage

§ B.3.3.1 Insurance selected and described in this Section B.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The

Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:
(If the Construction Manager is required to maintain any of the types of insurance selected below for a duration other than the expiration of the period for correction of Work, state the duration.)

§ B.3.3.2 The Construction Manager shall purchase and maintain the following types and limits of insurance in accordance with Section B.3.3.1.
(Select the types of insurance the Construction Manager is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)

☐ **§ B.3.3.2.1** Property insurance of the same type and scope satisfying the requirements identified in Section B.2.3, which, if selected in this section B.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section B.2.3.1.3 and Section B.2.3.3. The Construction Manager shall comply with all obligations of the Owner under Section B.2.3 except to the extent provided below. The Construction Manager shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Construction Manager shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:
(Where the Construction Manager's obligation to provide property insurance differs from the Owner's obligations as described under Section B.2.3, indicate such differences in the space below. Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)

☐ **§ B.3.3.2.2 Railroad Protective Liability Insurance**, with policy limits of not less than _____ ($__) per claim and _____ ($__) in the aggregate, for Work within fifty (50) feet of railroad property.

☐ **§ B.3.3.2.3 Asbestos Abatement Liability Insurance**, with policy limits of not less than _____ ($__) per claim and _____ ($__) in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

Sample

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☐ **§ B.3.3.2.4** Insurance for physical damage to property while it is in storage and in transit to the construction site on an "all-risks" completed value form.

☐ **§ B.3.3.2.5** Property insurance on an "all-risks" completed value form, covering property owned by the Construction Manager and used on the Project, including scaffolding and other equipment.

☐ **§ B.3.3.2.6 Other Insurance**
(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)

Coverage	Limits

§ B.3.4 Performance Bond and Payment Bond
The Construction Manager shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:
(Specify type and penal sum of bonds.)

Type	Penal Sum ($0.00)
Payment Bond	
Performance Bond	

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement.

ARTICLE B.4 SPECIAL TERMS AND CONDITIONS
Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

Sample

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Evaluation Ranking Summary

Date: 3/7/2024

RFSQ #23-14 Construction Manager at Risk for Construction of Public Utilities Operations Facility

Firm Name	Total Weighted Score (Maximum 50)
D.E. Scorpio Corporation	41.73
Paul Culver Construction, Inc.	38.83
Pirtle Construction Company	43.35
W&J Construction Corporation	43.38
Wharton-Smith, Inc.	47.61

Comments
On March 7, 2024 a Statement of Qualifications Evaluation Committee scored the statements received from the firms listed above for RFSQ #23-14 Construction Manager at Risk for Construction of Public Utilities Operations Facility. The committee agreed by consensus to recommend for award **Wharton-Smith, Inc.** based on a combination of overall scores and their ability to best meet the needs of the City.

"Failure to file a protest within the time prescribed in section 120.57(3), Florida Statutes, or failure to post the bond or other security required by law within the time allowed for filing a bond shall constitute a waiver of proceedings under chapter 120, Florida Statutes." The 72 hour posting requirement will elapse on March 14, 2024 at 4:00 PM EST

NOTICE OF INTENT TO AWARD

RFSQ #23-14 Construction Manager at Risk for Construction of Public Utilities Operations Facility

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March 11, 2024

On March 7, 2024, a Statement of Qualifications Evaluation Committee comprised of City of Port Orange staff scored in a publicly noticed meeting five (5) Statements of Qualifications received for ***RFSQ #23-14 Construction Manager at Risk for Construction of Public Utilities Operations Facility.***

After reviewing and scoring the responses, City Staff has made a recommendation to award to:

Wharton-Smith, Inc.

Respectfully Submitted,

Jill Poolman, CPPO, CPPB, FCCM
Purchasing Manager

"Failure to file a protest within the time prescribed in section 120.57(3), Florida Statutes, or failure to post the bond or other security required by law within the time allowed for filing a bond shall constitute a waiver of proceedings under chapter 120, Florida Statutes." The 72-hour posting requirement will elapse on March 14, 2024 at 4:00 PM EST.

CITY OF PORT ORANGE, FLORIDA

Construction Manager at Risk for Construction of Public Utilities Operations Facility

RFSQ #23-14

COPY

Wharton-Smith, Inc.
CONSTRUCTION GROUP

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Statement of **Interest**

City of Port Orange City Clerk's Office
Attn: Jill Poolman, Purchasing Manager
Purchasing Division
1000 City Center Circle
Port Orange, Florida 32129

February 16, 2024

Re: Construction Manager at Risk for Construction of Public Utilities Operations Facility | RFSQ #23-14

Dear Ms. Poolman and Selection Committee Members,

Wharton-Smith (WS) has reviewed your Request for Statements of Qualifications for the Public Utilities Operations Facility project, and we fully understand your goals and objectives for this project. We are committed and available to provide the required services to the City of Port Orange. Wharton-Smith works with public utilities all along Florida's east coast. Your new facility will serve as the hub that enables you to provide reliable sanitary sewer and water services to your rate payers. The City needs this project done now; however, your budget is not unlimited. Wharton-Smith is the firm that can exceed your expectations for **schedule, budget, and quality**.

Wharton-Smith's history of providing Construction Manager at Risk (CMAR) services began in 1995 with the City of Kissimmee (now Toho Water Authority), and we have served as an industry leader in the Central Florida CMAR market ever since. Over the past 29 years, we have continued to refine our best practices to deliver award-winning projects to our clients. Port Orange will benefit from our CMAR best practices that maximize collaboration and deliver the lowest cost, fastest schedule, and highest levels of safety and quality. **This is the Wharton-Smith way**.

Our firm has been tracking and preparing for this project for two years. We have planned our resources to ensure you receive the best collection of team members. The core of our proposed staff recently delivered a similar public works complex for the City of Casselberry. That facility included office, maintenance, and warehouse space. **This proposal will demonstrate our deep understanding of your project, our unmatched utility operations facility experience, and our proven CMAR approach.**

A LOCAL TEAM HAS A VESTED INTEREST— A majority of our project team members are local residents living within a 30-minute radius from the project. Sr. Project Manager, Keri Strawder, has been a Volusia County resident for over 37 years! Our project team members will have a personal stake in this project and will offer the City of Port Orange the fastest response times. **This is where our people live, work, play, and pay their taxes.**

WATER PLANT EXPERIENCE IS A HUGE ADVANTAGE— Wharton-Smith offers a blended background of vertical construction and water treatment facility construction. If we access the new facility through the water plant to avoid residents, we understand how our ingress and egress routes, laydown areas, and site utilization plan can affect facility operations. Our project team will leverage that experience to ensure **zero** impact on your water plant operation and capacity.

TRUST ISN'T BUILT OVERNIGHT— Wharton-Smith and Schenkel Shultz Architecture (SSA) have collaborated and delivered amazing projects together since 2010. **That includes 20 projects valued at nearly $1,000,000,000!** The cohesion between our firms will be evident from day one. Our partnership works because our firms share a common vision for providing value, delivering a quality product, and exceeding our clients' expectations.

PROJECT RISKS MUST BE IDENTIFIED AND MITIGATED— The past few years have presented us all with unprecedented project risks like manpower shortages, cost escalations, and supply chain delays. Wharton-Smith navigates those challenging waters on similar projects every day, and we will use those lessons learned to lower the risk profile for all parties on this project.

ADDING VALUE DURING THE PRECONSTRUCTION PHASE— Our in-house team of preconstruction services professionals, led by **Director of Preconstruction Andy Duthie**, has over 200 years of collective project experience in both estimating and constructing utility operations buildings throughout Florida. Our team is a unique blend of lifelong estimators and former construction managers that now work solely on providing value engineering, cost estimates, design and constructability reviews, and innovative ideas for our clients. The preconstruction team is excited to add value to your Utilities Operations Facility.

PORT ORANGE DESERVES AN ON-TIME DELIVERY— Immediately upon our selection, in collaboration with the City and Schenkel Schultz, our project team will develop an aggressive yet achievable project schedule. It will be important that together we identify those key milestone dates for mobilization, substantial completion, and final closeout. Wharton-Smith has developed a standard practice of evaluating multiple schedule scenarios to meet key schedule milestones. This can include evaluating multi-phase procurement, value engineering options, various construction methods, alternative materials, and early commissioning. As we transition to the construction phase, we will maintain our momentum utilizing our Production Planning System. Production Planning serves as our foundation of execution as we control the things most important to you including schedule, quality, and safety.

QUALITY CONTROL OCCURS IN ALL PROJECT PHASES— Quality control measures are instilled in everything we do. Our dedicated and experienced **Quality Manager, AJ Stover**, has 20+ years of experience and is currently serving the same role on the City of DeLand's Utility Administration Building. He understands standards for quality and will strive to exceed expectations. Quality control is also present in our approach through pre-qualified and proven subcontractor partners, effective document management, and self-performance with our craft labor forces.

Since 1984, Wharton-Smith has helped build the communities in which we serve. Our mission has continued to be "to exceed our clients' expectations by performing with the highest quality, professionalism, and fairness, and by communicating with honesty and integrity at all times." That approach has served as our foundation as we have grown to be the Central Florida leader in vertical and water plant construction. Consider this Statement of Qualifications as Wharton- Smith's offer to serve as your community partner on this critical infrastructure project.

Sincerely,

Wharton-Smith, Inc.
750 Monroe Road
Sanford, FL 32771
(407) 321-8410

Timothy S. Smith
President / CEO

Tom Widener
Principal-in-Charge

Nathan Hillard
Client Service Manager

20+ UTILITIES OPERATIONS FACILITIES COMPLETED

30 MINUTES FROM COMPANY HEADQUARTERS TO PROJECT SITE

90% LOCAL PROJECT TEAM MEMBERS

#1 CONSTRUCTION FIRM IN CENTRAL FLORIDA (ORLANDO BUSINESS JOURNAL 2022)

20 PROJECTS COMPLETED WITH SCHENKEL SCHULTZ ARCHITECTS

A Required Documents

A. Required **Documents**

SECTION 9 – REQUIRED FORMS

FORM 9.1 – RESPONDENTS SUBMITTAL CHECKLIST

X ____ Form 9.2 – Respondents Acknowledgement

X ____ Form 9.3 – Addendum and Change Order Procedure Acknowledgement

X ____ Form 9.4 – Drug Free Preference Statement

X ____ Form 9.5 – Public Entity Crimes Statement

X ____ Form 9.6 – Anti-Collusion Form

X ____ Form 9.7 – Statement of Respondent's Qualifications

X ____ Form 9.8 – Professional References for Previous Experience

X ____ Form 9.9 – Authorized Signatures/Negotiators

X ____ Form 9.10 – Scrutinized Companies Certification

X ____ Form 9.11 – E-Verify Affidavit

X ____ Form 9.12 – Debarment, Suspension and Other Responsibility Matters

X ____ Form 9.13 – Non-Disclosure Agreement for Confidential Materiel

X ____ Exhibit "A" – Description of Confidential Material

X ____ Form 9.14 – No Submittal Form

X ____ Appendix A - 44 C.F.R. Part 18 Certification Regarding Lobbying

X ____ Copy of license to do business in the State of Florida Sunbiz report showing your company registered as "Active"

X ____ Copy of any and all professional licenses and certifications as required to perform the services described herein

X ____ Current Bonding Capacity Letter for Performance & Payment Bond

X ____ Submission of one (1) original marked 'ORIGINAL', five (5) copies and one (1) digital (USB flash drive) version in PDF format

BY: Wharton-Smith, Inc.
_____
Name of Business

_____
Authorized Signature

2/14/2024
_____
Date

FORM 9.2 – RESPONDENTS ACKNOWLEDGEMENT FORM

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

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

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

I further certify that this statement is made without prior understanding, contract, connection, discussion or collusion with any person, firm or corporation submitting a statement for the same product or service; no officer, employee or agent of the City of Port orange City Council or of any other Respondent interested in said RFSQ; and that the undersigned executed this Respondents' Acknowledgement with full knowledge and understanding of the matters therein contained and was July 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 RFSQ.

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 statement non-responsive.

NO EXCEPTIONS ALLOWED AFTER THE STATEMENT IS SUBMITTED:

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

_____

_____

Wharton-Smith, Inc.
Name of Business

Darin A. Crafton
Authorized Signature

Darin A. Crafton, Chief Operating Officer
Printed Name and Title

59-2392802
Federal Identification No.

750 Monroe Road
Mailing Address

Sanford, FL 32771
City, State & Zip Code

407-321-8410
Telephone Number

dcrafton@whartonsmith.com
E-mail Address

STATE OF: Florida COUNTY OF: Seminole

The foregoing instrument was acknowledged before me by means of ☒physical presence or ☐online notarization, this 14th day of February, 2024, by Darin A. Crafton and who:

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

Pamila Evans
Notary Public, State of Florida

Printed, typed or stamped name, commission and expiration:

PAMILA EVANS
MY COMMISSION # GG 972439
EXPIRES: July 21, 2024
Bonded Thru Notary Public Underwriters

This document must be completed and returned with your submittal

FORM 9.3 – ADDENDUM AND CHANGE ORDER PROCEDURE ACKNOWLEDGEMENT

ADDENDUM ACKNOWLEDGEMENT

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

I acknowledge receipt and incorporation of the following addenda:

Addendum# 1 Date: 2/9/2024 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.

By signing below, I acknowledge the above statements regarding issued Addenda and Change Order Procedures.

Wharton-Smith, Inc.
Name of Business

Authorized Signature

Darin A. Crafton, Chief Operating Officer
Printed Name and Title

STATE OF: Florida COUNTY OF: Seminole

The foregoing instrument was acknowledged before me by means of ☒physical presence or ☐online notarization, this 14th day of February, 2024, by Darin A. Crafton and who:

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

Pamila Evans
Notary Public, State of Florida

Printed, typed or stamped name, commission and expiration:

PAMILA EVANS
MY COMMISSION # GG 972439
EXPIRES: July 21, 2024
Bonded Thru Notary Public Underwriters

This document must be completed and returned with your Submittal

FORM 9.4 – DRUG-FREE PREFERENCE STATEMENT

IDENTICAL TIE STATEMENTS – 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 statement 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 statements will be followed if none of the tied respondents 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 request, 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 faither 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.

Wharton-Smith, Inc.
Name of Business

Darin A. Crafton
Authorized Signature

Darin A. Crafton, Chief Operating Officer
Printed Name and Title

STATE OF: Florida COUNTY OF: Seminole

The foregoing instrument was acknowledged before me by means of ☒physical presence or ☐online notarization, this 14th day of February, 2024, by Darin A. Crafton and who:

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

Pamila Evans

Notary Public, State of Florida

Printed, typed or stamped name, commission and expiration:

PAMILA EVANS
MY COMMISSION # GG 972439
EXPIRES: July 21, 2024
Bonded Thru Notary Public Underwriters

This document must be completed and returned with your Submittal

FORM 9.5 – 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 Darin A. Crafton, who, being by me first duly sworn, made the following statement:

1. The business address of Wharton-Smith, Inc. (name of Respondent or business) is 750 Monroe Road, Sanford, FL 32771.
2. My relationship to Wharton-Smith, Inc. (name of Offeror or business) is Chief Operating Officer (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)

Wharton-Smith, Inc.
Name of Business

Dan a Crafton
Authorized Signature

Darin A. Crafton, Chief Operating Officer
Printed Name and Title

STATE OF: Florida

COUNTY OF: Seminole

The foregoing instrument was acknowledged before me by means of ☒physical presence or ☐online notarization, this 14th day of February, 2024, by Darin A. Crafton and who:

☑is personally known to me; or ☐ has produced _____ as identification.

Pamila Evans
Notary Public, State of Florida

Printed, typed or stamped name, commission and expiration:

NOTARY PUBLIC STATE OF FLORIDA
PAMILA EVANS
MY COMMISSION # GG 972439
EXPIRES: July 21, 2024
Bonded Thru Notary Public Underwriters

This document must be completed and returned with your Submittal

FORM 9.6 – ANTI-COLLUSION FORM

ANTI-COLLUSION STATEMENT FORM:

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

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

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

NAME OF FIRM: Wharton-Smith, Inc.

SIGNED BY: _____

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

PRINTED SIGNATURE: Darin A. Crafton

TITLE: Chief Operating Officer

ADDRESS: 750 Monroe Road

CITY, STATE AND ZIP CODE: Sanford, FL 32771

TELEPHONE: 407-321-8410 F.E.I.N.: 59-2392802

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

This document must be completed and returned with your Submittal

FORM 9.7 - STATEMENT OF RESPONDENT'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 9.7 is complete, true and correct to the best of his or her knowledge and belief. **If necessary, questions may be answered on a separate paper and attached with any additional information that may be pertinent.**

A. Name of Respondent: Wharton-Smith, Inc.

B. Permanent main office address: 750 Monroe Road, Sanford, FL 32771

C. Date organized: April 2nd, 1984

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? 39

F. Contracts on hand: (List these, showing amount of each contract and the appropriate anticipated dates of completion.) **USE SEPARATE SHEET & ATTACH TO SUBMITTAL** Attached

G. General character of work performed by your company: Construction Management at Risk

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** Attached

K. List your major equipment currently owned or leased: **USE SEPARATE SHET & ATTACH TO SUBMITTAL** Attached

L. Background and experience of the principal members of your organization, including the officers: **USE SEPARATE SHEET & ATTACH TO SUBMITTAL** Attached

M. Credit currently available: $ 11,500,000.00

N. Give bank name, contact name and phone number: Regions Bank, John D. Bachman, Vice President of Commercial and Industrial Banking, (407) 246-8917

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 compromising the Statement Qualifications.

Wharton-Smith, Inc.
Name of Business

Authorized Signature

Darin A. Crafton, Chief Operating Officer
Printed Name and Title

STATE OF: Florida

COUNTY OF: Seminole

The foregoing instrument was acknowledged before me by means of ☒physical presence or ☐online notarization, this 14th day of February, 2024, by Darin A. Crafton 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:

NOTARY PUBLIC STATE OF FLORIDA
PAMILA EVANS
MY COMMISSION # GG 972439
EXPIRES: July 21, 2024
Bonded Thru Notary Public Underwriters

This document must be completed and returned with your Submittal

F. Contracts on Hand

Project Name	Client	Anticipated Start Date	Anticipated Completion Date	Construction Cost
SDOC Transportation East Facility	School District of Osceola County	9/7/2023	10/31/2024	$35,314,170
Seminole County Sheriff's Office Communications Center Renovations	Seminole County Sherriff's Office	5/1/2023	1/31/2024	$2,300,000
Middleton Town Center	The Villages Development Operating	12/5/2022	4/30/2024	$17,651,250
Daytona Beach Fire Station/Admin. Bldg. Preconstruction Services	City of Daytona Beach	8/1/2023	4/30/2024	TBD
Winter Springs High School Central Energy Plant	School Board of Seminole County	5/22/2023	5/2/2024	$2,965,511
K-8 School "BB" Westside Relief New Construction	School District of Osceola County	3/1/2023	7/30/2024	$46,205,913
City of Deland Utilities Admin. Bldg.	City of DeLand	5/23/2023	10/1/2024	$17,555,771
City of Palm Coast Fire Stations Package	City of Palm Coast	12/1/2023	3/31/2025	$9,000,000
K-8 School "PP"	St. Johns County School District	6/20/2023	6/30/2025	$59,400,000
VCS Starke Elementary School Preconstruction Services	School Board of Volusia County	5/1/2024	8/1/2025	$150,000
GRU Groundwater Recharge Wetland	Gainesville Regional Utilities	3/3/2025	3/30/2026	$9,243,642

J. Projects Recently Completed by Wharton-Smith

Project Name	Client	Completion Date	Size	Construction Cost
Volusia County Medical Examiner's Office	Volusia County, FL	October 2023	19,892 SF	$16,087,250
Casselberry Public Works	City of Casselberry, FL	September 2023	52,928 SF	$15,370,599
Brightline Trains Orlando Vehicle Maintenance Facility	Brightline Trains	August 2022	136,259 SF	$63,098,147
Southwest Water Reclamation Facility Operations Building	City of Cape Coral, FL	May 2023	32,513 SF	$16,230,630
Cocoa Dyal Training Building	City of Cocoa Beach, FL	August 2022	10,000 SF	$19,828,408
New Administration Facility – Department of Water Utilities	City of Lakeland, FL	June 2021	35,000 SF	$5,602,802
Ocoee City Hall	City of Ocoee, FL	March 2022	44,792 SF	$19,288,065
Kelly Park School	Orange County Public Schools (OCPS)	May 2022	159,062 SF	$28,521,195
Seminole County Juvenile Assessment Center Addition	Seminole County, FL	April 2022	8,500 SF	$4,995,000
City of Mount Dora Fire Station #35	City of Mount Dora, FL	January 2023	9,142 SF	$4,539,339
Secret Lake Park	City of Casselberry, FL	June 2022	N/A	$3,000,000
Aurelia M. Cole Academy	Lake County Schools	June 2023	169,647 SF	$51,043,462
Austin Tindall Fire Station 67	Osceola County Board of County Commissioners	June 2023	12,000 SF	$6,500,000
The Villages Charter High School South Campus	The Villages	April 2023	450,000 SF	>$150,000,000 (Confidential)
Melching Field Stadium Improvements	City of DeLand, FL	February 2023	N/A	$2,376,680
UCF Roth Athletic Center	University of Central Florida (UCF)	October 2022	37,288 SF	$8,022,898
Lake Concord Art House Expansion	City of Casselberry, FL	June 2023	3,271 SF	$3,200,000
Supervisor of Elections Office Improvements	Osceola County Board of County Commissioners	January 2024	17,270 SF	$1,448,445

Wharton-Smith, Inc.
Owned Equipment
Feb-24

Description
2021 United Alloy CAT XQ60 Serial- CF901169 VIN-
2014 CAT 316EL Excavator DZW01653
2014 CAT 320EL Excavator WBK03046
2020 Kubota SVL95-2SHF Compact track loader 504
2020 Kubota SVL95-2SHF Compact track loader 504
2017 CAT 420 FIT Backhoe Ext HWD01894
2021 CAT 420 Backhoe H8T00371
2023 Sullair 185 CFM Air Compressor US012305021
2020 CAT 336 Excavator YBN10143 W/ teledipper
2017 CAT 336F Excavator RKB10312
2017 CAT 320FL Excavator YBM10298
2020 CAT 323 Excavator RAZ20092
2021 CAT 304E2 Mini Excavator ME408104
2021 CAT 336 Excavator YBN20306
2022 CAT 304 Mini Ex AN400717
2023 CAT 304 Mini Excavator AN401599
2023 CAT 308 Excavator GG808008
2023 CAT 336 Excavator RDL10046
2023 CAT 336 Excavator RDL10163
2023 CAT 308 Excavator GG808170
2023 CAT 308 Excavator GG808200
2023 CAT 320 Excavator MYK21484
2023 CAT 325 07D HEX Excavator TEL30530
CAT 325
2021 CAT C5000 Forklift AT904885
2021 Club Car 1700G UTV 224365
2021 Kawasaki Mule KAF622 UTV Serial JK1AFHA1
2021 Kawasaki Mule KAF622 UTV Serial JK1AFHA1
2021 Club Car 1700G UTV 224292
2021 Club Car 1700G UTV 227050
2021 Club Car 1700G UTV 285225
2021 Club Car 1700G UTV 285240
2021 Club Car 1700G UTV 285247
2021 Club Car 1700G UTV 285248
2021 Club Car 1700G UTV 285249
2021 Club Car 1700G UTV 285259
2022 Can-Am 8ZNA Defender 3JBUBAJ40NK000053
2022 Can-Am 8ZNA Defender 3JBUBAJ42NK000085
2022 Can-Am 8ZNA Defender 3JBUBAJ44NK000038
2022 Kawasaki Mule JK1ATCB12NB501139
2022 Club Car Carryall 1700G UTV A5CUAA4FCNA3
2022 Club Car Carryall 1700G UTV A5CUAA4FKNA3
2022 Kawasaki Mule KAT620B JK1ATCB17NB5016
2022 Can-Am 8ZNA Utility Vehicle 3JBUBAJ45NK00
2022 Can-Am 8ZNA Utility Vehicle 3JBUBAJ47NK00
2022 Can-Am 8ZNA Utility Vehicle 3JBUBAJ46NK00
2022 Can-Am 8ZNA Utility Vehicle 3JBUBAJ49NK00
2022 Can-Am 8ZNA Utility Vehicle 3JBUBAJ47NK00
2022 Can-Am 8ZNA Utility Vehicle 3JBUBAJ42NK00
2023 Can-AM 8ZPB Utility Vehicle 3JBUBAJ45PK00
2023 Can-AM 8ZPB Utility Vehicle 3JBUBAJ48PK00
2023 Can-AM 8ZPB Utility Vehicle 3JBUBAJ40PK00
2023 Can-AM 8ZPB Utility Vehicle 3JBUBAJ43PK00
2023 Can-AM 8ZPB Utility Vehicle 3JBUBAJ47PK00
2023 Can-AM 8ZPB Utility Vehicle 3JBUBAJ49PK00
2023 Can-AM 8ZPB Utility Vehicle 3JBUBAJ45PK00
2023 Can-AM 8ZPB Utility Vehicle 3JBUBAJ46PK00
2023 Can-AM 8ZPB Utility Vehicle 3JBUBAJ43PK00
2023 Can-AM 8ZPB Utility Vehicle 3JBUBAJ47PK00
2023 Can-AM 8ZPB Utility Vehicle 3JBUBAJ4XPK00
2023 Can-AM 8ZPB Utility Vehicle 3JBUBAJ48PK00
2023 Can-AM 8ZPB Utility Vehicle 3JBUBAJ47PK00
2023 Can-AM 8ZPB Utility Vehicle 3JBUBAJ4XPK00
2023 Can-AM 8ZPB Utility Vehicle 3JBUBAJ41PK00
2023 Can-AM 8ZPB Utility Vehicle 3JBUBAJ48PK00
2023 Can-AM 8ZPB Utility Vehicle 3JBUBAJ47PK00
2023 Can-AM 8ZPB Utility Vehicle 3JBUBAJ44PK00
2023 Can-AM 8RPD Utility Vehicle 3JBUBAP42PK00
2023 Can-AM 8ZPB Utility Vehicle 3JBUBAJ48PK00
2023 Can-AM 8ZPB Utility Vehicle 3JBUBAJ40PK00
2023 Can-AM 8ZPB Utility Vehicle 3JBUBAJ44PK00
2023 Can-AM 8ZPB Utility Vehicle 3JBUBAJ43PK00
2023 Can-AM 8ZPB Utility Vehicle 3JBUBAJ49PK00
2023 Can-AM 8ZPB Utility Vehicle 3JBUBAJ42PK00
2021 CAT 926M Wheel Loader W5L01507
2023 CAT 938M Wheel Loader J3R10582
2017 CAT 926M Wheel Loader LTE03587
2017 CAT 926M Wheel Loader LTE04000
2020 CAT 938 Wheel Loader J3R08777
2021 CAT 938 Wheel Loader P5K01466
2021 CAT 938 Wheel Loader P5K02101
2018 CAT TL642D Mat. Handler ML800954
2021 CAT TL642D Mat. Handler ML801706
2021 CAT TL642D Mat Handler ML801728
2021 CAT TL642D Mat Handler ML801781
2021 CAT TL642D Mat Handler ML801751
2021 CAT TL642D Mat Handler ML801792
2022 CAT TL642 Mat Handler T6900263
2022 CAT TL642 Mat Handler T6900267
2023 CAT TL642 Mat. Handler T6900938
2023 CAT TL1255 Mat. Handler T8201712
2021 CAT 289D3 Skid Steer JX906229
2021 Kubota SVL97-2HF Skid Steer KBCZ964CVM1
2021 Kubota SVL97-2HF Skid Steer KBCZ064CEM1
2021 CAT 289D Skid Steer JX906398
2021 Kubota SVL97-2HF Skid Steer E63118 KBCZ
2022 Kubota SVL97-2HF KBCZ064CJN1F70237
2024 CAT 259D3 Skid Steer CW929052
2020 CAT 289D3 L2+ Compact Track Loader JX903
2020 CAT 289D3 L2+ Compact Track Loader JX903
2021 CAT 289D3 Skid Steer JX905224
2021 Laymor SM300 Sweeper 40358
2021 Laymor SM300 Sweeper 40359
2021 Laymor SM300 Sweeper 40388
2023 Laymor SM300 Sweeper 42889

L. Background and Experience of Principal Members

Tim Smith | President & CEO

In 1984, at age 16, Tim Smith joined Wharton-Smith, starting at the bottom and learning his way up the ladder through college, earning full-time employment in 1991. During nearly 40 years of incredible growth and change, Tim has served the company in many roles — Cleaning Crew, Field Engineer, Estimator, Project Engineer, Project Manager, Project Executive, Quality Control Director, Vice President, and President. He has advanced the company's goal of being the Construction Group of Choice in each of these roles. As President and CEO, Tim aids the company's growth through his servant leadership abilities, robust engineering and operations background, and dedication to Wharton-Smith's core value of continuous improvement. His responsibilities include oversight of the overall performance of each division. He is involved with projects from estimating through operations, assuring in-depth knowledge of all functions within the organization. He is also responsible for the financial aspects of the business, including banking, bonding, and insurance. Tim also oversees the execution of strategic business plans and infrastructure management by leveraging technology to yield efficient and effective growth management methods. Tim holds a bachelor's degree in Finance from Auburn University and a bachelor's degree in Civil Engineering from the University of Central Florida. Tim is a Professional Engineer and a licensed General Contractor. Tim is committed to the Central Florida community. He actively supports Kids House, Leadership Seminole, Habitat for Humanity, Seminole State College, the University of Central Florida, and the Central Florida Zoo. In addition, Tim has been recognized with a Civil, Environmental, and Construction Engineering achievement award from the University of Central Florida. Tim's

Darin Crafton | Chief Operating Officer, Commercial

Darin Crafton joined Wharton-Smith in 2015 and brought with him more than 20 years of experience in the construction industry and a proven record of successful completion of many high-profile multi-million-dollar projects. In his current role of Chief Operating Officer (COO), Darin supports the company's vision and strategic goals and plays an essential part in shaping the company's future. Under Darin's leadership, the expansion of the commercial division has thrived, and the company has increased its revenue by more than 300 percent. This growth has led to new commercial market share in education, municipal, assisted living facilities, and entertainment in both Central Florida and throughout our regional areas of operation. Darin holds a bachelor's degree in Construction from Bradley University in Peoria, IL. Community service is a passion for Darin, and he actively supports Associated Builders and Contractors, Inc., Kids House, Habitat for Humanity, and the Foundation for Seminole County Schools.

Pat Hewitt | Chief Operating Officer, Water

Pat Hewitt joined Wharton Smith in 1998 and currently serves as Chief Operating Officer (COO), Water, working in our Sanford, Florida, headquarters. With over 30 years of experience in the construction industry, Pat's expertise has proven integral to Wharton Smith's growth. During his 20 years at Wharton-Smith, Pat's leadership and focus have built a thriving business line and a new generation of employees dedicated to client relationships and quality construction standards. In his current role, Pat provides oversight and is responsible for the strategic growth of Water operations in Orlando, as well as our regional offices in Tampa, Fort Myers and Jupiter, FL; Houston, TX; Charlotte, NC; and Baton Rouge, LA. Pat has a bachelor's degree in Civil Engineering from the University of Florida. He is a licensed General Contractor and a licensed Mechanical Contractor. Pat also serves on the Board at the Coalition for the Homeless in Orlando.

Stephanie Pompeo | Chief Financial Officer

Stephanie Pompeo was named Chief Financial Officer (CFO) for Wharton-Smith in 2023, after serving as Vice President of Finance since 2020 and was Wharton-Smith's first female stockholder. She joined the company in 2006 and has more than 17 years of experience in accounting, finance, construction, and technology. Stephanie holds a corporate leadership role in which she provides oversight of the company's financial reporting as well as compliance with internal financial procedures and corporate policies. She is an experienced professional with a demonstrated history of working in the construction industry leading a dynamic Accounting, Finance, Workflow, Training, and IT teams that works on high profile, multi-million-dollar projects. She has experience in tax, financial budgeting, planning, cost control, software development, payroll, workflow mapping and improvements, financial analysis, and strong decision-making skills. She works closely with executive leadership to support business growth in strategic planning areas. This involves collaboration with operations and all administrative departments to facilitate communication of financial information needed for analysis and forecasting. She is also responsible for the enterprise technology of the company. In addition to her professional experience, Stephanie graduated from University of Central Florida with a bachelor's degree in accounting. She also holds an Associates of Arts degree from Edison State College and is a former Phi Theta Kappa member. In 2022, Stephanie was a honoree in the Orlando Business Journal's Women Who Mean Business and CFMA Rising Star Honoree. Stephanie is active in the financial construction community and her community and is involved in several organizations. She serves on the Industry Accounting Advisory Board of Seminole State College, a member of Construction Financial Management Association, President of Central Florida CFMA, CFMA 2019-2020 Peer Group member, CFMA Emerging Leaders 2022-2023 graduate, Corporate Payments Client Advisory Board member and a Sage 300 CRE User Group member, member of FMI CFO Construction Forum. She has provided pro-bono accounting services to Kids House of Seminole. She is a current Athena Orlando Women's Leadership, Inc alumni and on the Council for Leadership Seminole. She was a 2019 graduate of Leadership Seminole, a 2019 graduate of Athena NextGen Thought Leadership Series, Co-Founder, Board of Director and Treasurer of Wharton-Smith Foundation, Inc.

FORM 9.8 – PROFESSIONAL REFERENCES FOR PREVIOUS EXPERIENCE

The Respondent 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: City of Casselberry, FL
   Contact Person: Randy Newlon, City Manager
   City, State: Casselberry, FL
   Telephone Number: 407-262-7700 x.1130
   Email Address: jnewlon@casselberry.org
   Description of goods/services provided: Construction Management at Risk Services
   Contract Amount: $15,220,599
   Start/End Date of Contract: November 2020 / September 2023
2. Company Name: Volusia County, FL
   Contact Person: Dr. James Fulcher, District 7 Chief Medical Examiner
   City, State: DeLand, FL
   Telephone Number: 386-258-4060
   Email Address: JFulcher@volusia.org
   Description of goods/services provided: Construction Management at Risk Services
   Contract Amount: $16,087,250
   Start/End Date of Contract: September 2022 / October 2023
3. Company Name: City of Cape Coral, FL
   Contact Person: Matthew Astorino
   City, State: Cape Coral, FL
   Telephone Number: 239-677-0042
   Email Address: mastorino@capecoral.net
   Description of goods/services provided: Construction Management at Risk Services
   Contract Amount: $16,230,630
   Start/End Date of Contract: June 2019 / May 2023

This document must be completed and returned with your Submittal.

(Form 9.8 – Professional References for Previous Experience Page 2)

LISTING OF PREVIOUS EXPERIENCE
COMMERCIAL CLIENT LIST

The Respondent 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 to those required under the City's contract as outlined in this package. A minimum of three (3) project shall be listed below. The Owner reserves the right to check references and confirm information provided herein.

1. Contact Name: Randy Newlon, City Manager (Project - Casselberry Public Works)

   Phone: (407) 262-7700 ext. 1130

   Current Client: ☐Yes ☒ No

   Number of years of service provided: 3

   Description of service: Wharton-Smith provided Construction Management at Risk services for the City of Casselberry. This project consists of the phased demolition and renovation of the existing Public Works Facility, which includes an administration/ maintenance building, warehouse/fleet maintenance building, and covered equipment parking.

2. Contact Name: Dr. James Fulcher, District 7 Chief Medical Examiner

   Phone: (386) 258-4060 (Project - Volusia County Medical Examiner's Office)

   Current Client: ☐Yes ☒ No

   Number of years of service provided: 1

   Description of service: Wharton-Smith provided Construction Management at Risk (CMAR) services for the District 7 Medical Examiner's Office in Volusia County, Florida. The medical examiner's office has a total area of 19,892 square feet and was constructed at a cost of $16,087,250.

3. Contact Name: Matthew Astorino (Project - Southwest Water Reclamation Facility Operations Building)

   Phone: (239) 677-0042

   Current Client: ☐Yes ☒ No

   Number of years of service provided: 3

   Description of service: Wharton-Smith provided Construction Management at Risk services for the construction of a new 25,000 SF Operations and Administration Building on the existing Southwest WRF site.

This document must be completed and returned with your Submittal

(Form 9.8 – Professional References for Previous Experience Page 2)

CONTINUED

LISTING OF PREVIOUS EXPERIENCE
COMMERCIAL CLIENT LIST

The Respondent 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 to those required under the City's contract as outlined in this package. A minimum of three (3) project shall be listed below. The Owner reserves the right to check references and confirm information provided herein.

4. Contact Name: Fiorella Hall (Project - New Administration Facility – Department of Water Utilities)

Phone: (863) 834-2342

Current Client: ☐Yes ☒ No

Number of years of service provided: 2

Description of service: Wharton-Smith provided Construction Management at Risk services for the multi-phased Administration Complex for the City of Lakeland.

FORM 9.9 – AUTHORIZED SIGNATURES/NEGOTIATORS

The Respondent represents that the following person(s) are authorized to sign and/or negotiate contracts and related documents to which the Respondent will be duly bound:

Name	Title	Phone #
Please see attached list.		407-321-8410

Authorized Signature

Darin A. Crafton

Print Name of Authorized Signature

This document must be completed and returned with your Submittal

Wharton-Smith, Inc.
CONSTRUCTION GROUP

CORPORATE OFFICERS / PRINCIPALS

Names and titles of principal officers	Year position assumed	Years with Wharton-Smith	Qualifier
Timothy S. Smith – President/CEO	2022	31	Yes
Ronald F. Davoli – Chairman	2005	32	Yes
Patrick J. Hewitt – Chief Operating Officer Water	2005	25	Yes
Stephanie Pompeo – Chief Financial Officer / Secretary	2020	16	Yes
Darin A. Crafton – Chief Operating Officer Commercial	2015	8	Yes
Kenneth E. Marcell III – Vice President Gulf Coast Water	2014	18	Yes
Todd O'Donnell – Director of Business Development – W/WW	2014	22	Yes
Gregory Williams – Director of Operations	2015	7	Yes
Thomas D. Iarossi – VP West Coast Commercial	2018	7	Yes
George E. Smith – Chairman of the Board (Retired as President/CEO in 2005)	2005	39	Yes
Andre P Boagni – Area Manager	2019	16	Yes

FORM 9.10 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, Darin A. Crafton, Chief Operating Officer, on behalf
(Print Name and Title)

of Wharton-Smith, Inc. ("Company"), certify that
(Company Name)

Wharton-Smith, Inc. does not:
(Company Name)

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.

Wharton-Smith, Inc.
COMPANY NAME

SIGNATURE

Darin A. Crafton
PRINT NAME

Chief Operating Officer
TITLE

STATE OF FLORIDA

COUNTY OF: Seminole

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

14th day of February, 2024, by Darin A. Crafton and who:

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

Pamila Evans Notary Public, State of Florida

Printed, typed or stamped name, commission and expiration:

PAMILA EVANS
MY COMMISSION # GG 972439
EXPIRES: July 21, 2024
Bonded Thru Notary Public Underwriters

This document must be completed and returned with your Submittal

FORM 9.11 - E-VERIFY AFFIDAVIT

CITY OF PORT ORANGE

CONTRACTOR E-VERIFY AFFIDAVIT

IN ACCORDANCE WITH SECTION 448.095, FLORIDA STATUTES

Project Name: CMAR for Construction of Public Utilities Operations Facility

Solicitation Number: RFSQ #23-14

I, the undersigned hereby certify that Wharton-Smith, 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 Wharton-Smith, 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.

Darin A. Crafton, Chief Operating Officer
Print or Type Name, Title

Signature of Affiant

59-2392802
Federal Employer ID Number (FEIN)

142880
E-Verify Number

STATE OF FLORIDA

COUNTY OF: Seminole

The foregoing instrument was acknowledged before me by means of ☒physical presence or ☐online notarization, this 14th day of February, 2024, by Darin A. Crafton 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:

PAMILA EVANS
MY COMMISSION # GG 972439
EXPIRES: July 21, 2024
Bonded Thru Notary Public Underwriters

This document to be completed and returned with your Submittal

E-Verify Employment Eligibility Verification

Welcome Melissa Rivera | User ID MRIV0591 | Last Login 03:28 PM - 12/19/2011 | Log Out

Home
My Cases
New Case
View Cases
Search Cases
My Profile
Edit Profile
Change Password
Change Security Questions
My Company
Edit Company Profile
Add New User
View Existing Users
Close Company Account
My Reports
View Reports
My Resources
View Essential Resources
Take Tutorial
View User Manual
Contact Us

Company Information

View / Edit

Company Name: Wharton-Smith, Inc.

Company ID Number: 142880
Doing Business As (DBA) Name:
DUNS Number:

Physical Location:

Address 1: 750 Monroe Road
Address 2:
City: Sanford
State: FL
Zip Code: 32771
County: SEMINOLE

Mailing Address:

Address 1: P.O. Box 471028
Address 2:
City: Lake Monroe
State: FL
Zip Code: 32747

Additional Information:

Employer Identification Number: 592392802
Total Number of Employees: 500 to 999
Parent Organization:
Administrator: Wharton-Smith, Inc

Organization Designation:

Employer Category: Federal Contractor with FAR E-Verify Clause
Federal Contractor Category: None of these categories apply
Employees being verified: All new hires and all existing employees assigned to a Federal contract

NAICS Code: 237 - HEAVY AND CIVIL ENGINEERING CONSTRUCTION View / Edit

Total Hiring Sites: 16 View / Edit

Total Points of Contact: 3 View / Edit

View MOU

FORM 9.12 - 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 statement be 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 statement/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 Statement.

Wharton-Smith, Inc.	RFSQ #23-14
Organization Name	Request for Statement of Qualifications Number
Darin A. Crafton, Chief Operating Officer	2/14/2024
Name and Title of Authorized Representative	Signature Date

This document must be completed and returned with your Submittal

FROM 9.13 – NON-DISCLOSURE AGREEMENT FOR CONFIDENTIAL MATERIALS

REFERENCE# RFSQ #23-14

RETURN THIS FORM ONLY IF CONFIDENTIAL MATERIALS ARE BEING INCLUDED WITH THE SUBMITTAL. PLEASE READ THE SECTION IN THE REQUEST TO DETERMINE IF THIS APPLIES.

Respondent: Wharton-Smith, Inc.

Address: 750 Monroe Road, Sanford, FL 32771

This Agreement is entered into as of the date of the last signature set forth below between the City of Port Orange, a political subdivision of the State of Florida (hereinafter the "City"), and the above-named Respondent (hereinafter the ("Respondent"). The City and the Respondent are collectively referred to as the "Parties" and may be referred to individually as a Party.

RECITALS

WHEREAS, the Respondent asserts that it possesses certain confidential trade secret materials that it wishes to disclose to the City for the purpose of responding to a solicitation or otherwise conducting business with the City; and

WHEREAS, the City desires to review such materials in order to evaluate the City's interest in negotiating and concluding an agreement for the purchase of certain products and services, or otherwise conducting business with the Respondent.

NOW THEREFORE, in consideration of the mutual promises and premises contained herein, the receipt and sufficiency of which are hereby acknowledged, the City and the Respondent agree as follows:

1. Confidential Materials. The Respondent warrants and represents to the City that the materials described in the attached Exhibit A (Description of "Confidential Material") constitute trade secrets as defined by Section 812.081(1)(c), Florida Statutes, or financial statements required by the City for projects as defined in 119.071(1)(c), Florida Statutes. Subject to the terms and conditions of this Agreement, the City agrees not to disclose such Confidential Materials to third parties.
2. Additional Materials. During the course of the review or the business relationship with the City, the Respondent may disclose additional confidential or trade secret information to the City in which case the restrictions and obligations on the use and disclosure of the Confidential Materials imposed by this Agreement shall also apply to such additional information to the extent permitted by Florida law. Any such additional confidential or trade secret information shall be duly marked and stamped "confidential" or "trade secret" prior to delivery to the City, and shall be subject to this Agreement and Section 812.081(2), Florida Statutes, only if written receipt is provided by the City acknowledging receipt of such materials.
3. Exclusions. For purposes of this Agreement, the term "Confidential Materials" does not include the following:
    a. Information already known or independently developed by the City;
    b. Information in the public domain through no wrongful act of the City;
    c. Information received by the City from a third party who was legally free to disclose it;
    d. Information disclosed by the Respondent to a third party without restriction on disclosure;
    e. Information disclosed by requirement of law or judicial order, including without limitation Chapter 119 Florida Statutes; or
    f. Information that is disclosed with the prior written consent of the Respondent, but only to the extent permitted by such consent.
4. Non-Disclosure by Respondent. In the event that the City discloses confidential or trade secret information to Respondent, the Respondent agrees to not disclose such information to any third party or copy such information or use it for any purpose not explicitly set forth herein without the City's prior written consent. Further, upon conclusion of discussions or business transactions between the City and the Respondent, or at any time upon request of the City, Respondent agrees to return such information (including any copies) to the City.

5. Duty of Care. Each Party agrees to treat the other Party's confidential or trade secret information with the same degree of care, but not less than reasonable care, as the receiving Party normally takes to preserve and protect its own similar confidential information and to inform its employees of the confidential nature of the disclosing Party's information and of the requirement of nondisclosure. In the event either Party has actual knowledge of a breach of the nondisclosure requirements set forth in this Agreement, the Party acquiring such knowledge shall promptly inform the other Party and assist that Party in curing the disclosure, where possible, and preventing future disclosures.
6. Limitations of Florida Law. Respondent understands and agrees that its assertion that any item is confidential or a trade secret does not, in and of itself, render such material exempt from the Florida Public Records Law, Chapter 119 of the Florida Statutes, and that the City's ability to prevent disclosure of confidential and trade secret information may be subject to determination by a Florida court that such materials qualify for trade secret protection under Florida law. In the event a third party makes a public records request for the Confidential Materials or other materials deemed by Respondent to be confidential or a trade secret, the City may submit the materials to the court for inspection in camera as set forth in Section 119.07(1)(g) Florida Statutes. Respondent further understands that the City may be required to disclose such information if directed by a court of competent jurisdiction.
7. Indemnification by Respondent. In the event of any litigation instituted by a third party to compel the City to disclose such materials, Respondent shall, at its sole cost and expense, provide assistance to the City in defending the denial of the records request, and shall hold the City harmless from any claim for statutory costs and attorney's fees arising from the City's refusal to disclose such materials.
8. No Additional Obligations. This Agreement shall not be construed in any manner to be an obligation for either Party to enter into any subsequent contract or agreement.
9. Sovereign Immunity. Nothing in this Agreement 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 has been or which may be adopted by the Florida Legislature, regardless of the nature of any claim which may arise, including but not limited to a claim sounding in tort, equity or contract. In no event shall the City be liable for any claim or claims for breach of contract, including without limitation the wrongful disclosure of confidential or trade secret information for an amount which exceeds, individually and collectively, the then current statutory limits of liability for tort claims. Nothing in this Agreement 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 by operation of law.
10. Notice. Whenever either Party desires to give notice unto the other, it must be given by written notice, sent by registered United States mail, with return receipt requested, addressed to the party for whom it is intended, at the place last specified, and the place for giving of notice in compliance with the provisions of this paragraph. For the present, the Respondent designates the address set forth above as its place for receiving notice, and the City designates the following address for such notice:

    The City of Port Orange, Florida
    Purchasing Manager
    1000 City Center Circle
    Port Orange, FL 32129

11. Governing Law. This Agreement shall be governed by the laws of the State of Florida, and venue for any action arising out of or relating to the subject matter of this Agreement shall be exclusively in Volusia County, Florida, or the Federal City Court for the Middle City of Florida, Jacksonville Division.
12. Respondent and the City hereby expressly waive any rights either may have to a trial by jury of any civil litigation related to this Agreement for any litigation related to or arising from this solicitation and resulting agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers the day and year as set forth below.

The City of Port Orange, FL

BY: _____

NAME: Till Poolman

TITLE: Purchasing Manager

DATE: 2-16-24

Respondent

BY: _____

NAME: Darin A. Crafton

TITLE: Chief Operating Officer

DATE: 2/14/2024

ATTEST:

BY: _____

NAME: Pamila Evans

TITLE: Corp. Business Development Supervisor

DATE: 2/14/2024

PAMILA EVANS
MY COMMISSION # GG 972439
EXPIRES: July 21, 2024
Bonded Thru Notary Public Underwriters

EXHIBIT A - DESCRIPTION OF CONFIDENTIAL MATERIAL

Audited financial statement of the last available fiscal year, enclosed in a separate envelope marked “CONFIDENTIAL pursuant to Florida Statutes Section 119.071(1)(c)”.

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, Wharton-Smith, 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

Darin A. Crafton, Chief Operating Officer

Name & Title of Contractor's Authorized Official

Date: 2/14/2024

CNA SURETY

500 Colonial Center Parkway, Suite 400
Lake Mary, FL 32746

Elio E. Sanchez, CPA, AFSB
Telephone 407-804-5931
Cellular: 407-325-5532
Internet elio.sanchez@cnasurety.com

February 8, 2024

City of Port Orange City Clerk's Office
Attn: Jill Poolman, CPPO, CPPB, FCCM
1000 City Center Circle
Port Orange, FL 32129

Re: Wharton-Smith, Inc., 750 Monroe Road, Sanford, FL 32771
Construction Manager at Risk for Construction of Public Utilities Operations Facility
RFSQ #23-14

Dear Ms. Poolman,

We are providing this information at the request of our principal.

We have been providing surety bonds for Wharton-Smith, Inc. since 1986. We have approved bonds for them covering jobs up to $250,000,000 and potential work programs of $1,600,000,000.

We understand that Wharton-Smith, Inc. has or is about to submit a proposal for Construction Manager at Risk for Construction of Public Utilities Operations Facility – RFSQ #23-14 with an estimated price of $8,500,000. If a contract is awarded to Wharton-Smith, Inc. and based on present circumstances, CNA Surety will be willing to provide bid, performance and payment bonds for the applicant in connection with the contract.

Wharton-Smith, Inc. has surety credit established with Western Surety Company, a wholly-owned subsidiary of CNA Surety. An admitted surety in the State of Florida, Western Surety Company is an A.M. Best "A" (Excellent) rated company with a financial size category of XIV ($1.5 Billion to $2 Billion.) Western Surety Company is also included in the Treasury Department list of approved sureties.

Any arrangement for bonds required by the contract is a matter between Wharton-Smith, Inc. and the surety and we assume no liability to you or third parties, if for any reason we do not execute these bonds.

Sincerely,

Elio E. Sanchez

State of Florida
Department of State

I certify from the records of this office that WHARTON-SMITH, INC. is a corporation organized under the laws of the State of Florida, filed on April 3, 1984, effective April 2, 1984.

The document number of this corporation is G94383.

I further certify that said corporation has paid all fees due this office through December 31, 2024, that its most recent annual report/uniform business report was filed on January 3, 2024, and that its status is active.

I further certify that said corporation has not filed Articles of Dissolution.

Given under my hand and the Great Seal of the State of Florida at Tallahassee, the Capital, this the Third day of January, 2024

Secretary of State

Tracking Number: 4058037720CC

To authenticate this certificate,visit the following site,enter this number, and then follow the instructions displayed.

https://services.sunbiz.org/Filings/CertificateOfStatus/CertificateAuthentication

Sunbiz.org DIVISION of CORPORATIONS
an official State of Florida website

Department of State / Division of Corporations / Search Records / Search by Entity Name /

Previous On List Next On List Return to List Search

Events **No Name History**

Detail by Entity Name

Florida Profit Corporation
WHARTON-SMITH, INC.

Filing Information

Document Number	G94383
FEI/EIN Number	59-2392802
Date Filed	04/03/1984
Effective Date	04/02/1984
State	FL
Status	ACTIVE
Last Event	AMENDMENT
Event Date Filed	04/21/2023
Event Effective Date	NONE

Principal Address

750 MONROE RD
SANFORD, FL 32771

Changed: 04/25/2006

Mailing Address

750 Monroe Road
Sanford, FL 32771

Changed: 01/02/2020

Registered Agent Name & Address

CORPORATION SERVICE COMPANY
1201 HAYS STREET
TALLAHASSEE, FL 32301-2525

Name Changed: 10/07/2019

Address Changed: 10/07/2019

Officer/Director Detail

Name & Address

Title CEOPT

SMITH, TIMOTHY S
750 MONROE RD
SANFORD, FL 32771

Title CEO, T

DAVOLI, RONALD F
750 MONROE RD
SANFORD, FL 32771

Title Dir. of Operations

Marcell , Kenneth E, III
750 MONROE RD
SANFORD, FL 32771

Title COO

HEWITT, PATRICK J
750 MONROE RD
SANFORD, FL 32771

Title COO

CRAFTON, DARIN A
750 MONROE ROAD
Sanford, FL 32771

Title Dir. of Business Development

O'Donnell, Todd H
750 MONROE RD
SANFORD, FL 32771

Title Dir. of Operations

Williams, Gregory L
750 MONROE RD
SANFORD, FL 32771

Title Director of Operations

Iarossi, Thomas D
750 MONROE RD
SANFORD, FL 32771

Title VPS

POMPEO, STEPHANIE
750 MONROE RD
SANFORD, FL 32771

Title Director

BOAGNI, ANDRE
750 MONROE RD
SANFORD, FL 32771

Title C,AS

DAVOLI, RONALD F
750 MONROE RD
SANFORD, FL 32771

Annual Reports

Report Year	Filed Date
2021	01/06/2021
2022	01/04/2022
2023	01/03/2023

Ron DeSantis, Governor
Melanie S. Griffin, Secretary
Florida dbpr
STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
CONSTRUCTION INDUSTRY LICENSING BOARD
THE GENERAL CONTRACTOR HEREIN IS CERTIFIED UNDER THE PROVISIONS OF CHAPTER 489, FLORIDA STATUTES
SMITH, TIMOTHY SCOT
WHARTON-SMITH INC
750 MONROE ROAD
SANFORD FL 32771
LICENSE NUMBER: CGC1511243
EXPIRATION DATE: AUGUST 31, 2024
Always verify licenses online at MyFloridaLicense.com
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Wharton-Smith's General Contractor's License

Ron DeSantis, Governor
Melanie S. Griffin, Secretary
Florida dbpr
STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
CONSTRUCTION INDUSTRY LICENSING BOARD
THE MECHANICAL CONTRACTOR HEREIN IS CERTIFIED UNDER THE PROVISIONS OF CHAPTER 489, FLORIDA STATUTES
HEWITT, PATRICK JOHN
WHARTON-SMITH INC
2606 CHIPPEWA TRAIL
MAITLAND FL 32751
LICENSE NUMBER: CMC1249482
EXPIRATION DATE: AUGUST 31, 2024
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Wharton-Smith's Mechanical Contractor's License

Ron DeSantis, Governor
Melanie S. Griffin, Secretary
Florida dbpr
STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
CONSTRUCTION INDUSTRY LICENSING BOARD
THE PLUMBING CONTRACTOR HEREIN IS CERTIFIED UNDER THE PROVISIONS OF CHAPTER 489, FLORIDA STATUTES
SMITH, TIMOTHY SCOT
WHARTON-SMITH INC
750 MONROE ROAD
SANFORD FL 32771
LICENSE NUMBER: CFC1427566
EXPIRATION DATE: AUGUST 31, 2024
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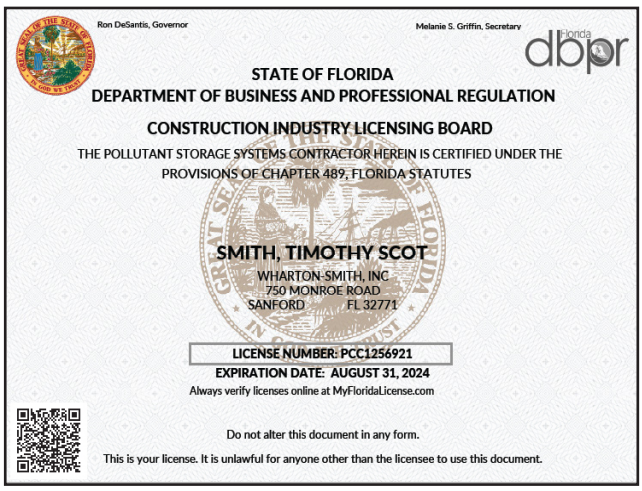
Wharton-Smith's Plumbing Contractor's License


Ron DeSantis, Governor
Melanie S. Griffin, Secretary
Florida dbpr
STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
CONSTRUCTION INDUSTRY LICENSING BOARD
THE POLLUTANT STORAGE SYSTEMS CONTRACTOR HEREIN IS CERTIFIED UNDER THE PROVISIONS OF CHAPTER 489, FLORIDA STATUTES
SMITH, TIMOTHY SCOT
WHARTON-SMITH, INC
750 MONROE ROAD
SANFORD FL 32771
LICENSE NUMBER: PCC1256921
EXPIRATION DATE: AUGUST 31, 2024
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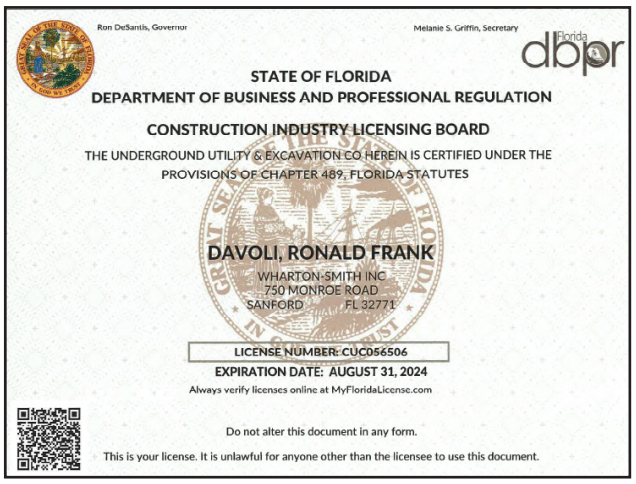
Wharton-Smith's Pollutant Storage Contractor's License


Ron DeSantis, Governor
Melanie S. Griffin, Secretary
Florida dbpr
STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
CONSTRUCTION INDUSTRY LICENSING BOARD
THE UNDERGROUND UTILITY & EXCAVATION CO HEREIN IS CERTIFIED UNDER THE PROVISIONS OF CHAPTER 489, FLORIDA STATUTES
DAVOLI, RONALD FRANK
WHARTON-SMITH INC
750 MONROE ROAD
SANFORD FL 32771
LICENSE NUMBER: CUC056506
EXPIRATION DATE: AUGUST 31, 2024
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Wharton-Smith's Underground Utility Excavation License

B

Company Profile

History and Qualifications

B. Company Profile - History and Qualifications

Wharton-Smith, Inc. is a privately held corporation founded nearly 40 years ago on April 2, 1984 in Central Florida. As a construction manager, general contractor, and design-builder, Wharton-Smith helps build communities delivering water and wastewater treatment facilities, state-of-the-art schools, fire and police stations, recreational parks, mixed-use developments, sports arenas, and more.

Wharton-Smith was founded by George Smith and Bill Wharton, who envisioned growing a company that would encompass strong work ethics and have a positive impact within the communities that we serve. An ENR Top 400 Contractor, with a strong financial backing, Wharton-Smith continues to uphold these founding ideals under the leadership of Tim Smith, President and CEO.

Wharton-Smith's approach to successful team collaboration starts with having the right perspective. Our perspective focuses on building and sustaining long-term relationships with our clients and industry partners. Our company mission statement reflects that perspective and our company culture teaches that the customer is the most important person and is not an interruption to our work, but the purpose for it. The positive result of this perspective is that approximately 85% of our work is with repeat clients on projects of all sizes.

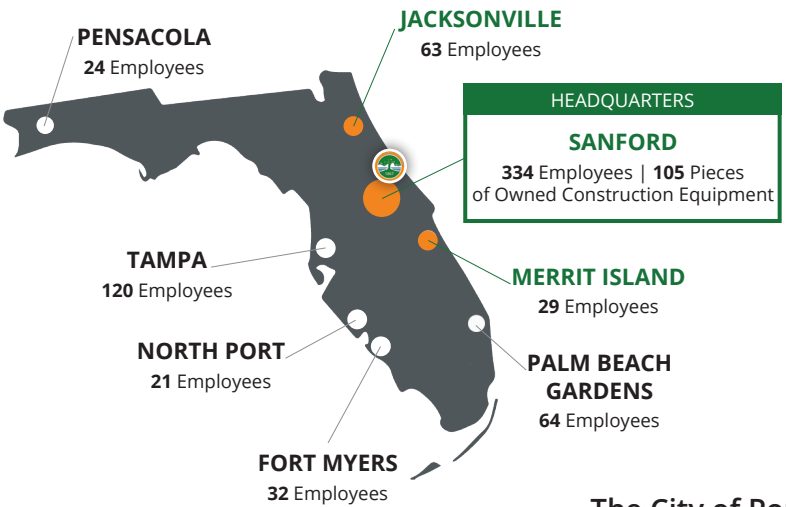
Left to right: Ronald F. Davoli - Chairman of the Board; George E. Smith - Founder; Timothy S. Smith - President & Chief Executive Officer

KEY FACT: Wharton-Smith is a "blended" firm offering the City of Port Orange the expertise in both utility and vertical construction.

Our people are our greatest asset and we have the depth and diversity to deliver your project successfully. Wharton-Smith also owns our own Florida-based fleet of heavy equipment to provide fast response times and eliminate the risks associated with the current market conditions.

The Most Resources in Florida

We have ample and available resources to successfully complete the Public Utilities Operations Facility project with **426 employees staffing our East/Central, Florida offices!** Below is a graphic display of our Florida offices with the number of employees stationed out of each.



DISCIPLINE	FIRM	EAST/CENTRAL FL
Project Managers	95	**47**
Project Engineers	53	**25**
Executive Mgmt.	62	**37**
Superintendents	127	**61**
Trade/Craft	195	**97**
Precon/Estimating	29	**13**
VDC/CADD	5	**5**
Safety	13	**10**
Accounting	22	**15**
Administration	173	**116**
TOTAL	774	**426**

The City of Port Orange sits in a geographic location that can be serviced by three Wharton-Smith branch offices.

Relevant Work History with Government Facilities in Florida

Wharton-Smith has nearly 40 years of experience providing quality building construction services for public and municipal clients. Approximately 90% of Wharton-Smith's work is for municipalities including many landmark projects involving both **utility and vertical construction**. As community builders, we understand the importance of being good stewards of public funds while working closely with our clients and design team members to fulfill a community vision. The majority of our public work has been delivered through the Construction Management at Risk methodology. We understand how to work with owners, design teams, and developers, to help manage projects and bring added value to the project. The key to a successful construction management process is communication, and we believe in forming strong partnerships with all team members at the beginning of every project.

As Construction Manager, we coordinate all project functions including estimating, value analysis, constructability reviews, project operations and management, scheduling, cost control, quality control, and safety. We operate under an open-book principle with the budget and GMP process, delivering accurate updates on cost, value analysis, and project scheduling throughout the project. Our open-book policy and communication ensures that there are no surprises and guarantees a successful project.

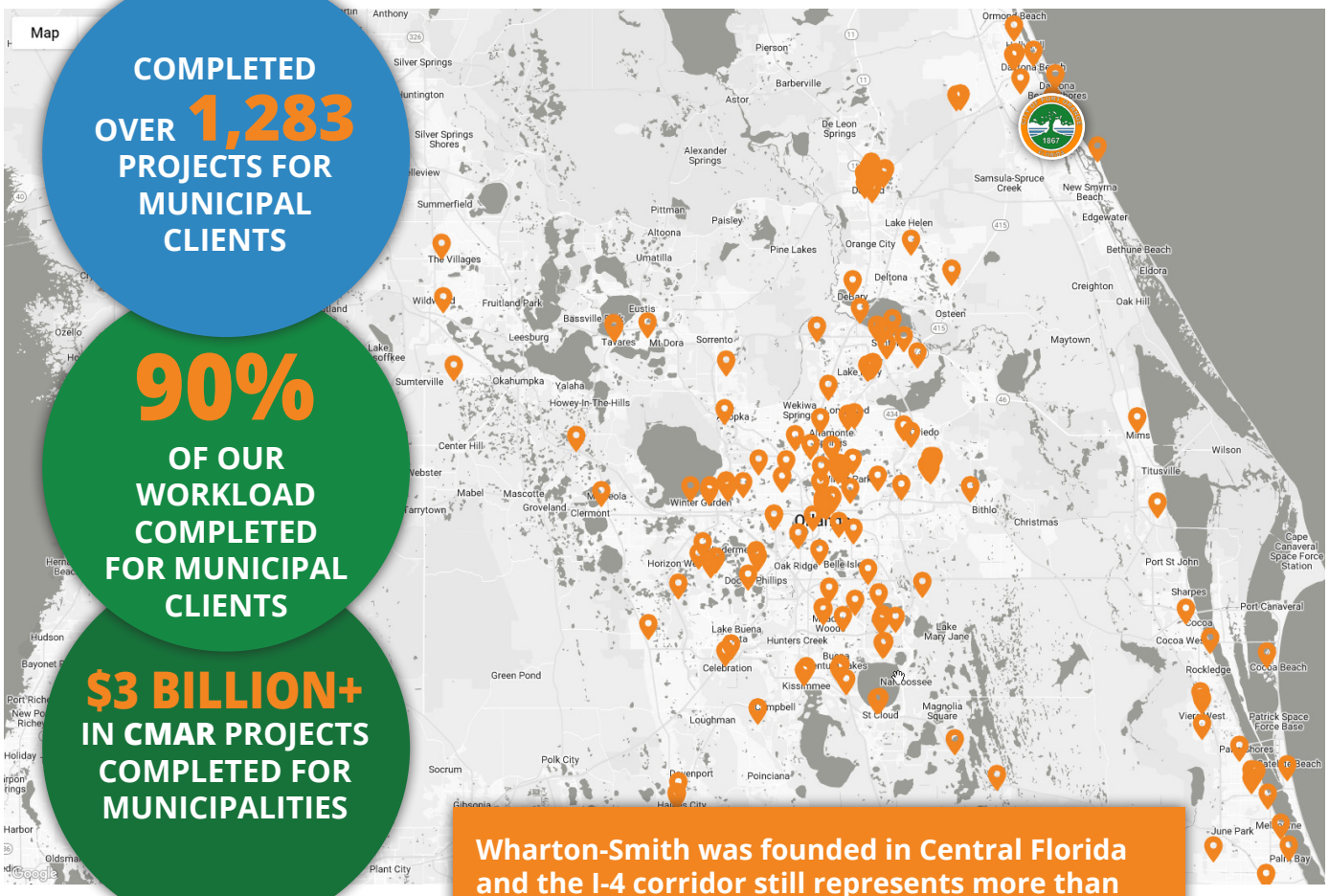
We have successfully partnered with more than 80 municipalities throughout the state of Florida ranging from small renovation/conversion projects under $1 million to the new construction of public facilities in excess of $300 million.

As public sector builders, Wharton-Smith has **permitted over 1,283 government projects** for Volusia County, Volusia County School Board, City of New Smyrna Beach, City of Orange City, City of Daytona Beach, City of DeLand, City of Titusville, Brevard County Public Schools, City of Palm Coast, and City of Beverly Beach to name a few.

COMPLETED OVER 1,283 PROJECTS FOR MUNICIPAL CLIENTS

90% OF OUR WORKLOAD COMPLETED FOR MUNICIPAL CLIENTS

$3 BILLION+ IN CMAR PROJECTS COMPLETED FOR MUNICIPALITIES



Wharton-Smith was founded in Central Florida and the I-4 corridor still represents more than half of Wharton-Smith's revenue each year!

Project Similarities

- CMAR Delivery
- Operations Facility
- Office/Support Space
- Storage/Warehouse Space
- Maintenance
- Site Work
- Same Project Team
- On-time
- Under Budget
- Central FL Project

CASSELBERRY PUBLIC WORKS & UTILITIES OPERATIONS FACILITY

Location: Casselberry, FL

Wharton-Smith provided Construction Management at Risk services for the City of Casselberry. This project consisted of the phased demolition and renovation of the existing Public Works Facility, which included an administration/maintenance building, warehouse/fleet maintenance building, and covered equipment parking. In addition, the site was developed to include new paved parking areas and driveways, chemical storage building, dumpster enclosure, perimeter fence with sliding gate, and all necessary site and building utilities and infrastructure. Work also included replacing the existing SCADA antenna and re-locating the existing 14,000-gallon above-ground fuel tank and pumps.

Key team members such as Project Executive Rick Bundy, Sr. Project Manager Keri Strawder, Sr. Superintendent, Tim Moore, and Assistant Superintendent Evan Terwilleger all worked collaboratively on this project to make it a success! This team will bring their lessons learned to the City of Port Orange's new Utility's Operations Facility!

Client Reference:
City of Casselberry
Randy Newlon, City Manager
(407) 262-7700 ext. 1130
jnewlon@casselberry.org

Architect Reference:
Bentley Architects
Gary Kranston
(407) 331-6116 ext.104
gary@@bentleygroupinc.com

Initial GMP:
$15,370,599

Final project cost:
$15,220,599 - Under budget!

Completion Date:
September 2023

Type of Service and Contractual Relationship:
CMAR

"Their client-focused approach put collaboration with the City first in every decision that needed to be made."
– Randy Newlon, City Manager

Project Similarities

- CMAR Delivery
- Operations Facility
- Office/Support Space
- Storage/Warehouse Space
- On-time
- Under Budget
- Central FL Project

SOUTHWEST WRF UTILITIES OPERATIONS BUILDING

Location: Cape Coral, FL

Wharton-Smith provided Construction Management at Risk services for the construction of a two-story Operations and Maintenance Building at the Southwest Water Reclamation Facility for the City of Cape Coral. The Operations and Maintenance Building is a two-story, 24,149 SF building. The Generator Storage Building is a one-story, 8,364 SF building.

The Operations Building includes repair bays, welding bays, parts rooms, and shop spaces, as well as a mezzanine area for storage. The Operations Building is designed to have a Control Room that over looks the site, Supervisory Control and Data Acquisition (SCADA) Room, laboratories, training spaces, a conference room, break room, and offices.

Client Reference:
City of Cape Coral
Matthew Astorino
239-677-0042
mastorino@capecoral.net

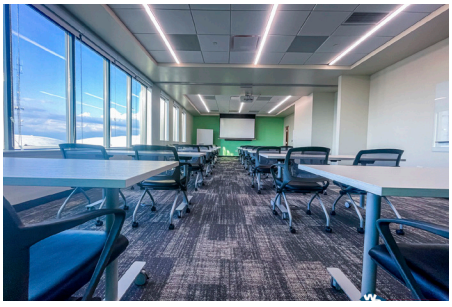
Architect Reference:
Stantec Consulting Services, Inc.
Greg Shipley
703-485-8555
greg.shipley@stantec.com

Initial GMP:
$15,700,000

Final project cost:
$16,230,630 (Owner requested scope additions)

Completion Date:
May 2023

Type of Service and Contractual Relationship:
CMAR



"To date the project team has been able to negotiate through supply chain and cost escalation issues that have been prevalent in the construction industry, keeping the project on schedule and within budget."
– Thomas W. McLean, PE

VOLUSIA COUNTY MEDICAL EXAMINER OPERATIONS FACILITY

Location: Daytona Beach, FL

Wharton-Smith provided Construction Management at Risk services for the District 7 Medical Examiner's Office in Volusia County, Florida. The 19,892 SF facility was designed to be capable of mass disaster response with state-of-the-art autopsy rooms. The secure, 24-hour, multi-building compound contains public, staff, and law enforcement parking, as well as a secure vehicle access, loading docks, and mobile cooler staging areas. The facility was also constructed to accommodate future expansion.

The facility itself includes an autopsy suite, laboratory, morgue, separate decomposition morgue, evidence storage, records storage, office/reception space, lobby, break room, shower rooms, restrooms, locker rooms, and meeting rooms. Additionally, this facility includes secure separation of public areas, law enforcement areas, medical examiner staff areas, intake, staging, transport, and storage.

The facility is under review for accreditation by the National Association of Medical Examiners (NAME) with expected approval in early 2024. The facility also complies with all codes and requirements of the Florida Building Code, National Fire Protection Association (NFPA), and the National Electric Code (NEC).

Client Reference:
Volusia County
Dr. James Fulcher, District 7 Chief Medical Examiner
386-258-4060
meol@volusia.org

Architect Reference:
Schenkel Shultz Architecture
Gay Geiger
407-872-5719
GGeiger@schenkelshultz.com

Initial GMP:
$16,087,250

Final project cost:
$16,087,250

Completion Date:
October 2023

Type of Service and Contractual Relationship:
CMAR

Scan this QR code to hear Dr. James Fulcher's remarks regarding his experience working with our team on this project.

Project Similarities

- CMAR Delivery
- Operations Facility
- Utilities
- Maintenance
- Office/Support Space
- Storage/Warehouse Space
- On-time
- Under Budget
- Central Florida Project

LAKELAND UTILITIES OPERATIONS FACILITY

Location: Lakeland, FL

Wharton-Smith provided Construction Management at Risk services for construction of a new operations facility for the City of Lakeland's Department of Water Utilities.

In phase one, Wharton-Smith demolished the existing shop building and replaced it with a nearly 9,000 SF metal building structure. The scope of work for the new structure included a new meter shop, radio shop, telecommunications switch room, door and window installations, and associated equipment. For the communication equipment, conduit and pull boxes were also installed.

In phases two and three, a multi-story building was demolished and replaced with a 26,000 SF administration building with a 6,000 SF metal building alongside the admin building. Office spaces were also renovated to revert back to truck shed configuration matching existing adjacent eave height, material, slab flooring, and stem wall foundations.

Client Reference:
City of Lakeland
Fiorella Hall
863-834-2342
Fiorella.hall@lakelandgov.net

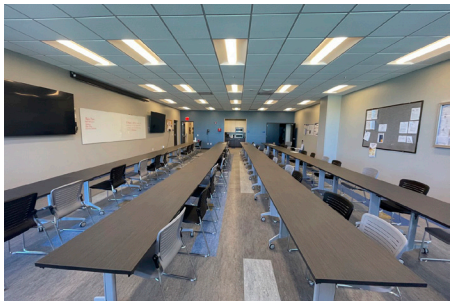
Architect Reference:
Straughn Trout Architects, LLC
Gerald Trout
863-665-2352
jerry@straughntrout.com

Initial GMP:
$6,099,125

Final project cost:
$5,602,802 - Under budget!

Completion Date:
June 2021

Type of Service and Contractual Relationship:
CMAR



Project Similarities

- CMAR Delivery
- Utilities
- Operations Facility
- Office/Support Space
- Volusia County Project

SCHENKEL SHULTZ ARCHITECTURE

CITY OF DELAND UTILITIES OPERATIONS BUILDING

Location: DeLand, FL

Proposed Assistant Project Manager Duncan Graham is leading the construction team to provide a new 24,241 SF, two-story operations building that is made up of concrete tilt-wall panels with structural steel columns and joists and includes mechanical, electrical, plumbing and fire suppression systems, along with stained concrete, tile and laminate vinyl flooring, architectural millwork and a TPO membrane roof system.

One of the main architectural features included in the building is an open-faced two-story covered terrace in the front of the building which includes a decorative glass exterior stair case leading occupants up to the second floor. The building will include a fitness center as well as a full kitchen to service the City's public works field and office staff. This building will serve as a replacement of the current utilities administration building located within the public works campus and will help to update the overall look of the campus while providing the City with a brand new hardened facility to serve the community for years to come.

Client Reference:
City of DeLand
Chad Gamble
386-626-7197
gamblec@deland.org

Architect Reference:
Schenkel Schultz Architecture
Gay Geiger, Principal, AIA
407-872-3322
ggeiger@schenkelshultz.com

Initial GMP:
$17,555,771

Final project cost:
TBD - On budget!

Completion Date:
October 2024 - On Schedule!

Type of Service and Contractual Relationship:
CMAR

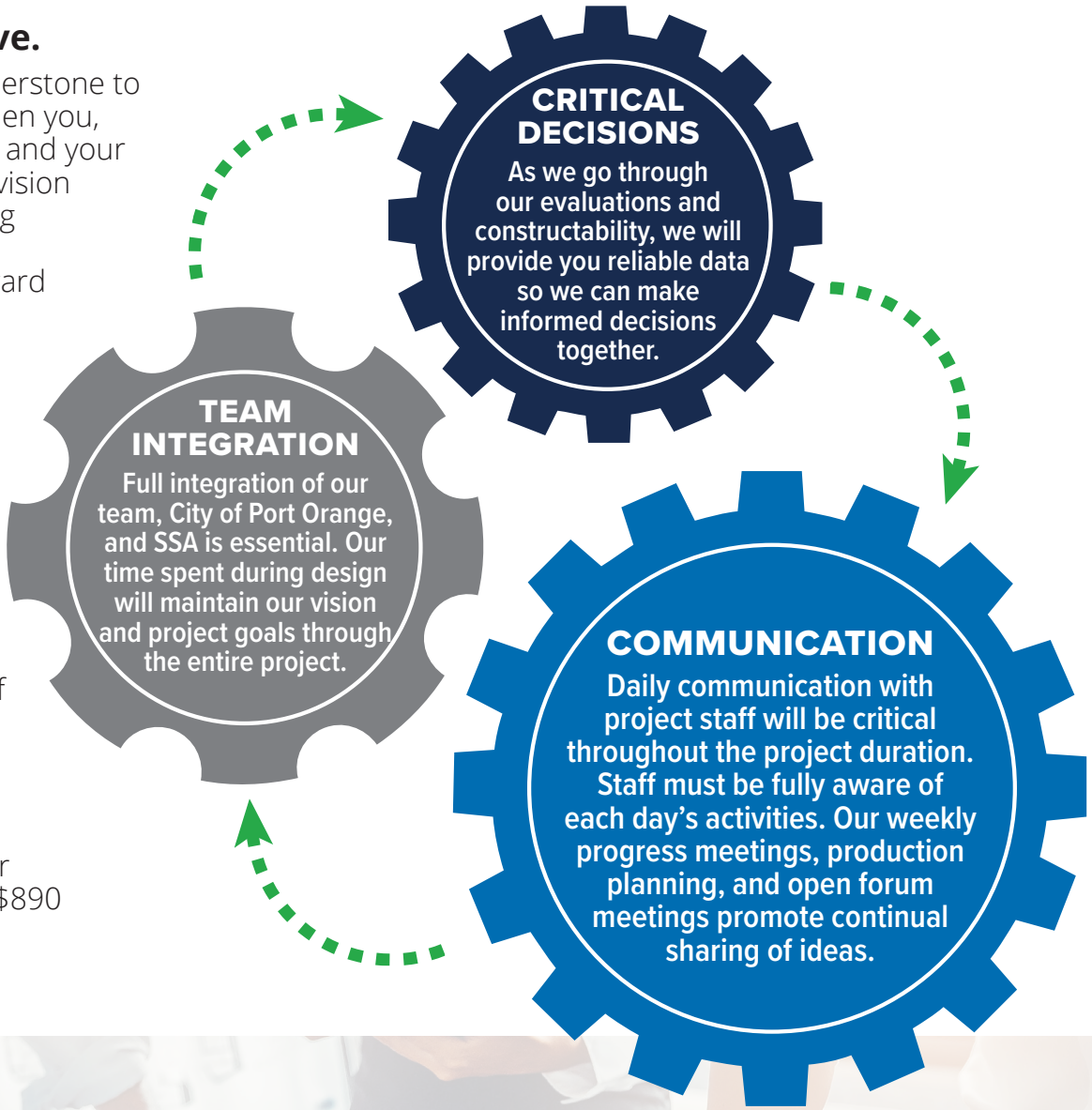
Read more about this project on page 48.

We are collaborative.

Collaboration is the cornerstone to our CMAR approach. When you, your design consultants, and your CMAR share a common vision for a project, it is amazing what we can accomplish together as we work toward our mutual goals.

Our team-centered approach will serve as a model and influence a positive approach for our selected subcontractors and suppliers. All project contributors are then working in unison. We have seen the benefits of this approach on all of our CMAR projects.

No other firm can match Wharton-Smith's proven cohesion with Schenkel Schultz constructing over 20 projects valued over $890 million.



"Our vision at SchenkelShultz is to inspire our community through impactful designs and deliver that vision through our relationships, collaboration, and fiscal responsibility. Working with the Wharton-Smith team is like working with an extension of our SchenkelShultz family and we are confident that the designs we handcraft for our clients are efficiently brought to fruition by your talented construction professionals. There truly is no challenge that we can't overcome working together.

Wharton-Smith and SchenkelShultz have developed a proven partnership that our customers can trust to deliver their projects successfully. It is always a pleasure working with your team and I am excited about continuing our excellent partnership on projects for years to come."

J. David Torbert, AIA
Partner
SCHENKELSHULTZ

We proactively manage risk.

What is a risk register and why is it so important to the Public Utilities Operations Facility project? Risk management starts with effectively identifying potential areas of risk. A major differentiator of our team is the ability to properly assess and mitigate risk before it becomes a problem. We start by dissecting your project into critical areas, components, and schedule activities. For each identified item, we identify the potential cost and schedule impact, probability, and most importantly, the risk mitigation strategy. This helps to document how the team will work together to **mitigate potential risks long before** they are encountered. We have found that by identifying, discussing, and assigning responsibility to each item, we greatly reduce the frequency of occurrence. For those items that still present cost risk, we create allowances and contingencies. The City retains complete control over the usage of allowances and contingencies, meaning only actual, realized risks become a project cost. Under CMAR delivery, any unused allowances and contingencies are returned in full to the City. Below is a sample preliminary risk register our team has developed specifically for the Public Utilities Operations Facility project:

Risk ID	Risk Issue	Potential Cost Impact	Potential Schedule Impact	Probability (0-100%)	Risk Mitigation Strategy	Weighted Cost Exposure (Prob x PCI)
1	Weather Delays	TBD	10	100%	Provide for reasonable float in the project schedule / create an emergency response plan.	TBD
2	Permitting	TBD	0	5%	Submit permit applications immediately to gain feedback.	TBD
3	Design Delays	TBD	20	5%	Utilize action item lists to ensure accountability and minimize delays due to missing information or responses.	TBD
4	Subsurface Conditions	TBD	90	50%	Identify need for ground water control/permitting and any soil stabilization ahead of GMP to avoid construction delays.	TBD
5	Critical Path Delays	TBD	30	20%	Owner representative must be responsible for timely decisions.	TBD
6	Unavoidable Supply Chain Issues / Delivery Delays	TBD	20	100%	Offset potential supply chain issues with contingency.	TBD
7	System Performance Issues	TBD	10	30%	Adequate investigation during design phase to ensure system performance.	TBD
8	Unanticipated Design Requirements after GMP	TBD	10	50%	Limit scope to only those items identified in bid documents.	TBD
9	Delay in Power and Transformers	TBD	90	50%	Finalize power requirements early and procure transformers and/or incoming power ahead of GMP.	TBD
10	Unsuitable Soil Conditions	TBD	30	30%	Perform additional soils tests ahead of construction. Establish unit rates during the bidding phase for soil replacement.	TBD
11	Materials Escalation/Supply Chain	TBD	0	25%	Expedite construction start for all projects, subcontracts and POs, early procurement.	TBD
		TBD	**310**			**TBD**

We provide cost certainty.

Our team will continually update the cost model throughout the life-cycle of preconstruction. Having accurate modeling ensures the projects stays on budget and avoids delays and expensive re-design costs. Wharton-Smith still bids hard-bid projects, which gives us a unique ability to provide you with real-time cost data from the earliest design milestones. Our **Director of Preconstruction Services, Andy Duthie**, has 37 years of experience. He will lead all of your estimating activities and provide our preconstruction team with the cost estimates that will help to compile the GMP(s) for this project. To assist the City financial department, accompanying each cost estimate Wharton-Smith will provide an estimated payment disbursement schedule.

EMPLOYEE SPOTLIGHT

ANDY DUTHIE
DIRECTOR OF PRECON.

Andy has 37 years of industry experience and is responsible for overseeing Wharton-Smith's Commercial Division Preconstruction Services Department. His responsibilities include the review of contract documents, estimating, the preliminary pricing of projects, and preparing Guaranteed Maximum Price (GMP) packages.

30% DESIGN COST ESTIMATE (PDR)

Our recent experience constructing similar facilities enables us to collaborate with Schenkel Schultz to confirm the drawings incorporate all necessary elements and scope. Our in-house, experienced staff will estimate all the mechanical, concrete, and site work based on the site layout determined by Schenkel Schultz. We will rely on our exclusive industry partners to help with portions of the cost estimates.

60% DESIGN COST ESTIMATE

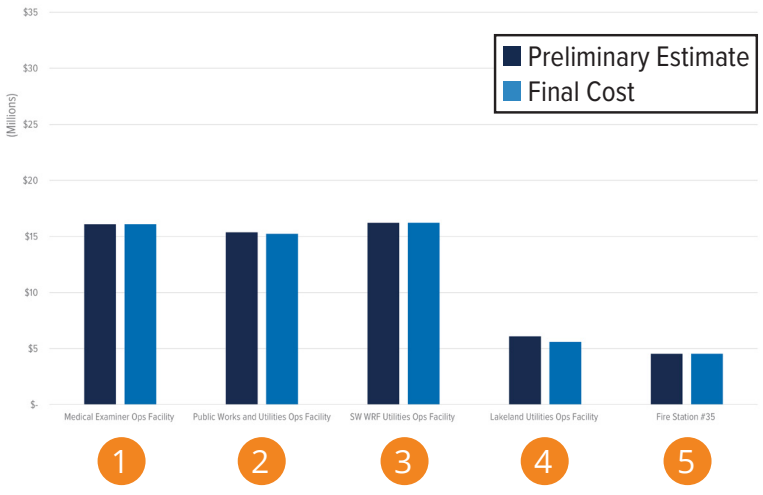
Our estimators, led by **Director of Precon. Services, Andy Duthie**, will perform detailed takeoffs on all trades. Adequate contingencies and allowances will be carried for design items still unknown or needing clarification. General conditions are adjusted based on the schedule. A partial GMP for long-lead equipment, such as HVAC and electrical gear, and early work activities will be suggested to provide schedule gains.

90% DESIGN COST ESTIMATE (GMP)

Wharton-Smith issues competitive bid packages to subcontractors and suppliers including detailed scopes of work, bid forms, and instructions to bidders. The bids are received, reviewed, and recommendations of award are made to the City. General conditions are finalized and all GMP bids and documents are provided to the City for full transparency.

COST CERTAINTY OF RECENT WHARTON-SMITH CMAR PROJECTS

1. **Volusia County** Medical Examiner Ops Facility (2023)
2. **City of Casselberry** Public Works and Utilities Ops Facility (2023)
3. **City of Cape Coral** SW WRF Utilities Ops Facility (2023)
4. **City of Lakeland** Utilities Ops Facility (2021)
5. **City of Mount Dora** Fire Station #35 (2023)



We plan the work.

Wharton-Smith utilizes Primavera P6 software for computer-generated Critical Path Method (CPM) scheduling. Our proposed **Sr. Project Manager, Keri Strawder,** has 28 years of experience with creating and maintaining CPM schedules.

With oversight from our **Scheduler, Mike Christian**, Keri will create a full CPM schedule early in preconstruction. Our team's recent experience with similar operations facilities projects in Florida allows us to create an accurate schedule with durations that we know are attainable. Below, we have proactively identified some of the schedule challenges for the Public Utilities Operations Facility project, plus our approach to mitigating them:

DESIGN SCHEDULE

CMAR best practices of co-locating, constant and open communication, and integrating permits in our baseline schedule.

ADEQUATE TIME ALLOTTED FOR PERMITTING

After our initial project kickoff meeting, we will incorporate timeframes for building permits into our baseline schedule.

EXPEDITED EQUIPMENT PROCUREMENT

Secure process equipment pricing at the 60% design milestone so installation is not delayed by delivery of HVAC, electrical gear, and pipeline.

EARLY SITE INVESTIGATION

The project schedule will include detailed preconstruction activities to ensure that design efforts can be maintained without interruption.

Then we work the plan.

Wharton-Smith's Production Planning System (PPS) has served as the backbone of our project delivery for over a decade. Our PPS drives the project schedule, quality control, and safety on construction tasks everyday. We have seen tremendous results by utilizing the PPS, which begins with subcontractor involvement. Each trade has representatives present for our beginning- and end-of-shift meetings in which conversation is facilitated to detail the work that is actually happening on the project site. This allows the subcontractors to coordinate and plan activities, and develop solutions and strategies to resolve potential conflicts or delivery delays on a short-term basis.

WHAT is the production planning system? The process of planning all work three to six weeks in advance to ensure all prerequisite work is complete, and all necessary materials are on site.

WHY is this system so important? It ensures every crew on the jobsite effectively and efficiently completes their daily production goals without any incidents or defects.

WHEN is it done? Production Planning meetings are held at each day's beginning- and end-of-shift meetings. Additionally, a weekly meeting is held that is dedicated to updating the production goals and look-ahead schedules.

WHERE is it done? Every Wharton-Smith jobsite has a dedicated Production Planning room in the on-site construction trailer.

WHO participates in these meetings? Wharton-Smith project team members, subcontractors, and the design team are all required to participate. Representatives from the City are also encouraged to engage in the process.

HOW does the system work? Work days are organized into columns. Each row represents a different work crew (trade), including those of subcontractors. Each color sticky note represents a different project structure or component, and actual current and upcoming work activities are listed on the sticky notes. Activities missing any prerequisite work or materials are turned at a 45-degree angle.

C

Qualifications of the Firm's Key Personnel

C. Qualifications of **Key Personnel**

Wharton-Smith is proud to present the City of Port Orange with our team of permanently based professionals from Volusia and northern Brevard Counties for the Public Utilities Operations Facility. Our whole team lives, works, and contributes economically, to Port Orange and the surrounding communities. Wharton-Smith's team is illustrated in the organizational chart below.

Diving into the Details of the Casselberry Public Works Project

The Casselberry Public Works Complex is a prime example of our proposed project team's ability to provide excellent construction management services. From the earliest onset of our team's involvement during the selection process, **Rick Bundy, Keri Strawder, and Tim Moore** identified crucial phasing obstacles based on the original scope of work and ironed out paths to a successful completion. As you can see from the photos below, this multi-phased project was located on an extremely tight site where the City of Casselberry's Public Works department was maintaining crucial ongoing operations which could not be disrupted. By listening to the City's concerns, accommodating their needs, and providing clear communication along the way, our team was able to keep the schedule on track and eliminate any potential disruptions to their operations, ultimately delivering a successful outcome for all parties.

Pre-planning and then sticking to that plan are two components that led to success on this project. **Tim Moore and Keri Strawder's** early involvement and communication with the operations and administrative team on-site allowed for a smooth and collaborative phasing plan. Our project team worked together with city staff to ensure they stayed informed and included in all decisions. Even with multiple material supply chain challenges looming throughout this project, they were able to turn the finished complex over on time. In addition, they provided seamless transitions for moving staff into their new building. **We intend to provide this same level of service to the City of Port Orange!**

SSC STUDENTS VISIT CASSELBERRY SITE

Tim Moore, Sr. Superintendent, provided a Seminole State College Construction program class with a tour of the Public Works Complex project site, diving into the details and complexities of this project. Tim is highly passionate about providing educational opportunities to our future generation of construction personnel and hopes to bring this same idea to the Utility Operations Facility project.

ENVIRONMENTAL CHALLENGES

This project experienced many environmental challenges along the way, which could have significantly affected the schedule if not for our project team's pre-planning and thorough site investigations. Some areas of concern included the presence of gopher tortoises on-site, unsuitable soils with organics within the new building pad area, and an adjacent wetland that required a properly executed Stormwater Pollution Prevention Plan (SWPPP). **We understand that the City's designated location for the new Utility Operations Facility may encounter some of these similar challenges, and our team is prepared to take them on at ease!**

Volusia County
Medical Examiner Operations Facility

City of DeLand
Utilities Operations Building

Contributing to our success on the City of DeLand Utilities Operations Building, we prioritized buyout of the main package for long-lead and possibly volatile items such as:

Electrical Gear: To prevent unknown lead-time concerns from the supplier.

Benefit On-site: All gear is currently in hand ready to be installed.

HVAC Equipment: To prevent price escalation and lead-time issues.

Benefit On-site: Carrier Condensers/AHUs are in hand, ahead of schedule, and ready to be installed.

Site Storm Structures Package: To prevent possible lead-time issues.

Benefits On-site: Storm structures were delivered on-site the week after breaking ground, ahead of the initial schedule, and stored on-site until ready to begin that installation activity.

Wharton-Smith, Inc CONSTRUCTION GROUP + SCHENKELSHULTZ ARCHITECTURE

A Proven History with Schenkel Schultz Architecture

Over the past 14 years, Wharton-Smith has constructed over 20 projects with Schenkel Shultz Architecture (SSA). The total combined value of these projects amounts to nearly $1,000,000,000. On day one, our extensive experience with SSA will be leveraged to benefit the City of Port Orange. There is no learning curve for our team, and we are ready to add the Public Utilities Operations Facility as another successful project in our Schenkel Shultz portfolio.

20 PROJECTS COMPLETED WITH SCHENKEL SCHULTZ ARCHITECTURE

14 YEARS OF TEAM COLLABORATION

NEARLY $1B IN TOTAL COMPLETED PROJECTS

"The thing that I respect and value the most from your team is how they approach challenges that arise on projects. Let's face it, despite our best efforts, the design, construction, and owner teams are not perfect, and issues inevitably arise. The thing that separates Wharton Smith from other CM's in my experience is how your team consistently comes to the table with an attitude and approach of solving the problem rather than assigning blame. This approach combined with the attitude of "do the right thing" enables the whole team to move forward in a productive and successful way and I believe it is a huge part of why so many clients ask Wharton Smith to "come back" again and again."

J. David Torbert, AIA
Partner
SCHENKELSHULTZ

The Success of Your Project Starts with Selecting the Right Management Team!

Keri Strawder, Sr. Project Manager, and **Tim Moore**, Sr. Superintendent, have been working together to provide excellent Construction Management services since 2018, completing six consecutive projects together along the way. **This recent experience together has cultivated a team synergy that will ultimately save the City time and money by streamlining communication on your project!** Central Florida clients such as the City of Casselberry, Seminole County Public Schools, and Seminole State College have all benefited from this dynamic duo who have found innovative ways to streamline schedules, provide cost-saving options to meet budgets, and complete construction without affecting ongoing operations on site. Keri and Tim will make the City proud by seamlessly building this new Utility Operations Facility with your staff in mind!

KERI STRAWDER
SR. PROJECT MANAGER

"The Utility Operations Facility is a unique project, and I couldn't be more thrilled at the chance to build in my backyard while cultivating an excellent relationship with your staff. Tim and I will work to ensure this facility exceeds all of your expectations along the way."

Keri Strawder, Sr. Project Manager, has a successful similar work history, and she has a vested interest in this project as **a Volusia County resident for over 37 years!** Clients appreciate Keri's ability to communicate clearly and precisely throughout each project, ensuring everyone remains on the same page. Since joining Wharton-Smith in 2015, Keri has been a valued asset to every project she touches and an excellent resource for those working with her. She has an unmatched ability to provide value management services to keep tight budgets in check and has never finished a project late!

TIM MOORE
SR. SUPERINTENDENT

"Maintaining proper communication and early engagement during preconstruction will ultimately set this project up for success, and I look forward to proving to the City why Wharton-Smith is the Construction Group of Choice amongst our clients."

Tim Moore, Sr. Superintendent, is perfectly aligned to complete the Utility Operations Facility for the City of Port Orange. Having recently finished up the City of Casselberry's new Public Works Complex, amongst other similar projects shown on his resume, Tim provides the City with unmatched experience you will not receive elsewhere. He has been a dedicated member of the Wharton-Smith family since 2009 and is known for his ability to work through tight schedules, keep a safe and clean jobsite, and hold subcontractors accountable throughout each project. **With Tim on our team, no stone goes unturned.**

Our team of experts have done this before!

The Public Utilities Operations Facility represents a large capital investment that needs to be completed on time and on budget. An on-time or early finish is our intended approach. Building projects in today's market face both unexpected and expected challenges such as inflation, supply chain delays, adverse weather, technical challenges, and craft labor shortages. **This is precisely why the City of Port Orange needs, and deserves, a well-rounded team that is fully capable of guiding and navigating through these challenges**.

Some of the core qualities the Wharton-Smith team offers:

co • he • sion.

noun. *The act or state of sticking together tightly.*

Teamwork comes from people, not companies. Our proposed team members have **worked together for decades** on projects similar to the Public Utilities Operations Facility. Our internal cohesion enables us to establish trust with the City that much faster. ***Established trust provides lower costs and faster lead times***.

sta • bil • i • ty.

noun. *The quality state or degree of being stable.*

The team members to the right offer the City **an average tenure of 25 years of service**. Our consistent service and stability ensure the team we propose will finish this project. They are committed to their careers and the City can rest easy knowing ***this team will be here tomorrow and at the end of the project***.

ex • pe • ri • ence.

noun. *The state of having gained knowledge through direct observation or participation.*

Our proposed staff of seasoned professionals have ***spent a lifetime building similar projects to the Public Utilities Operations Facility.***

ex • per • tise.

noun. *Possessing expert level of knowledge or skill in a particular subject.*

Our plan is to leverage our team's technical expertise to provide the City with all your project's wants and needs while meeting the budget. To accomplish this, our experts will dive deep into the design details. Many times, we can **build the same things for less money** using alternative techniques. ***There is money to be saved***.

Team Member	Role	Years of Experience	CMAR Delivery	Similar Building Exp.	Local
Rick Bundy	Project Executive	33	•	•	
Keri Strawder	Senior Project Manager	28	•	•	•
Nate Hillard	Client Service Manager	22	•	•	•
Tom Widener	Principal-in-Chargre	32	•	•	•
Andy Duthie	Preconstruction Director	37	•	•	
Duncan Graham	Assistant Project Manager	6	•	•	•
Tim Moore	Senior Superintendent	38	•	•	
Evan Terwilleger	Assistant Superintendent	12	•	•	
Chris Orcasitas	Safety Manager	18	•	•	
AJ Stover	Quality Control	20	•	•	•

SEMINOLE COUNTY RESIDENT

Rick Bundy

Project Executive

BS in Civil Engineering - Florida State University

OSHA 30-Hour

NSU Leadership Development Certification

33 Years of Experience

9 Years with WS

As a Project Executive, Rick works to ensure the entire team is on the same page regarding the project and fosters a one-team atmosphere. He provides guidance and problem solving advice, assists with staffing, outlining project plans, setting project goals/deadlines, and evaluates performance. He also works closely with our Preconstruction Services Managers on bid packages, schedule, constructability reviews, value engineering, and site logistics.

City of Casselberry, Public Works—$15.4 M

Wharton-Smith provided Construction Management at Risk services for the City of Casselberry. This project consists of the phased demolition and renovation of the existing Public Works Facility, which includes an administration/maintenance building, warehouse/fleet maintenance building, and covered equipment parking. In addition, the site will be developed to include new paved parking areas and driveways, chemical storage building, dumpster enclosure, perimeter fence with sliding gate, and all necessary site and building utilities and infrastructure. Work also includes replacing the existing SCADA antenna and re-locating the existing 14,000-gallon above-ground fuel tank and pumps.

Brightline Trains, Orlando Vehicle Maintenance Facility—$63.1 M

The Wharton-Smith provided Construction Management at Risk services for Brightline's Orlando Vehicle Maintenance Facility, which supports the trains transporting on the new 170-mile track from Miami to Orlando. This project included the construction of a 136,259 SF vehicle maintenance facility (VMF) for Brightline's new rolling stock (locomotives and passenger cars) capable of performing light and heavy maintenance requirements. This pre-engineered metal building provides maintenance for the trains, supporting administration space, maintenance pits, a loading dock, parts storage, machine shop, drop table, wheel truer, train wash, sanding system, and a fuel depot. Additionally, Wharton-Smith provided improvements to the 35-acre site that consist of rail lines, a parking lot and circulation roadways, storm sewer, sanitary sewer, domestic water, and fire services. The maintenance and attendant staff is based at the VMF located on property leased from the Greater Orlando Aviation Authority at the south end of the new South Terminal complex at Orlando International Airport (MCO). Future plans include a new passenger station at the new intermodal center at MCO that will serve future Terminals C & D.

Volusia County, Court-Central Warehouse—$2.7 M

Wharton-Smith provided construction management at risk services to Volusia County Florida Central Services by installing a 15,000 s.f. pre-engineered metal building. The project was completed in May 2019. This is a secure, climate-controlled, high-density warehouse for file storage of court records, security sensitive records, construction materials, fixtures, furniture, equipment, maintenance materials, vehicles, auto parts, generators, scissor lifts, and the like in Daytona Beach, Florida.

VOLUSIA COUNTY RESIDENT

Keri Strawder

Senior Project Manager

BS in Construction Management - Seminole State College

OSHA 30-Hour, Confined Space, Trenching & Excavation, Scaffolding, Fall Protection

28 Years of Experience

9 Years with WS

As Project Manager, Keri is responsible for providing daily leadership to the project team and for the successful completion of all preconstruction and construction phases of the project. She will develop schedules, perform constructability reviews, value engineering and site logistics. During construction, she assists with all construction activities, including quality control, cost control, change orders, and close-out.

City of Casselberry, Public Works—$15.4 M

Wharton-Smith provided Construction Management at Risk services for the City of Casselberry. This project consists of the phased demolition and renovation of the existing Public Works Facility, which includes an administration/maintenance building, warehouse/fleet maintenance building, and covered equipment parking. In addition, the site will be developed to include new paved parking areas and driveways, chemical storage building, dumpster enclosure, perimeter fence with sliding gate, and all necessary site and building utilities and infrastructure. Work also includes replacing the existing SCADA antenna and re-locating the existing 14,000-gallon above-ground fuel tank and pumps.

City of Casselberry, Lake Concord Park & Signature Street—$10.6 M

Wharton-Smith performed Construction Management at Risk services on this project for the City of Casselberry, which consisted of four parts: (1) Lake Concord Park mass grading, (2) realignment of Triplet Lake Drive, (3) Public Works Building renovation, and (4) Lake Concord Park public amenities. The 15-acre multi-use development is located along 17-92 and Triplet Lake Drive. The mass grading project consisted of clearing, organic material removal, underground utilities, and grading to allow for the subsequent development of residential, commercial, and public properties. The Triplet Lake realignment project involved the demolition of the existing roadway from 17-92 to Quail Pond Circle, adjustment of affected utilities, and new hardscape and landscaping. The Public Works Building project consisted of the demolition of the former Casselberry Fire Department as necessary for the Triplet Lake Drive realignment. The remaining portion of the Public Works Building received interior and exterior modifications. The Lake Concord Park project included the construction of a three-acre public park, which consisted of two retention ponds with decorative water fountains, hardscape and landscaping, park furnishings, and site lighting.

Seminole State College of Florida, Renovations of Lower Building L—$14 M

Wharton-Smith provided construction management services for renovations to Building “L” at Seminole State College’s Sanford/Lake Mary Campus. This project included demolishing the existing interior build-out to create multi-purpose classrooms, lounge areas, restrooms, cafe, communications, electrical, and mechanical rooms. Outdoor gathering spaces and exterior architectural features to improve the aesthetic of the building were also constructed.

SEMINOLE COUNTY RESIDENT

Tim Moore

Senior Superintendent

AS in Business Management -Valencia College

General Contracting - Mitchell Community College

OSHA 10-Hour, CPR & First Aid Certified, FDEP Qualified Stormwater Inspector, Confined Space, Fall Protection, Scaffolding, Trenching & Excavation, Qualified Rigger, HAZCOM

38 Years of Experience

15 Years with WS

As Senior Superintendent, Tim is responsible for the supervision and coordination of the day-to-day activities of the subcontractors and Wharton-Smith employees, including safety inspections, daily reports, three-week look ahead schedules, delivery coordination, production planning, weekly subcontractor coordination meetings, storage and installation requirements, quality control, labor and equipment resources, project final quality, and start-up, testing, and final close-out. He is also responsible for keeping projects on schedule and within budget.

City of Casselberry, Public Works—$15.4 M

Wharton-Smith provided Construction Management at Risk services for the City of Casselberry. This project consists of the phased demolition and renovation of the existing Public Works Facility, which includes an administration/maintenance building, warehouse/fleet maintenance building, and covered equipment parking. In addition, the site will be developed to include new paved parking areas and driveways, chemical storage building, dumpster enclosure, perimeter fence with sliding gate, and all necessary site and building utilities and infrastructure. Work also includes replacing the existing SCADA antenna and re-locating the existing 14,000-gallon above-ground fuel tank and pumps.

Valencia College, Building 6 Renovation at West Campus—$830 K

Wharton-Smith provided Construction Management services for the interior renovation of 8,231 SF of Building 6 on Valencia College's West Campus. The space is used by the Centers for Teaching/Learning Innovation (CTLI) program and includes new administrative office space, a new break room and system upgrades. The renovation consisted of completely gutting the interior and reconfiguring with new drywall partitions, new ductwork, ceilings, lighting, electrical, low voltage, doors, paint, and carpet.

Orange County Board of County Commissioners, Holden Heights Community Center—$3.9 M

Wharton-Smith provided General Contracting services for the Holden Heights Community Center, a 12,612 SF facility designed and constructed to provide services and programs for the residents of the Holden Heights neighborhood. The contemporary design is constructed of tilt-wall and structural steel and features a large multi-purpose room for meetings and receptions, state-of-the-art classroom, computer lab, offices, conference room, a 2,294 square-foot covered deck, and 345 square-foot uncovered deck. The project also included an underground exfiltration system for stormwater, new sanitary system, a parking lot, retaining walls, landscaping and site amenities.

SEMINOLE COUNTY RESIDENT

Andy Duthie

Director of Preconstruction Services

BS in Construction Engineering - Fanshawe College

37 Years of Experience | **7** Years with WS

Andy is responsible for overseeing Wharton-Smith's Commercial Division Preconstruction Services Department. His responsibilities include the review of contract documents, estimating, the preliminary pricing of projects, and preparing Guaranteed Maximum Price (GMP) packages.

City of Casselberry, Public Works—$15.4 M

Wharton-Smith provided Construction Management at Risk services for the City of Casselberry. This project consists of the phased demolition and renovation of the existing Public Works Facility, which includes an administration/maintenance building, warehouse/fleet maintenance building, and covered equipment parking. In addition, the site will be developed to include new paved parking areas and driveways, chemical storage building, dumpster enclosure, perimeter fence with sliding gate, and all necessary site and building utilities and infrastructure. Work also includes replacing the existing SCADA antenna and re-locating the existing 14,000-gallon above-ground fuel tank and pumps.

City of Tavares, Public Safety Complex—$13.7 M

Wharton-Smith provided General Contracting services on this two-story, 38,527 SF Public Safety Complex for the City of Tavares. Designed to replace the undersized, outdated, and ill-converted Train Supply Station Depot previously utilized by the City for years as a temporary fire station and the crowded, poorly ventilated accommodations that the police department had been enduring at City Hall. The new facility now houses a fire station, police station, and emergency operations center.

City of Ocoee, Ocoee City Hall—$19.3 M

Wharton-Smith and HKS were the Design-Build team for the Ocoee City Hall project, with Wharton-Smith as the Construction Manager and HKS providing design services. The project included a three-story, 46,100 SF structural steel, brick, and precast clad building. As well as site work and area development for a five-acre site located in downtown Ocoee adjacent to Bill Breeze Park and Starke Lake. It features new commission chambers, a public plaza for community events and expands/updates facilities for their utilities, planning, building, accounting, human resources, executive, and legislative departments.

Seminole County, Justice Center Annex and Parking Garage—$65.6 M

Wharton-Smith is providing Design-Build services and HKS is providing design services for the Seminole County Justice Center Annex and Parking Garage project, which is the first phase of Seminole County's Five Points Project, a 10-year master plan to build out a new campus for the existing Seminole County justice and emergency services complex. During this first phase, Wharton-Smith will complete the construction of a new five-story parking garage with associated existing parking lot renovations along with a new 4,400-ton chiller plant with maintenance workshop and office space, as well as a new 105,000 SF Justice Center Annex office building and campus-wide utility upgrades.

VOLUSIA COUNTY RESIDENT

Tom Widener

Principal-in-Charge

BA in Business Marketing - University of Central Florida

Board Member - Academy of Construction Technology

32 Years of Experience **27** Years with WS

Tom Widener brings many years of expertise and leadership to Wharton-Smith's Orlando-based commercial operations. As Vice President of Operations, Tom is responsible for operations oversight, business development, community relations, and quality of services.

Volusia County Public Schools, Pine Ridge High School Chiller Upgrade & Building 5 HVAC Renovation—$1.4 M

Wharton-Smith provided General Contracting services for the Volusia County Public Schools at Pine Ridge High School. The project team replaced three chillers and upgraded the electrical wiring at the central energy plant (CEP) for Pine Ridge High School. In addition, this project also included the renovation of the HVAC system in Building 5. The renovation scope of work included a new air handling unit (AHU), new ductwork, new VAVs, and all associated controls, as well as the installation of new electrical, lighting, and acoustical ceiling throughout the 29,517 SF, two-story building.

Orange County Public Schools, Cypress Creek High School Comprehensive Needs Project—$42.1 M

Wharton-Smith provided Construction Manager at Risk services on the construction of a new tilt-up two-story classroom building, ESE lab, culinary kitchen lab, a new chiller CEP plant, a new concession building, the renovation of the gymnasium, auditorium, classroom, art labs, science labs, media center, cafeteria, kitchen and administration building. Renovation scope included fire protection sprinkler system, fire alarm system, intercom, theatrical sound, video, audio-visual, data systems, locker rooms and restrooms. The site work included the installation of a new fire main, underground storm, sanitary, electrical and chilled water piping throughout. The existing storm piping had to be cleaned. Other site scope included asphalt patching, concrete sidewalks, basketball court refurbishment, and overall site cleanup.

Orange County Public Schools, Horizon High School—$94 M

Wharton-Smith provided Construction Management at Risk (CMAR) services for the construction of a new multi-story, prototype high school facility totaling approximately 350,000 gross square feet on a site that is around 67 acres. This high school includes an administration office, media center, gymnasium, academic buildings, cafeteria, auditorium/music center, concessions, football stadium, multiple athletic fields, parking lots, and underground utilities.

Lake County Schools, Lake Pointe K-8 Academy—$32.4 M

Wharton-Smith provided Design-Build services to Lake County Schools on the new 160,722 SF K-8 school located in the Four Corners area of Lake County. The new school is three stories and includes administration, a cafeteria, classrooms, a gymnasium, multiple mini-media centers based on age groups, collaboration spaces for teachers and students, outdoor athletic spaces, and an environmental courtyard.

TITUSVILLE RESIDENT

Nate Hillard

Client Service Manager

BS in Civil Engineering - University of Central Florida

Registered Engineer in Training - State of Florida

OSHA 40-Hour, Standard First Aid & CPR, Designated Design-Build Professional (DBIA)

22 Years of Experience **20** Years with WS

As Vice President Nathan ensures that Wharton-Smith takes the lead in maintaining a collaborative working environment, including our owners and engineer partners, as we deliver your award winning project. He is also responsible for ensuring that Wharton-Smith maintains the highest levels of integrity, professionalism, and technical expertise to finish all Wharton-Smith projects on-time and under budget.

City of Cape Coral, Southwest WRF Operations Building—$15.7 M

Wharton-Smith provided Construction Management at Risk services for the construction of a new 25,000 SF Operations and Administration Building on the existing Southwest WRF site. The two-story building was constructed utilizing tilt wall construction. This building is designed to create state-of-the-art office spaces for staff and a permanent structure for the plant's computer systems, in lieu of a temporary modular trailer. The facility includes open areas for maintenance purposes, a mezzanine, and conference room areas. Additionally, a 500 SF pre-engineered metal building was also constructed for warehouse-type storage.

City of Lakeland, New Administration Facility - Department of Water Utilities—$6.2 M

Wharton-Smith provided Construction Management at Risk services for the multi-phased Administration Complex for the City of Lakeland. Phase 1 included demolition of the existing shop building and construction of an 8,786 SF replacement structure. Phases 2 and 3 demolished the existing multi-story masonry building and constructed an 8,154 SF two-story administration building and truck bay. The project also included coordination with the City of Lakeland on the relocation of the City's Main Communication Switch.

City of Cocoa Beach, Cocoa Dyal Training Building—$19.8 M

Wharton-Smith provided Construction Management at Risk services on the renewal and rehabilitation of the existing Dyal Water Treatment Facility for the City of Cocoa, FL. The City of Cocoa CCRI project consisted of adding two new bulk liquid storage chemical facilities with PEMB canopies to discontinue the use of the SHC and AMS gas lines. There was also the addition of a new PEMB High Service Pump Station with Owner refurbished high service pumps. This included a second 54" FW line to SR 520 and a surge tank.

City of DeLand, Utilities Administration Building—$16.6 M

This project consists of a 24,241 SF, new construction two-story office building that is made up of concrete tilt-wall panels with structural steel columns and joists and includes mechanical, electrical, plumbing and fire suppression systems along with stained concrete, tile and laminate vinyl flooring, architectural millwork, and a TPO membrane roof system. The building will include a fitness center as well as a full kitchen to service the City's public works field and office staff. This building will serve as a replacement of the current utilities administration building located within the public works campus and will help to update the overall look of the campus while providing the City with a brand new hardened facility to serve the community for years to come.

VOLUSIA COUNTY RESIDENT

Duncan Graham

Assistant Project Manager

BS in Building Construction Management - University of North Florida

OSHA 30-Hour

6 Years of Experience

5 Years with WS

As Assistant Project Manager, Duncan is responsible for facilitating subcontractor meetings, creating and distributing weekly owner and subcontractor meeting minutes, submittal reviews for compliance (e.g., concrete/rebar shop drawings, structural steel shop drawings, casework shop drawings, etc.), facilitating MEP coordination meetings, communicating directly with the project architect, compiling operation/ maintenance manuals, coordinating and tracking material deliveries, and taking weekly progress photos.

City of DeLand, Utilities Administration Building—$16.6 M

This project consists of a 24,241 SF, new construction two-story office building that is made up of concrete tilt-wall panels with structural steel columns and joists and includes mechanical, electrical, plumbing and fire suppression systems along with stained concrete, tile and laminate vinyl flooring, architectural millwork, and a TPO membrane roof system. The building will include a fitness center as well as a full kitchen to service the City's public works field and office staff. This building will serve as a replacement of the current utilities administration building located within the public works campus and will help to update the overall look of the campus while providing the City with a brand new hardened facility to serve the community for years to come.

Polk County Public Schools, Davenport High School—$93 M

Wharton-Smith provided Construction Management services for Polk County Public Schools on the new Davenport High School project located in Davenport, Florida. The new 345,000 SF school is a state-of-the-art prototype that includes connected classroom buildings; administration offices; an 800-person capacity auditorium; a media center; an EHPA-rated gymnasium; a cafeteria; a culinary arts kitchen/classroom; band, chorus, and fine arts classrooms; a central courtyard with elevated walkways; sports fields with stadium amenities for football, baseball, and softball; as well as all associated site work. The project site is 57-acres in northwest Polk County.

Orange County Public Schools, Horizon West Middle School—$30.6 M

Wharton-Smith provided Construction Management at Risk services to Orange County Public Schools on the new Horizon West Middle School project. This campus consists of four new multi-story buildings totaling approximately 175,000 SF and includes an outdoor physical education center as well. The new campus was built on a 25.56-acre greenfield site and has a maximum capacity of 1,213 students.

Orange County Public Schools, Innovation Middle School—$26.1 M

Wharton-Smith provided preconstruction and construction management services on the new Innovation Middle School located on a 26-acre site in Lake Nona, FL. This project included the construction of a new multi-story prototype school building, approximately 166,561 GSF, and an outdoor physical educational facility.

SEMINOLE COUNTY RESIDENT

Evan Terwilleger

Assistant Superintendent

BS in Construction Engineering - University of Alabama

Trenching & Excavation, Confined Space, Scaffolding, Fall Protection, Respirable Crystalline Silica

12 Years of Experience **8** Years with WS

As Assistant Superintendent, Evan is responsible for supervision of all field activities, including the coordination of all subcontractors and field construction activities and supervisory review of all on-site construction. In addition, Evan oversees and implements safety procedures and accident protection and prevention.

City of Casselberry, Public Works—$15.4 M

Wharton-Smith provided Construction Management at Risk services for the City of Casselberry. This project consists of the phased demolition and renovation of the existing Public Works Facility, which includes an administration/maintenance building, warehouse/fleet maintenance building, and covered equipment parking. In addition, the site will be developed to include new paved parking areas and driveways, chemical storage building, dumpster enclosure, perimeter fence with sliding gate, and all necessary site and building utilities and infrastructure. Work also includes replacing the existing SCADA antenna and re-locating the existing 14,000-gallon above-ground fuel tank and pumps.

University of Central Florida, Building 48 Environmental Health & Safety Expansion—$836 K

Wharton-Smith provided Construction Management at Risk services for the University of Central Florida's Building 48 Environmental Health and Safety Expansion project. The team completed a partial and isolated demolition of the existing 6,705 SF hazardous waste processing, storage administration building #48. The addition included a 1,175 SF single-story concrete slab on-grade with concrete block exterior wall addition.

Orange County Public Schools, Hillcrest Elementary School—$16.4 M

Wharton-Smith provided Construction Management at Risk services to Orange County Public Schools on the 11-month Comprehensive Needs Project at Hillcrest Elementary School. This project consisted of replacing the existing buildings (1 and 2), the PE Pavilion, and the renovation of Building 3 to provide improved facilities that meet Orange County Public Schools's design guidelines, standards, and assigned educational program requirements. Wharton-Smith identified all life safety, fire, accessibility code deficiencies and maintenance issues, which were corrected within the scope of this project. The newly remodeled facilities accommodate 500 student stations with a core capacity of 650 students. The newly built classroom addition Buildings 1 and 2 includes classrooms, skills/resource labs, administration, art/music, warming kitchen, dining/multi-purpose room, support spaces, and a 52,000 SF media center. An on-site garage structure was built to accommodate approximately 130 parking spaces as well.

TITUSVILLE RESIDENT

AJ Stover

Quality Control

BS in Civil Engineering - University of Central Florida
Certified Compliance Inspector of Stormwater
Confined Space, Trenching & Excavation, Scaffolding

20 Years of Experience **1** Years with WS

AJ is responsible for identifying, developing, training, and reinforcing Wharton-Smith best practices in the Production Planning System and Quality Management Program. AJ works with Operations companywide, teaching and empowering project teams, as they leverage their collective talent, minimize rework through production planning, and provide the quality work required by the client.

Volusia County, Medical Examiner's Office—$16.1 M

Wharton-Smith provided Construction Management at Risk (CMAR) services for the District 7 Medical Examiner's Office in Volusia County, Florida. The 19,892 SF facility was designed to be capable of mass disaster response with state-of-the-art autopsy rooms. The secure, 24-hour, multi-building compound contains public, staff, and law enforcement parking, as well as a secure vehicle access, loading docks, and mobile cooler staging areas. The facility was also constructed to accommodate future expansion.

City of DeLand, Utilities Administration Building—$16.6 M

This project consists of a 24,241 SF, new construction two story office building that is made up of concrete tilt-wall panels with structural steel columns and joists and includes mechanical, electrical, plumbing and fire suppression systems along with stained concrete, tile and laminate vinyl flooring, architectural millwork and a TPO membrane roof system.

City of Eustis, Bates Avenue Wastewater Treatment Plant—$11.3 M

Wharton-Smith is providing CMAR services for the City of Eustis on the Bates Avenue Wastewater Treatment Plant Expansion. This project includes the construction of a 0.8 MGD addition to the existing facility which will result in a permitted capacity of 3.2 MGD.

LAKE COUNTY RESIDENT

Chris Orcasitas

Area Safety Manager

Central Florida Joint Apprenticeship & Training Committee (JATC)

OSHA 10-Hour, CPR & First Aid, Scaffolding, Trenching & Excavation, MOT

18 Years of Experience

9 Years with WS

Chris is responsible for safety training and inspections at all of Wharton-Smith's jobsites in the Orlando and Jacksonville Regions. He visits jobsites at least twice a month and conducts safety hazard recognition, fire protection audits, ensures regulatory compliance, health hazard controls, ergonomic improvements, hazardous material management and monitors environmental protection practices. Chris maintains safety and health records, and conducts accident and incident investigation, handles the required training and evaluation and reports to management to establish safety objectives, plans programs to achieve those objectives and integrate safety into the culture of an organization. Chris establishes Emergency Response for the jobsites – organizing, training and coordinating skilled employees. He also manages security: aspects - identifying and implementing design features and procedures to protect facilities and businesses from threats that introduce hazards.

Seminole County, Justice Center Annex and Parking Garage—$65.6 M

Wharton-Smith is providing Design-Build services and HKS is providing design services for the Seminole County Justice Center Annex and Parking Garage project, which is the first phase of Seminole County's Five Points Project, a 10-year master plan to build out a new campus for the existing Seminole County justice and emergency services complex. During this first phase, Wharton-Smith will complete the construction of a new five-story parking garage with associated existing parking lot renovations along with a new 4,400-ton chiller plant with maintenance workshop and office space, as well as a new 105,000 SF Justice Center Annex office building and campus-wide utility upgrades.

City of Ocoee, Ocoee City Hall—$19.3 M

Wharton-Smith and HKS were the Design-Build team for the Ocoee City Hall project, with Wharton-Smith as the Construction Manager and HKS providing design services. The project included a three-story, 46,100 SF structural steel, brick, and precast clad building. As well as site work and area development for a five-acre site located in downtown Ocoee adjacent to Bill Breeze Park and Starke Lake. It features new commission chambers, a public plaza for community events and expands/updates facilities for their utilities, planning, building, accounting, human resources, executive, and legislative departments.

Seminole County, Juvenile Assessment Center Addition—$5 M

Wharton-Smith is providing Design-Build services for the Seminole County's Juvenile Assessment Center Addition project. The team will construct an 8,500-square-foot addition to the existing Seminole County Juvenile Assessment Center. The addition shall include offices, holding cells, restrooms, conference rooms, control room, and general-purpose space.

D

Financial Stability

Litigation and Debarment History

D. Financial **Stability**

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

- A 2023 audited financial statement has been enclosed in a separate envelope marked "CONFIDENTIAL pursuant to Florida Statutes Section 119.071(1)(c)".

  Dun & Bradstreet Clarifications

  Our Duns & Bradstreet # is 115152639. The report is not current and contains many incorrect items. As a privately held company, we do not provide confidential business information to these companies. A better indicator of our financial strength and stability is the letter provided by our Bonding company and the audited financial statement provided in a separate file labeled "Confidential".

  Listed below is some of the incorrect information in this D&B Report.

  Page 1, Company Summary - Indicates a maximum credit recommendation of $950,000. We have vendors and subcontractors with current contracts well over $100,000,000 that contain standard pay when paid payment terms.

  The overall business risk of moderate-high is incorrect. We have been in business for 39 years and have seen record highs in backlog in the last 5 years, each year increasing from the last.

  Page 2, Financial Stress Score - This is inaccurate. Please see our bonding company letter and feel free to contact them concerning our financial strength and stability.

  Page 5, Trade Payments – The Trade payments summary does not consider the retainage balances in our payables. Retainage is paid when work is complete per contract terms. It should not be considered past due as this is a standard within the construction industry.

  Page 13, Suits - Indicates a pending suit with Angel Rosado. This was resolved in March of 2020. The UCC filings are reports of construction equipment we leased from various vendors. As a large general contractor, at times we choose to lease equipment as when purchasing does not make sense for us.

  Page 19, Company Profile - Number of employees indicates 450. We currently have 780 employees.

  Page 20, Branches - The branches listed are incorrect. Our current branch offices are located in:

  Charlotte, NC
  Baton Rouge, LA
  Houston, TX
  North Port, FL
  Merritt Island, FL
  Palm Beach Gardens, FL
  Tampa, FL
  Ft. Myers, FL
  Sanford, FL (Headquarters)
  Jacksonville, FL

This tab shall contain information on the nature and magnitude of any litigation or proceeding whereby, during the past five (5) years, a court or any administrative agency has ruled against the firm in any matter related to the professional activities of the firm.

- OWNER/CLIENTS:

  UCF Stadium Corporation f/k/a Golden Knights Corporation, et al. vs. Dant Clayton Corporation, Wharton-Smith, Inc., et al. (Case No. 2017-CA-008259-O, The Circuit Court, Ninth Judicial Circuit, Orange County, Florida): In September 2017, UCF filed suit against Dant Clayton Corporation, Wharton-Smith and others over alleged breach of contract regarding the design-build contracts for the construction of their stadium. Wharton-Smith was then dismissed from the suit with a Tolling Agreement that they could be brought back in before April 1, 2019. In December 2018, Wharton-Smith was brought back into the lawsuit. ***The suit was settled at mediation in January 2020.***

Include any class actions within your company where named, industry investigations by Attorneys General, in addition to individual cases.

- None

This tab shall contain information on the nature and magnitude of any debarment or proceeding during the past five (5) years against the firm in any matter related to the professional activities of the firm.

- None

This tab shall include any debarment actions against your company by the City or other public entity. Respondent must indicate whether any contract awarded by another government agency has been terminated for default or convenience.

- None

E

References

E. References

City of Casselberry
95 Triplet Lake Drive, Casselberry, Florida 32707

RE: Letter of Recommendation- Wharton-Smith, Inc.

To whom it may concern,

Please accept this reference letter for Wharton-Smith, Inc. regarding the outstanding construction management services they have provided on the completed Casselberry Public Works Operations Facility project.

From the very beginning in preconstruction, Wharton-Smith team members brought solutions to every challenge put in front of them. This was a complex phased project that was completed while maintaining daily operations for the existing City staff who remained on-site throughout the duration of the project. The existing complex space was tight before construction began, but the Wharton-Smith team worked to minimize conflicts so that operations would not be impacted. Even with their early and thorough preparation, challenges continued to arise during construction such as environmental impacts, extensive soil mitigation, and several material supply chain issues. Wharton-Smith project managers diligently worked through these challenges to project completion. Their client-focused approach put collaboration with the City first in every decision that needed to be made.

Wharton-Smith was a critical strategic partner throughout this project and their support, along with their ability to adapt to challenges throughout the project, helped to ensure the City's Public Works Operations Facility was a success from start to finish.

I highly recommend this team and their services on any similar project in the future. If you have any questions, please contact me at 407-262-7700, x1130.

Sincerely,

James (Randy) Newlon,
City Manager

District 7 Medical Examiner
Volusia County
(386) 258-4060

1360 Indian Lake Rd.
Daytona Beach, FL 32124
(386) 258-4013 FAX

To Whom It May Concern,

I am writing this letter of recommendation on behalf of Wharton-Smith, a commercial construction company that recently completed the construction of our 20,000 sqft state-of-the-art Medical Examiner facility in Volusia County, Florida. As the Chief Medical Examiner for the county, I had the privilege of overseeing this crucial project, and I am pleased to express my utmost satisfaction with the exceptional services provided by Wharton-Smith.

From the outset, Wharton-Smith demonstrated a remarkable commitment to excellence in all aspects of the construction process. Their attention to detail, unparalleled organization, clear communication, and overall professionalism set them apart as an outstanding construction partner. The success of our project can be attributed to the collaborative efforts of the entire Wharton-Smith team, from top management to the most basic workers on-site.

One of the key strengths of Wharton-Smith is their ability to manage complex projects efficiently and effectively. The construction of a Medical Examiner facility requires a high level of precision and adherence to stringent regulations, and Wharton-Smith consistently demonstrated a thorough understanding of the unique challenges associated with our specialized requirements. They were proactive in addressing potential issues, ensuring that the project stayed on schedule and within budget.

Throughout the construction process, Wharton-Smith maintained an open line of communication, providing regular updates and promptly addressing any concerns or inquiries. This level of transparency fostered a positive working relationship and instilled confidence in their ability to deliver a high-quality facility.

The professionalism exhibited by Wharton-Smith extended beyond their management team to every member of their workforce. The dedication, skill, and work ethic of their personnel were evident at every stage of the project. It is clear that Wharton-Smith values and invests in their employees, resulting in a cohesive and competent team that consistently delivers exceptional results.

In conclusion, I wholeheartedly recommend Wharton-Smith as a construction company of choice. Their unwavering commitment to excellence, coupled with their expertise in managing complex projects, makes them an ideal partner for any construction endeavor. I am confident that Wharton-Smith will continue to excel in their field and contribute positively to future projects.

Sincerely,

James Fulcher MD

James Fulcher, M.D.
Chief Medical Examiner, District 7

City of Cape Coral
Utilities Administration

March 24, 2022

Re: City of Cape Coral, Florida
Southwest Water Reclamation Facility – Operations Building and Warehouse Building

To Whom it May Concern:

Wharton-Smith was selected as the Construction Manager at Risk (CMAR) firm for the above referenced project. The project includes the construction of a 24,000 sf multi-story administration building and 8,300 sf warehouse building with a total value of $15.2 million. The project is currently ongoing with a completion date scheduled for December 2022.

This project is particularly challenging due to the fact the new operations building is located central to an operating 15 MGD water reclamation facility. To date the project team has been able to negotiate through supply chain and cost escalation issues that have been prevalent in the construction industry, keeping the project on schedule and within budget.

Based on the progress to date for the Operations Building project, the City would recommend Wharton-Smith's Commercial Division for projects of similar scope and size. If you have any further questions please do not hesitate to contact me at tmclean@capecoral.gov.

Respectfully,

Thomas W. McLean, P.E.
Project Manager
Utilities Administration
City of Cape Coral

Wharton-Smith, Inc.
CONSTRUCTION GROUP

750 MONROE ROAD
SANFORD, FL 32771

TEL: 407-321-8410

WWW.WHARTONSMITH.COM

CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 8/21/2024

SUBJECT: (C7e) Approval of Change Order No. 2 to the Standard Contract for Services as it relates to RFSQ #20-02 for the 20-inch Force Main River Crossing with Kimley-Horn & Associates, Inc. for a time extension request

DEPARTMENT: Engineering

GOAL: 2 - Infrastructure

RECOMMENDED MOTION: Move to approve Change Order No 2 to the Standard Contract for Services CA7244 as it relates to RSFQ 20-02 for the 20-inch Force Main River Crossing with Kimley-Horn & Associates, Inc. for a time extension request; and authorize the Mayor and City Clerk to execute all required documents.

SUMMARY: The Engineering Department is requesting Council to approve Change Order No. 2 under Standard Contract for Services as it relates to RSFQ #20-02 for the 20-inch Force Main River Crossing with Kimley-Horn & Associates, Inc. for time extension.

On February 9, 2021, the City entered into an agreement with Kimley-Horn & Associates, Inc. for the design, permitting, and construction administration for a 20-inch subaqueous sanitary sewer force main river crossing as outlined under RFSQ #20-02 in the amount of $588,735.

On September 20, 2022, Council approved Change Order No. 1 for $145,050; revised agreement not to exceed $733,785. Change Order No. 1 was issued for various design changes needed to adjust the location of crossing the Halifax River on the western side of a route directly parallel to Dunlawton Avenue, as well as extending the force main north along US-1, approximately 750 LF, from Dunlawton Avenue to Herbert Street. This change also included a design to replace an existing cast iron water main between Dunlawton Avenue and Herbert Street to better service the redevelopment of the area. No additional time was requested.

The Engineering Department has been working with the City Attorney's Office to prepare an RFSQ for Construction Management at Risk Agreement (CMAR) to assist with the bidding and construction for this project and the 16-inch Water Main Crossing. The CMAR construction delivery method is appropriate for large, complex projects such as the 20-inch Force Main River Crossing. CMAR allows the city to capitalize on the expertise of a seasoned contractor before finalizing the design of the project. Bringing the Construction Manager (CM) in before design is complete allows the CM to gain intimate knowledge of the project before it goes out for bidding. The CMAR is selected

based on qualifications, and thus they will typically have more specific knowledge about some aspects of the type of construction than the city and engineering firm designing the project. This knowledge helps to optimize the design and ensure constructability. Change Order No. 2 is necessary to add 365 days to the substantial and final completion dates. This will revise the substantial completion date from September 7, 2024, to September 7, 2025, and revise the final completion date from October 7, 2024, to October 7, 2025. No additional funds are requested at this time.

PRESENTER: Junos Reed

ATTACHMENTS:

1.	CO No 2 Kimley-Horn & Associates, Inc. RFSQ 20-02 20 Inch Force Main River Crossing	Kimley-Horn & Associates, Inc. RFSQ 20-02 20 Inch Force Main River Crossing.pdf
2.	CO No 1 Kimley Horn Standard Contrct for 20 in FM River Crossing_0001	CO No 1 Kimley Horn Standard Contrct for 20 in FM River Crossing_0001.pdf
3.	Kimley Horn Standard Contrct for 20 in FM River Crossing	Kimley Horn Standard Contrct for 20 in FM River Crossing.pdf
4.	Kimley-Horn and Associates, Inc. ALL 4.1.2025	Kimley-Horn and Associates, Inc. ALL 4.1.2025.pdf
5.	Original NTP_0001	Original NTP_0001.pdf

Julia Wiggins	Created/Initiated - 7/12/2024
Richard Colby	Approved - 7/12/2024
Junos Reed	Approved - 8/1/2024
John McKinney	Approved - 8/1/2024
Matthew Jones	Approved - 8/7/2024
Wayne Clark	Approved - 8/8/2024
Tracee Cody	Final Approval - 8/9/2024

CHANGE ORDER NO. 2
To the Standard Contract for Services dated February 9, 2021
KIMLEY-HORN & ASSOCIATES, INC., Contractor

Project: RFSQ 20-02, 20-inch Force Main River Crossing

The following changes are hereby made to the Contract Documents:

CHANGE IN CONTRACT PRICE:	**CHANGE IN CONTRACT TIMES**:
Original Contract Price: $588,735.00	Original Contract Times: Substantial Completion: 18 Months September 7, 2022 Final Completion: 30 days October 7, 2022 NTP Issued: March 8, 2021
Net changes from previous Change Order: No. 1: $145,050.00	Changes in contract time from previous Change Orders: No. 1: 2 years
Contract Price prior to this Change Order: $733,785.00	Contract Completion Date prior to this Change Order: Substantial Completion: September 7, 2024 Final Completion: October 7, 2024
Net Increase (decrease) of this Change Order: No. 2 $0.00	Changes in contract time requested this Change Order: No. 2 1 year
Contract Price with all approved Change Orders: $733,785.00	Contract Times with all approved Change Orders: Substantial Completion: September 7, 2025 Final Completion: October 7, 2025

CHANGES ORDERED:

I. GENERAL: This Change Order is necessary to cover changes in the work to be performed under the Standard Contract for Services CA7244 entered into by and between the parties on February 9, 2021.

II. REQUIRED CHANGES: Change Order is necessary to provide additional time to complete project and close out all necessary documents. No goods shall be delivered, nor services commenced hereunder until this Change Order has been fully executed by all parties.

III. JUSTIFICATION: Change Order No 2 will add one-year. This will move the Final Complete date from October 7, 2024 to October 7, 2025. No additional cost at this time.

IV. PAYMENT: Payment for this Change Order shall be made in accordance with the terms of the Contract for Services subject to a limit not to exceed $733,785.00. All payments shall be governed by the Local Government Prompt Payment Act as set forth in Florida Statutes Section 218.70 through 218.79, as amended.

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

Acknowledgments:

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

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

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

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

RECOMMENDED BY:
RICHARD COLBY
Department Project Manager

By:_____
Richard Colby, Construction Manager

Date Signed:_____

ACCEPTED BY:
JOHN JUSTUS, JR.

By:_____
Jonathan D. Thigpen, Sr Vice President

Date Signed:_____

RECOMMENDED BY:
N/A
City's Representative

By:_____
Printed Name:_____
Title:_____

Date Signed:_____

RECOMMENDED BY:
N/A
Engineer of Record

By:_____
Printed Name:_____
Title:_____

Date Signed:_____

APPROVED BY:
CITY OF PORT ORANGE
Department Head

By:_____
Junos Reed, City Engineer

Date Signed:_____

City Manager

By:_____
Wayne Clark, City Manager

Date Signed:_____

If Council approval is required:

Affirmed:

By:_____
Donald O. Burnette, Mayor

_____
Robin L. Fenwick, MMC, City Clerk

Date Signed:_____

Date Signed:_____

CHANGE ORDER NO. 1
To the Standard Contract for Services dated February 9, 2021
KIMLEY-HORN & ASSOCIATES, INC. Contractor

Project: RFSQ 20-02, 20-inch Force Main River Crossing

The following changes are hereby made to the Contract Documents:

CHANGE IN CONTRACT PRICE:	**CHANGE IN CONTRACT TIMES:**
Original Contract Price: $588,735.00	Original Contract Times: Substantial Completion: 18 Months September 7, 2022 Final Completion: 30 days October 7, 2022 NTP Issued: March 8, 2021
Net changes from previous Change Order: N/A	Changes in contract time from previous Change Orders: N/A
Contract Price prior to this Change Order: $588,735.00	Contract Completion Date prior to this Change Order: Substantial Completion: 18 Months September 7, 2022 Final Completion: 30 days October 7, 2022
Net Increase (decrease) of this Change Order: No. 1 $145,050.00	Changes in contract time requested this Change Order: No. 1: 2 years
Contract Price with all approved Change Orders: $733,785.00	Contract Times with all approved Change Orders: Substantial Completion: September 7, 2024 Final Completion: October 7, 2024

CHANGES ORDERED:

I. GENERAL: This Change Order is necessary to cover changes in the work to be performed under the Standard Contract for Services entered into by and between the parties on February 9, 2021.

II. REQUIRED CHANGES: Change Order is necessary to provide additional funding and to extend the final completion date. No goods shall be delivered, nor services commenced hereunder until this Change Order has been fully executed by all parties.

III. JUSTIFICATION: Change Order 1 is needed for the re-design of the western portion of the 20-Inch Force Main to avoid impacts to the proposed development along the Riverwalk area. Additionally, the Change Order will cover additional services related to utilizing a Construction Manager at Risk (CMAR) to construct the project and provide an additional two (2) years for completion.

IV. PAYMENT: Payment for this Change Order shall be made in accordance with the terms of the Standard Contract for Services CA7244 subject to a limit up to but not to exceed $145,050; revised contract amount of $733,785. All payments shall be governed by the Local Government Prompt Payment Act as set forth in Florida Statutes Section 218.70 through 218.79, as amended.

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

Acknowledgments:

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

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

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

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

RECOMMENDED BY:
JUNOS REED
Department Project Manager

By:_____
Junos Reed, Eng & Const Manager

Date Signed: 9/22/2022

ACCEPTED BY:
KIMLEY-HORN & ASSOCIATES, INC.
Contractor

By:_____
Jonathan D. Thigpen, Senior Vice President

Date Signed:_____

RECOMMENDED BY:
N/A
City's Representative

By:_____
Printed Name:_____
Title:_____

Date Signed:_____

RECOMMENDED BY:
N/A
Engineer of Record

By:_____
Printed Name:_____
Title:_____

Date Signed:_____

APPROVED BY:
CITY OF PORT ORANGE
Department Head

By:_____
Lynn Stevens, Public Works & Utilities Director

Date Signed: 9-22-2022

City Manager

By: N/A
Wayne Clark, City Manager

Date Signed:_____

If Council approval is required:

By:_____
Donald O. Burnette, Mayor

Date Signed: 9/20/2022

Affirmed:

_____
Robin L. Fenwick, MMC, City Clerk

Date Signed: 9/20/2022

Kimley»Horn

CHANGE ORDER NO. 1 TO

STANDARD SERVICES CONTRACT CA7244 AS IT RELATES TO RFSQ 20-02 - 20-INCH FORCE MAIN REPLACEMENT

Describing a specific agreement between Kimley-Horn and Associates, Inc. (Kimley-Horn), and The City of Port Orange (the Client or the City) in accordance with the terms of Standard Services Contract CA7244 as it relates to RFSQ 20-02 20 Inch Force Main Replacement, which is incorporated herein by reference.

Project Understanding

The City currently owns and operates a 20-inch force main which crosses the Halifax River parallel to Dunlawton Avenue from approximately US-1 to S. Peninsula Drive. The City desires to add scope to the existing contract to include the re-design of the western portion of the Force Main due to the proposed development along the Riverwalk area. These changes include adjusting the location crossing the Halifax River on the western side of the route to directly parallel Dunlawton Avenue, as well as extending the force main north along US-1 approximately 750 LF from Dunlawton Avenue to Herbert Street. There is an existing cast iron water main within the same corridor on US 1. The City desires to replace this existing cast iron water main between Dunlawton Avenue and Herbert Street while working in the area. Additionally, the City has requested the design of a fiber optic cable crossing of the Halifax River to be designed in parallel with the force main crossing.

Specific Scope of Basic Services:

Task 2a: 60% Redesign Services

Due to the realignment of a portion of the route and the additional services requested, a revised set of 60% plans will be prepared.

1. Perform additional survey and locate services along US 1 between Dunlawton Avenue and Herbert Street.
2. 60% Redesign of the western force main route, between the Port Orange Causeway Park and Halifax Drive. The proposed force main will be designed to run parallel to Dunlawton Avenue and will continue to US-1. This revised route includes approximately 1500-LF of 24-inch force main.
3. 60% Design of approximately 750-LF of 20-inch DIP force main along US-1 from Dunlawton Avenue, connecting to the North at Herbert Street.
4. 60% Design of approximately 750-LF of 6-inch PVC water main along US-1 from Dunlawton Avenue, connecting to the North at Herbert Street.
5. 60% Design of a fiber optic conduit sized to the City's specifications.
6. 60% review meeting with staff

Task 3a: 90% Redesign and Final Design

Based on comments provided at the 60% design level, Kimley-Horn adds the following services to this task:

1. Redesign of the western force main route, between the Port Orange Causeway Park and Halifax Drive. The proposed force main will be designed to run parallel to Dunlawton

Avenue and will continue to US-1. This revised route includes approximately 1500-LF of 24-inch force main.

2. Design of approximately 750-LF of 20-inch DIP force main along US-1 from Dunlawton Avenue, connecting to the North at Herbert Street.
3. Design of approximately 750-LF of 6-inch PVC water main along US-1 from Dunlawton Avenue, connecting to the North at Herbert Street.
4. 90% Design of the fiber optic conduit.
5. Coordination with the CMAR contractor through this design phase.

Task 4: CMAR Coordination

The City desires to utilize a Construction Manager at Risk (CMAR), in lieu of the traditional bid solicitation defined in the original scope of services. It is recommended to select a CMAR contractor at the completion of the 60% design phase. During the 90% design phase, the Project's phasing will be defined, and value engineering items will be identified in an effort to defer or reduce capital costs when feasible. The detailed design phase will focus on the development of construction documents including plans, specifications, and other documents supporting the establishment of a Guaranteed Maximum Price (GMP) to be negotiated by the City with the Construction Manager at Risk (CMAR). Kimley-Horn will coordinate with the CMAR on the following CMAR scope items:

- Develop and update a detailed "open book" cost model based on current market conditions to confirm budgets and help guide design decisions.
- Develop a construction management plan and schedule in advance of construction with input from Kimley-Horn.
- Provide alternative system evaluation and constructability reviews in coordination with the City and Kimley-Horn.
- Develop long-lead procurement strategies and potentially initiate early procurement of long-lead items.
- Provide procurement services for selection of key subcontractors and suppliers.
- Develop construction estimates and GMPs for construction for City review and consideration.

The relationship between the CMAR and Kimley-Horn is intended to be collaborative, with both participating as advisors to the City during the Design Phase. It is the City's desire to incorporate a contractor's perspective and input to the project planning and design decisions, and to leverage the ability for early procurement and phased construction prior to full completion of design.

The following tasks are defined as the specific efforts to be performed and completed by Kimley-Horn during the design phase of the project:

A. Draft CMAR Pre-Construction Contract Development

Coordinate with the City to provide input and review of the CMAR Pre-Construction Phase contract.

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B. *Cost Model and GMP Review and Validation*

Coordinate with the CMAR and the City to provide input and information on equipment and other major capital cost items throughout the design phase and review and validate the cost model (90% and final design level) developed by the CMAR. Cost validation activities will include a review and verification of direct and indirect costs; CMAR fee and CMAR contingency; review supplier and subcontractor quotes and request supplemental quotes, as necessary; compare costs with other applicable projects; and perform review of risk analysis model and/or cost contingencies developed by the CMAR. Indirect costs included in the CMAR cost model will include applicable general conditions and general requirements, bonds, insurance and sales tax.

Using the cost models and GMPs as the basis for the total construction costs, Kimley-Horn will coordinate with the City regarding additional City administrative costs, engineering fees, construction administration and inspection fees, and, if applicable, City contingency to develop a Total Project Cost Estimate (TPCE).

C. *Early Procurement Activities*

Kimley-Horn will coordinate with the CMAR and the City to develop an equipment and materials procurement plan, including identification of items to be selected and/or procured early based on "best value" and/or low-bid strategies, and define the parameters associated with "best value" selection as applicable. Those items and design packages selected for early procurement will also identify the acceptable manufacturers and associated bid documents requirements.

Kimley-Horn will coordinate with the CMAR and City to develop multiple packages of the applicable front-end documents, technical specification and supporting design drawings for early procurement of long-lead equipment items with the specific acceptable manufacturers; coordinate with the CMAR as part of the bidding process and prepare addenda; And assist the City and the CMAR with review of the supplier proposals and bid packages and the subsequent selection process.

It is assumed that the CMAR will be responsible for the packaging of front-end documents, technical specifications, and applicable design drawings developed by Kimley-Horn; submittal of packages to applicable manufacturers or vendors; coordination of vendor proposals; pre-selection of equipment and appurtenances; delivery of detailed design criteria and documents of selected equipment to Kimley-Horn for further use and incorporation into detailed design documents; and coordination of delivery, storage, installation, startup, and payment of procured items. Kimley-Horn has assumed up to four early procurement packages will be developed.

D. *General CMAR Coordination*

General coordination with the CMAR during the design Phase will include:

- Coordination with the City regarding development of the CMAR construction

Kimley»Horn

and/or post-construction phase contract and applicable City front-end documents and Kimley-Horn's Division 1 specifications.

- Meeting with and soliciting input from the CMAR during design development as appropriate.
- Providing input to the construction management plan and schedule development.
- Evaluating alternative systems and materials proposed or suggested by the CMAR.
- Responding to constructability review comments.
- Attending subcontractor pre-selection meetings conducted by the CMAR as appropriate.

Should the City be unable or unwilling to accept the CMAR GMPs and instead decide to procure and deliver the project using a traditional "design-bid-build" delivery method, subsequent modifications to the front-end documents, technical specifications and associated design drawings specifically applicable to the CMAR delivery method will need to be updated under an amendment to this scope of work.

In addition, additional services for bidding, including the preparation of bid document sets, participating in a pre-bid conference, responding to bidder questions, preparing applicable addenda, attendance of the bid opening, assistance in evaluating bids, and participating in a pre-construction conference with the selected contractor will need to be handled under an amendment to this scope of work.

Schedule:

These services will be completed according to an agreed upon schedule with the City and will be determined once the CMAR is under contract.

Method of Compensation:

Kimley-Horn will perform these services for the total lump sum fee of $145,050, inclusive of expenses. Invoices will be billed on a percent complete basis per task. A breakdown of the fee by task is as follows:

Task	*Description*	*Subconsultant*	*Kimley-Horn*	*Lump Sum*
2a	60% Re-Design		$30,650	$53,650
	L&S - Subsurface Utility Investigation	*$23,000*		
3a	90% and Final Design	$0	$29,900	$29,900
6	CMAR Coordination	$0	$61,500	$61,500
	SubTotal	$23,000	$122,050	$145,050
Total				**$145,050**

Other Special Terms:

Services provided under this agreement will be invoiced on a monthly basis. All invoices will include a description of services provided.

ACCEPTED:

Kimley»Horn

CITY OF PORT ORANGE, FLORIDA

BY: See Change Order No. 1 Page 4

TITLE: _____

DATE: _____

KIMLEY-HORN AND ASSOCIATES, INC.

BY: _____
Jonathan D. Thigpen

TITLE: Sr. Vice President

DATE: _____

CITY OF PORT ORANGE
STANDARD CONTRACT FOR SERVICES

This Standard Contract for Services ("Contract") is entered into this 9th day of February, 2021, by and between the **CITY OF PORT ORANGE**, a Florida municipal corporation, whose principal address is 1000 City Center Circle, Port Orange, Florida 32129 (the "City"), and **KIMLEY-HORN AND ASSOCIATES, INC.**, a North Carolina corporation whose principal address is 421 Fayetteville Street, Suite 600, Raleigh, North Carolina 27601 ("Contractor"). The City and Contractor are collectively referred to herein as the "Parties."

1. *Provision of Services*

(a) The Contractor hereby agrees to professional consulting services, which shall include the design, permitting, and construction administration for a 20-inch subaqueous sanitary sewer force main river crossing, and as further described in Request for Statement of Qualifications 20-02 ("RFSQ 20-02"). This Contract together with RFSQ 20-02, Addendum No. 1, and Contractor's submittal, all of which may be referred to as the "Contract" and all of which are made a part hereof by reference, shall constitute the formal written contract between the City and Contractor. For convenience, Section 3, Scope of Services/Work and Requirements from RFSQ 20-02, and the Contractor's Submittal and Proposal are available in the Office of the City Clerk. Contractor represents that they are familiar with the documents that make up the Contract, as referenced hereinabove.

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

Term: The term of this Contract shall become effective on the last date the Contract is signed by the Parties ("Effective Date"). Upon issuance of a written Notice to Proceed, Contractor shall have eighteen (18) months for design and permitting, with an additional thirty (30) days thereafter for final completion ("Term").

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

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

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

2. *City Obligations*. In return for the services identified above, the City agrees to compensate the Contractor at the pricing set forth in Exhibit "1," attached hereto, in an amount not to exceed Five Hundred Eighty-Eight Thousand Seven Hundred Thirty-Five and 00/100 Dollars ($588,735.00). All payments shall be governed by the Local Government Prompt Payment Act as set forth in Sections 218.70 through 218.79, Florida Statutes, as amended.

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

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

5. *Termination for Convenience of the City*

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

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

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

(i) cease any further deliveries or work due under this Contract, on the date, and to the extent, which may be specified in the Notice;

(ii) place no further orders with any subcontractors except as may be necessary to perform that portion of this Contract not subject to the Notice;

(iii) terminate all subcontracts except those made with respect to contract performance not subject to the Notice;

(iv) settle all outstanding liabilities and claims which may arise out of such termination, with the ratification of the Finance Director of Port Orange; and

(v) use best efforts to mitigate any damages which may be sustained by the Contractor as a consequence of termination under this clause.

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

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

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

(i) With respect to all Contract performance prior to the effective date of Notice of Termination, the total of:

(1) the cost of work performed or supplies delivered;

(2) the cost of settling and paying any reasonable claims as provided in paragraph (c) (iv), above;

(3) a sum as profit on (a) determined by the Finance Director to be fair and reasonable.

(ii) The total sum to be paid under (i) above shall not exceed the contract price, as further reduced by the contract price of work or supplies not terminated.

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

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

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

8. *Examination of Records*

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

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

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

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

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

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

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

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

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

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

10. *Termination for Non-Appropriation of Funds*

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

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

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

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

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

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

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

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

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

Standard Insurance Requirements			
	Insurance	**Standards**	**Additional Requirements**
☒	Workers' Compensation The Contractor shall maintain coverage for its employees with statutory workers' compensation limits, and no less than the limits indicated in the Schedule of Limits for Employers' Liability. Said coverage shall include a waiver of subrogation in favor of the City. **The City will not accept elective exemptions.** Any contractor using an employee leasing company shall complete the Leased Employee Affidavit Form Exhibit.	Contract Amount — Limits Up to $10 million — Statutory/$500,000 $10 - $20 million — Statutory/$1,000,000 Contracts over $20 million To Be Determined by the City.	☐If Contract requires work on or about navigable waters, Longshoreman's and Harbor Workers' Coverage required. ☐If vessels involved, Jones Act coverage with limits of $500,000 required.
☒	Comprehensive General Liability (including Completed Operations and Contractual Liability	Limits: Combined Single Limit Bodily Injury and Property damage $1,000,000 occurrence $1,000,000 aggregate	☐When work is on or under Railroad rights of way or properties, the Contractor shall take out and maintain during the life of the Contract, Railroad protective liability and property damage insurance in amounts as requested by the Railroad.
☒	Comprehensive Business, Automobile Liability to include all owned, hired and non-owned automobiles.	Limits: Auto Liability Body Injury and Property Damage: $1,000,000 each occurrence $1,000,000 aggregate	
Additional Insurance Requirements			

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

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

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

14. *Modifications or Changes to this Contract*

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

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

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

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

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

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

16. *Liability for Loss or Damage*. Contractor shall be liable for any loss of, or damage to, City property to the extent caused by the negligence, recklessness, or intended wrongful misconduct of Contractor, his/its agents, servants and employees and shall indemnify and hold harmless the City, and its 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 intentionally wrongful conduct of the Contractor and other persons employed or utilized by the Contractor in the performance of the Contract. Contractor shall submit a full written report to the Finance Director within twenty-four (24) hours following the occurrence of such damage, loss or injury.

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

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

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

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

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

19. *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.

20. *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.**

21. *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.

22. *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.

23. *Notice*. For purposes of this agreement, notices shall be sent as follows:

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

Copy to:
City of Port Orange
Attention: Lynn Stevens, Public Works and Utilities Director
1000 City Center Circle
Port Orange, Florida 32129
(386) 506-5750

Contractor:
Kimley-Horn and Associates, Inc. Senior
Attention: Jonathan D. Thigpen, Vice President
189 South Orange Avenue
Suite 1000
Orlando, Florida 32801
(407) 898-1511 – Telephone
(561) 863-8175 – Facsimile
Wayne.White@Kimley-Horn.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.

24. *Contract Construction*

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

25. *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.

KIMLEY-HORN AND ASSOCIATES, INC.

Witnesses:

By: _____
Jonathan D. Thigpen, Vice 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.

Larissa Curran
Printed Name: Larissa Curran

Date: 1/28/2021

KELLY A. STARKEY
Printed Name: Kelly A Starkey

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me by means of ✓ physical presence or ___ online notarization, this 28th day of January, 2021, by Jonathan D. Thigpen, as Vice President of Kimley-Horn and Associates, Inc., a North Carolina corporation. He is ✓ personally known or ___ produced _____ as identification.

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

Notary Public State of Florida
Charlene Kunold
My Commission GG 176832
Expires 02/19/2022

Witnesses:

Ruth E. Thayne

Printed Name: RUTH E. THAYNE

Shelly Field

Printed Name: Shelby Field

CITY OF PORT ORANGE

By: _____

Donald O. Burnette, Mayor

Date: 2/9/2021

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of X physical presence or ___ online notarization, this 9th day of February 2021, by Donald O. Burnette, as Mayor of the City of Port Orange, a Florida municipal corporation, on behalf of the city. He is X personally known or ____ produced _____as identification.

Notary Public State of Florida
Ruth E. Thayne
My Commission GG 913343
Expires 10/05/2023

Ruth E. Thayne

Notary Public, State of Florida

Printed, typed or stamped name, commission and expiration:

RUTH E. THAYNE

Witnesses:

Shelly Field

Printed Name: Shelby Field

Ruth E. Thayne

Printed Name: RUTH E. THAYNE

ATTEST:

By: _____

Robin L. Fenwick, MMC, City Clerk

Date: 2/9/2021

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me, by means of X physical presence or ___ online notarization, this 9th day of February 2021, by Robin L. Fenwick, as City Clerk of the City of Port Orange, a Florida municipal corporation, on behalf of the city. She is X personally known or ___ produced _____as identification.

Notary Public State of Florida
Ruth E. Thayne
My Commission GG 913343
Expires 10/05/2023

Ruth E. Thayne

Notary Public, State of Florida

Printed, typed or stamped name, commission and expiration:

RUTH E. THAYNE

EXHIBIT "1"

(Consisting of 9 pages)

Kimley»Horn

RFSQ 20-02 PROPOSAL FOR 20-INCH FORCE MAIN REPLACEMENT

Describing a specific agreement between Kimley-Horn and Associates, Inc. (Kimley-Horn), and The City of Port Orange (the Client or the City) in accordance with the terms of the RFSQ 20-02 20 Inch Force Main, which is incorporated herein by reference.

Project Understanding

The City currently owns and operates a 20-inch force main which crosses the Halifax River parallel to Dunlawton Avenue from approximately US-1 to S. Peninsula Drive. The City desires to design and construct a new force main along a parallel route and subsequently evaluate the existing force main for use as a redundant, emergency back-up force main.

Specific Scope of Basic Services:

Task 1: Proposed Force Main Route Analysis

Based on discussions with City staff the route of the proposed 20-inch force main can be run along two potential paths. The first path closely mirrors the existing alignment starting from the commercial drive beside the bridge on the east end of the route drilling under the river to Port Orange Causeway Park. The pipeline will then be direct buried along the island to the west end and will include a new connection to the Sea Bird Island Mobile Home Park lift station located on the south side of Dunlawton Avenue. The route will then continue west under the river to Halifax Drive to a final connection point at US 1.

A second route will be evaluated to avoid the commercial sector on the east end of the route. This route will start at Peninsula Drive and Coral Way to begin the directional drill to Sea Bird Island under the canal at the end of Coral Way. The route along Port Orange Causeway Park will be unaffected, but an alternate route across the western portion of the river will be evaluated based on future plans for the Riverwalk area and currently owned property of the City.

Geophysical Survey Plan

The bathymetric survey program will be performed by Ocean Surveys, Inc (OSI) and will consist of the acquisition of multi-sensor marine geophysical data (hydrographic, subbottom profiling, magnetometer and side scan sonar imagery) within a 400-foot wide route corridor across the river where the proposed HDD alignment is planned.

Within the route corridor sounding, subbottom profiling and magnetometer data would be acquired along a series of survey tracklines oriented parallel to the proposed HDD alignment and spaced 50 feet apart. As a means of providing quality control and confirmation of the data acquired along the primary tracklines, additional data would be acquired along a series of "tie" lines oriented perpendicular to the primary lines and spaced approximately 200 feet apart across the river. Side scan sonar imagery would be acquired along specific tracks with the intent of providing close to 100 percent overlapping coverage of the bottom within the entire survey corridor. Sonar imagery data will allow for precisely locating specific objects and features exposed on the bottom (including rock, debris, pipes, cables, rip-rap, etc.).

Based upon the understood project depth of interest, OSI would propose to utilize both a high-frequency Chirp and a lower frequency Boomer type subbottom profiler to acquire subbottom data. The intent is that the two instruments will provide a broad range of energy and frequency to

investigate the expected variable sequence of sediments expected in the river. Since site conditions (specifically the near surface sediments) control the success of the subbottom penetration and data developed, employing the two systems maximizes the probability of acquiring the most informative data on site. It should be noted though that the presence of organic rich, gaseous sediments, common in shallow river/bay environments and/or coarse surficial sediments, might limit the penetration of acoustic signals below the bottom and thus limit the effectiveness of the profiler in resolving information pertaining to subsurface conditions within the corridor. Magnetometer data will identify any features composed of ferrous metal present on or just below the bottom within the corridor that could potentially impact the project (including utilities which have a ferrous metal component). Utilities that were installed via horizontal drilling techniques (deep below the bottom) or utilities composed of nonferrous metals or fiber optic cables will not be detected.

In response to the need to perform the survey in a timely, efficient, and cost-effective manner, we would plan to utilize an OSI vessel (shallow draft 25-27 feet in length). The vessel would be outfitted with a suite of multi-sensor geophysical survey equipment that has been proven repeatedly during similar survey efforts. Field operations would be conducted by a two-person field crew equipped with the following instrumentation (or equivalent).

- Trimble RTK Global Positioning System (GPS)
- HYPACK navigation and data-logging computer system
- ODOM survey grade single beam depth sounder
- Applied Acoustics 200J 0.5-8 kHz high-resolution "Boomer" subbottom profiling system interfaced with a TSS shallow seismic processor/heave compensator and data logger
- EdgeTech full-spectrum "chirp" subbottom profiler equipped with a SB216 tow vehicle (2-16 kHz transducer)
- Klein high-resolution dual-frequency side scan sonar
- Geometrics G882 cesium marine magnetometer equipped with bottom tracking altimeter

All survey units shall be in feet and referenced horizontally to the Florida State Plane Coordinate System, East Zone (0901), NAD83. Sounding data will be in feet referenced vertically to North American Vertical Datum of 1988 (NAVD 88) feet

Wetlands and Protected Species Survey

The analysis will include the following items to determine the route:

1. A conceptual design for both routes including a review session with City staff,
2. Underwater survey of the Halifax River to include river bottom and subsurface scanning of data up to 50 feet below the river bottom to provide a preliminary geophysical log of the crossing.
3. Surface survey of the land side work. This includes the work along Sea Bird Island including a crossing of Dunlawton Ave to the Sea Bird lift station, surveying from Peninsula Drive along Coral Way, surveying from Peninsula Drive along the commercial drive beside Dunlawton, the area north of Dunlawton on the mainland from the coast to US 1, and an additional location along Halifax Drive for an alternate crossing location (possibly at Herbert Street).
4. Wetlands and environmental review of the subject area to determine potential impacts in the route evaluation.
5. Specific review of points of connection,

6. Preliminary layout of Dunlawton crossing to Sea Bird Lift Station,
7. Review of operational considerations during construction,
8. Review of potential impacts to commercial and residential access,
9. Review of potential impacts to traffic,
10. Review of preliminary construction sequencing and impacts to boat ramps on Sea Bird Island,
11. This task includes up to three (3) meetings with staff to formally review the route analysis with staff to determine the development of the 30% conceptual design.

Geotechnical Investigations

Geotechnical investigations include nine borings, five in the River and four landside. The borings on land at the ends of the directional drill will be 50 feet deep. The aquatic borings will be 100 feet deep and made using an amphibious drill rig. This scope of services includes field exploration, laboratory testing, and engineering/project delivery. Field investigations will be provided in accordance with FDOT and ACOE requirements. Time has been accounted for to allow for permitted with both agencies to complete the necessary borings. The boreholes will be grout sealed after completion.

Geotechnical borings will commence after the route has been preliminarily defined to depict the route across the River as accurately as possible. The geotechnical reports will provide the following:

- Boring logs with field and laboratory data
- Stratification based on visual soil classification
- Groundwater levels observed during drilling
- Site and Boring location plans
- Subsurface exploration procedures
- Description of subsurface conditions
- Estimated seasonal groundwater fluctuations
- Recommended geotechnical engineering design parameters for directional drill design
- Recommended excavation and backfill consideration for open cut excavations.

The geotechnical engineering will be completed within ten weeks of authorization.

30% Conceptual Design

A 30% conceptual level design will be provided as the deliverable for this task. This deliverable will include the following:

1. Plan view only design plans identifying the selected route,
2. Written preliminary sequence of construction activities,
3. 30% opinion of probably construction costs,
4. Specification checklist for required technical specification sections.
5. Evaluation of maintaining existing force main as a back-up pipeline
6. Recommended operational procedures for maintaining the existing force main as a back-up force main.

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Task 2: 60% Design

Once the preliminary investigations and conceptual route have been reviewed and approved design plan production can be initiated. This design will include the following services:

1. Additional surveying identified by the conceptual design. This is specifically related to points of connection to ensure sufficient data is available for completing the design. This includes SUE investigations at up to twenty (20) locations to positively identify existing infrastructure.
2. Geotechnical investigations along the route. This includes twenty (20) borings on the land side route and up to six (6) borings in the River.
3. 60% Design Plans including:
    - Cover Sheet and General Notes
    - Survey and Layout
    - Plan and Profiles
    - Cross Sections
    - Conflict Details
    - Connection Details
    - Standard Utility Details
    - Maintenance of Traffic Details
    - Stormwater Protection and Dewatering Details
    - Landscaping and Restoration Details
4. 60% Technical Specifications. Front end documents can be included and shall be provided by the City for modifications specific to this project, such as the bid form, description of work, etc.
5. 60% opinion of probable construction cost.
6. This task includes up to three (3) meetings including interim progress meetings and a 60% design review meeting.

Task 3: 90% and Final Design

Once the 60% plans have been reviewed and approved design plan production can be initiated. This design will include the following services:

1. 90% Design Plans preparation
2. 90% Technical Specifications. Front end documents can be included and shall be provided by the City for modifications specific to this project, such as the bid form, description of work, etc.
3. 90% opinion of probable construction cost.
4. 90% Review meeting with the City.
5. Revision of 90% review comments to update the design plans and specifications.
6. Preparation of final opinion of probable construction cost.
7. This task includes up to four (4) meetings including interim progress meetings and a 60% design review meeting.

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Task 4: Permitting

Site Visit and Wetland Delineation

Kimley-Horn will conduct a site visit, which will include field flagging the wetlands in accordance with the State unified wetland delineation methodologies described in Chapter 62-340, Florida Administrative Code (FAC) and the United States Army Corps of Engineers (USACE) 1987 Wetland Delineation Manual and regional supplement. Kimley-Horn will coordinate with the surveyor (subconsultant) to incorporate the flags into the site plan.

Kimley-Horn will also conduct a benthic resource/submerged aquatic vegetation survey adjacent to the site, during the appropriate survey period (June through September). The benthic survey will be conducted in general accordance with the National Marine Fisheries Service (NMFS) methodology recommendations for sampling Halophila johnsonii at large-area project sites. The surveys will employ a quantitative sampling of one square meter quadrats at regular intervals along a transect line.

Each transect location will be accessed from the adjacent shoreline. Qualitative and quantitative sampling will be conducted by two biologists using snorkeling gear. The percent coverage of seagrass, species composition, substrate type, and other benthic resources will be documented at each quadrat along the transect line. Environmental conditions including weather, visibility, and tide cycles at the start and end of the surveys will be noted. Listed species or their habitat will also be noted during this site visit.

Following the survey, a technical memorandum will be prepared summarizing results, including a discussion of methodology and results, with figures illustrating location and percentage of seagrass by species within each polygon (if seagrass is present). The technical memorandums will be provided to state and federal regulatory agencies during the environmental permitting process.

FDEP

Kimley-Horn will attend a pre-application meeting with FDEP to discuss permitting effort required for this project. Kimley-Horn will prepare support documentation for a General Environmental Resource Permit Application and a general construction permit for the modification of a collection/transmission system from FDEP. For the purposes of this scope, it is assumed that the bore pits will be located in uplands and the force main will be drilled at least 14 feet below the authorized depth of a federal navigation channel. This will ensure that the project will qualify for a general permit with FDEP. This scope assumes no wetland mitigation will be required. Once the application is submitted, Kimley-Horn will respond to one Request for Available Information (RAI) from FDEP. Any additional RAIs or meetings with FDEP will be considered additional services. All application fees shall be paid by the Client.

Kimley-Horn will also prepare a Sovereign Submerged Lands lease application through FDEP for this force main. A survey and legal description will be supplied by the surveyor. Once the application is submitted, Kimley-Horn will respond to one RAI from FDEP. Any additional RAIs or meetings with FDEP will be considered additional services. All application fees shall be paid by the Client.

Federal (USACE)

Kimley-Horn will attend a pre-application meeting with USACE to discuss permitting effort required for this project. Kimley-Horn will prepare either a Nationwide Permit 12 or a Regional General Permit 14 application for submittal to the USACE. It is assumed that the force main will

be installed a minimum of 14 feet below the authorized depth of a federal channel, including a minimum of 25 feet outside channel edges, and bore pits will be more than 50 feet from top of bank of the Halifax River. These conditions will ensure that the project qualifies for the Nationwide 12 Permit or Regional General Permit 14. The application will include site plan drawings indicating the limits of proposed on-site excavation and fill areas, limits of existing wetlands and surface waters delineated in Task 1 (if applicable), proposed impacts to existing wetlands and surface waters (if applicable), and typical sections illustrating the proposed on-site excavation/fill activities.

Kimley-Horn will coordinate with the USACE Section 408. Kimley-Horn will also coordinate with the USACE Real Estate Division to obtain a consent-to-easement.

It is assumed no wetland mitigation will be required from the USACE. Once the application is submitted, Kimley-Horn will respond to one RAI. Any additional RAIs or meetings with USACE will be considered additional services. All permit application fees shall be paid by the Client.

Kimley-Horn will also coordinate with the US Fish and Wildlife Service (USFWS) (during the USACE permitting process) regarding possible listed species impacts (i.e. West Indian manatee, sea turtles). If the USFWS requires detailed listed species surveys, then a separate scope and fee will be prepared. Kimley-Horn will also coordinate with the National Marine Fisheries Service (NMFS) (during the USACE permitting process) regarding possible Essential Fish Habitat (EFH) impacts. If the NMFS requires detailed listed species surveys, then a separate scope and fee will be prepared.

Task 5: Bidding Services

A. Prepare one (1) separate bid package consisting of plans, permits, and specifications (in CSI or EJCDC format) to be included in the City's bid package.

B. Participate in one (1) pre-bid conference as the City's engineering representative. The City will be responsible for coordinating, scheduling, and administering the pre-bid conference.

C. Respond to Requests for Information (RFIs) and prepare bid addenda as necessary during the bid process. The City will be responsible for addenda distribution.

D. Review the bid responses and tabulate the results and provide the City with a written bid tabulation record along with a selection recommendation.

Schedule:

These services will be completed as expeditiously as possible. The initial submittal is projected to be completed within six months of authorization. 60% design is projected to be completed 4 months later and final design completed in an additional 3 months. Considering permitting and bidding, a total project time of 15 months is estimated.

Deliverables:

Deliverables for this project include the following:

- Preliminary route analysis including surveys and environmental
- 60% plans, technical specifications, opinion of probable construction costs, and

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geotechnical report

- 90% plans, specifications, opinion of probable construction costs
- Bid Ready plans, specifications and final opinion of probable construction costs.
- Existing force main evaluation report

Method of Compensation:

Kimley-Horn will perform these services for the total lump sum fee of $588,735, inclusive of expenses. Invoices will be billed on a percent complete basis per task. A breakdown of the fee by task is as follows:

Task	*Description*	*Subconsultant*	*Kimley-Horn*	*Lump Sum*
1	Route Analysis		$111,283	$252,919
	OSI – Bathymetric Survey	*$77,352*		
	L&S – Land Surveying	*$64,284*		
2	60% Design		$114,994	$204,938
	Terracon - Geotechnical	*$84,444*		
	L&S - Subsurface Utility Investigation	*$5,500*		
3	90% Design	$0	$85,090	$85,090
4	Permitting	$0	$32,285	$32,285
5	Bidding Services	$0	$13,503	$13,503
	SubTotal	$231,580	$357,155	
Total				**$588,735**

Other Special Terms:

Services provided under this agreement will be invoiced on a monthly basis. All invoices will include a description of services provided.

ACCEPTED:

CITY OF PORT ORANGE, FLORIDA

BY:_____

TITLE:_____

DATE:_____

KIMLEY-HORN AND ASSOCIATES, INC.

BY: _____
Jon Martin, PE

TITLE: Sr. Vice President

DATE:_____

SECTION 3 – SCOPE OF SERVICES/WORK AND REQUIREMENTS

20" Subaqueous Sanitary Sewer Force Main Design RFSQ

Project Background:

The City of Port Orange operates a sanitary sewer Water Reclamation Facility (WRF) that provides service to the City of Port Orange and the Towns of Daytona Beach Shores & Ponce Inlet. The Towns of Daytona Beach Shores and Ponce Inlet are barrier islands and are separated from the City of Port Orange by the Intercostal Water Way & the Halifax River. Wastewater from the Barrier Islands is transmitted to the Cities Water Reclamation Facility via 20" Ductile Iron Pipe (DIP) subaqueous force main which was constructed in the late 1980's. The City has determined the need to replace the existing DIP force main with a new DIP force main with a new High-Density Polyethylene (HDPE) force main to ensure uninterrupted sewer service for Daytona Beach Shores and Ponce Inlet. The average daily flow from the barrier islands is approximately 1.0 Millions of Gallons (MGD).

Scope:

The City of Port Orange Public Utilities is seeking the service of professional consultants to provide the design, permitting, and construction administration of a 20" subaqueous sanitary sewer force main river crossing. The scope of services shall consist of, but not limited to, the following:

- Existing force main conditions assessment
- Pre-design services (geotechnical engineering & survey)
- Replacement force main design
- Permitting
- Construction phase services
- As-built preparation and certification

Qualifications/Certifications:

The preferred firm will have a current Professional Registration Certificate from the appropriate governing board. The firm must be properly registered at the time of submittal to practice their profession in the State of Florida. Provide professional certifications of staff such as Professional Engineer (P.E) and other relevant professional titles/accomplishments related to the proposed project.

Evaluation Method:

The City will appoint a committee consisting of department staff to evaluate the proposals and to make recommendation to the City Council. The City will be the sole judge of its own best interests, the proposals, and the resulting contract. The Cities decisions will be final. Award will be made to the proposal, which presents the best value to the City based on the entire evaluation process and all of the information gathered. The City may require the short-listed firm(s) to do an oral presentation or have discussions by proposed team relative to their specific experience on similar projects. The selection process shall be in accordance to Consultants' Competitive Negotiation Act (CCNA) process. Although, each member of the

evaluation committee independently examines the proposals prior to the meeting, the short-listing or selectin of the firm(s) is determined by the consensus of the committee.

Evaluation Criteria:

In determining a firm's qualifications, the following criteria will be considered based on qualifications, experience and project approach:

- Professional license, certifications, titles, and accomplishments of staff;
- Credentials, qualifications and years' experience of the staff for both the prime and sub consultants and key personnel as presented by resumes, education, and training;
- Number of years prime and sub consultants worked together;
- Experience in providing similar projects;
- Overall project approach to support the needs and objectives of the project;
- Quality of performance or previous contracts or services;
- Whether the firm can perform the contract or provide the service within budget requirements, promptly or within the time specified, without delay or interference;
- Quality, availability and adaptability of the contractual services to the particular use required;
- Sufficiency of the financial resources and ability of the firm to perform the contract or provide the services;
- Character, integrity, reputation, judgment, and efficiency of the firm;
- Previous and existing compliance by the firm with laws and ordinance relating to the contract or services;
- The number of professional staff, education, and years' experience in public utilities engineering including support staff such as Geographic Information Systems (GIS) specialists, surveyors, Computer Aided Design and Drafting Technician (CADD) Techs, Construction Engineering Inspectors (CEI), etc.;
- Documented experience with State (Water Management District, Department of Environmental Protection DEP) and Federal (Environmental Protection Agency EPA, Army Corps.) permitting/regulatory programs related to the proposed project;
- Documented projects (with references) which demonstrate proficiency and experience in projects of a similar nature in scope and complexity to the proposed project;
- Location of office facilities and staff.

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 3/18/2024

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 Edgewood Partners Ins. Center/Greyling 3780 Mansell Rd. Suite 370 Alpharetta GA 30022	**CONTACT NAME:** Jerry Noyola **PHONE (A/C, No, Ext):** 7702207699 **FAX (A/C, No):** **E-MAIL ADDRESS:** greylingcerts@greyling.com
INSURED KIMLASS Kimley-Horn and Associates, Inc. 421 Fayetteville Street, Suite 600 Raleigh, NC 27601	**INSURER(S) AFFORDING COVERAGE** / **NAIC #** **INSURER A :** National Union Fire Ins Co of Pittsburg / 19445 **INSURER B :** Allied World Assurance Co (U.S.) Inc. / 19489 **INSURER C :** New Hampshire Insurance Company / 23841 **INSURER D :** Lloyd's of London / 85202 **INSURER E :** **INSURER F :**

COVERAGES **CERTIFICATE NUMBER:** 221548564 **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	X **COMMERCIAL GENERAL LIABILITY** CLAIMS-MADE X OCCUR X Contractual Liab GEN'L AGGREGATE LIMIT APPLIES PER: POLICY X PRO-JECT X LOC OTHER:			GL5268169	4/1/2024	4/1/2025	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 2,000,000 $ 1,000,000 $ 25,000 $ 2,000,000 $ 4,000,000 $ 4,000,000 $
A A	**AUTOMOBILE LIABILITY** X ANY AUTO OWNED AUTOS ONLY / SCHEDULED AUTOS X HIRED AUTOS ONLY / X NON-OWNED AUTOS ONLY			CA4489663 (AOS) CA2970071 (MA)	4/1/2024 4/1/2024	4/1/2025 4/1/2025	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ 2,000,000 $ $ $ $
B	X **UMBRELLA LIAB** X OCCUR X **EXCESS LIAB** CLAIMS-MADE DED X RETENTION $ 10,000			03127930	4/1/2024	4/1/2025	EACH OCCURRENCE AGGREGATE	$ 5,000,000 $ 5,000,000 $
C C	**WORKERS COMPENSATION AND EMPLOYERS' LIABILITY** Y / N ANYPROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? N **(Mandatory in NH)** If yes, describe under DESCRIPTION OF OPERATIONS below	N / A		WC015893685 (AOS) WC015893686 (CA)	4/1/2024 4/1/2024	4/1/2025 4/1/2025	X PER STATUTE / OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	 $ 2,000,000 $ 2,000,000 $ 2,000,000
D	Professional Liability			B0146LDUSA2404949	4/1/2024	4/1/2025	Per Claim Aggregate	$2,000,000 $2,000,000

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

Re: Comprehensive Plan Update; Kelley Klepper. The City of Port Orange is named as an Additional Insured with respects to General & Automobile Liability where required by written contract. Waiver of Subrogation applies to Workers Compensation where required by written contract & allowed by law.

CERTIFICATE HOLDER

City of Port Orange
1000 City Center Circle
Port Orange FL 32129-0000

CANCELLATION

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

AUTHORIZED REPRESENTATIVE

Gregg Bachelor

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CITY OF PORT ORANGE
NOTICE TO PROCEED

Issued By: Junos Reed, P.E. Eng & Const Mgr.
Public Works
1000 City Center Circle
Port Orange, FL 32129
Ph:(386)506-5754
jureed@port-orange.org

Issued To: **Kimley-Horn & Associates, Inc.**
Attn: Steve Romano, PE
189 S Orange Ave, Suite 1000
Orlando, FL, 32801
Ph: (321)239-5958
steve.romano@kimley-horn.com

PROJECT TITLE: **RFSQ 20-02 20-inch Force Main River Crossing**
PO NO. **001112**

This **Notice to Proceed** issued to your company is for the above referenced project and in accordance the Standard Contract for Services CA7244 dated February 9, 2021 and all terms and conditions of the agreement between the City of Port Orange and Kimley-Horn & Associates, Inc. The **effective date** of this **Notice to Proceed** is March 8, 2021 with a **Final Completion** date of October 7, 2022.

Please sign below acknowledging and agreeing to the contents of this Notice to Proceed and return a copy of this form to the Lynn Stevens, Public Works & Utilities Director via email and the original to the address below:

Project Manager: Junos Reed

All future correspondence or requests for changes to the contract must be addressed to the Director.

ISSUED BY:

Owner: City of Port Orange

This 8th day of March 2021.

By: Junos Reed
Junos Reed, P.E.

Title: Engineering & Construction Mgr.

ACCEPTANCE NOTICE:

Receipt of the foregoing Notice to Proceed is hereby acknowledged and agreed by:

Company: Kimley-Horn & Associates

This 8 day of March 2021

By: _____

Title: Associate

CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 8/21/2024

SUBJECT: (C7f) Approval of Change Order No. 2 to the EJCDC Agreement with McMahan Construction Company for ITB #22-10 Water Reclamation Facility East Master Lift Station Upgrades

DEPARTMENT: Engineering

GOAL: 2 - Infrastructure

RECOMMENDED MOTION: Move to approve Change Order No. 2 under EJCDC Agreement as it relates to ITB #22-10 WRF East Master Lift Station Upgrades with McMahan Construction Co. Inc. for time extension and authorize the Mayor and City Clerk to execute all required documents.

SUMMARY: The Engineering Department is requesting Council to approve Change Order No. 2 under EJCDC Agreement as it relates to ITB #22-10 Water Reclamation Facility (WRF) East Master Lift Station Upgrades with McMahan Construction Co. for a time extension.

On February 21, 2023, the City entered into an agreement with McMahan Construction Co, Inc. for the WRF East Master Lift Station Upgrades for $4,058,000.

On August 1, 2023, Council approved Change Order No. 1 for the purchase and installation of a steel frame to remove and reinstall the emergency standby generator at the facility in the amount of $38,250; revised agreement not to exceed $4,096,250.00. No additional time was requested with Change Order No. 1.

The Contractor has been experiencing some unexpected delays in the delivery of electrical equipment, specifically the Variable Frequency Drives (VFD) and Motor Control Centers (MCC). Additionally, there is work that needs to be completed by FPL in order for the Contractor to complete final electrical connections. Change Order No. 2 is needed to add 365 days to the final completion date, which will move the final completion date from July 11, 2024, to July 11, 2025. No additional funds are requested at this time.

PRESENTER: Junos Reed

ATTACHMENTS:

1.	McMahan Construction Co., Inc.	McMahan Construction Co., Inc. Change

	Change Order No 2 - ITB 22-10 Water Reclamation Facility East Master Lift Station Upgrades	Order No 2 - ITB 22-10 Water Reclamation Facility East Master Lift Station Upgrades.pdf
2.	McMahan Construction Co, Inc Change Order No. 1	McMahan Construction Co, Inc Change Order No. 1.pdf
3.	McMahan Construction Co., Inc. EJCDC Agreement ITB 22-10 WRF East Master Lift Station Upgrades	McMahan Construction Co., Inc. EJCDC Agreement ITB 22-10 WRF East Master Lift Station Upgrades.pdf
4.	McMahan Construction Co., Inc. Payment and Performance Bond ITB 22-10 WRF East Master Lift Station Upgrades	McMahan Construction Co., Inc. Payment and Performance Bond ITB 22-10 WRF East Master Lift Station Upgrades.pdf
5.	McMahan Construction GL AL UL 11.1.2024 WC 1.1.2025	McMahan Construction GL AL UL 11.1.2024 WC 1.1.2025.pdf
6.	NTP	NTP.pdf

Julia Wiggins	Created/Initiated - 6/26/2024
Richard Colby	Approved - 6/26/2024
Junos Reed	Approved - 7/25/2024
Steve Parnell	Approved - 7/31/2024
John McKinney	Approved - 8/1/2024
Matthew Jones	Approved - 8/7/2024
Wayne Clark	Approved - 8/9/2024
Tracee Cody	Final Approval - 8/9/2024

CHANGE ORDER NO. 2
To the EJCDC Agreement dated February 21, 2023
MCMAHAN CONSTRUCTION CO., INC., Contractor

Project: ITB 22-10 Water Reclamation Facility East Master Lift Station Upgrade

The following changes are hereby made to the Contract Documents:

CHANGE IN CONTRACT PRICE:	**CHANGE IN CONTRACT TIMES**:
Original Contract Price: $4,058,000.00	Original Contract Times: Substantial Completion: 335 days (NTP Issued July 11, 2023) Final Completion: 365 days
Net changes from previous Change Order: No. 1: $ 38,250.00	Changes in contract time from previous Change Orders: No. 1: N/A
Contract Price prior to this Change Order: $4,096,250.00	Contract Completion Date prior to this Change Order: No. 1: July 11, 2024
Net Increase (decrease) of this Change Order: No. 2 N/A	Changes in contract time requested this Change Order: No. 2 365 days
Contract Price with all approved Change Orders: $4,096,250.00	Contract Times with all approved Change Orders: Final Completion: July 11, 2025

CHANGES ORDERED:

I. GENERAL: This Change Order is necessary to cover changes in the work to be performed under the EJCDC Agreement entered into by and between the parties on February 21, 2023.

II. REQUIRED CHANGES: Change Order is necessary to provide additional time to complete project and close out all necessary documents. No goods shall be delivered, nor services commenced hereunder until this Change Order has been fully executed by all parties.

III. JUSTIFICATION: Change Order No 2 will add 365 days. This will move the Final Complete date from July 11, 2024 to July 11, 2025.

IV. PAYMENT: Payment for this Change Order shall be made in accordance with the terms of the Contract for Services subject to a limit not to exceed $4,096,250.00. All payments shall be governed by the Local Government Prompt Payment Act as set forth in Florida Statutes Section 218.70 through 218.79, as amended.

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

Acknowledgments:

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

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

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

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

RECOMMENDED BY:
RICHARD COLBY
Department Project Manager

By:_____
Richard Colby, Construction Manager

Date Signed:_____

ACCEPTED BY:
JOHN JUSTUS, JR.

By:_____
John Justus, Jr. Executive Vice President

Date Signed:_____

RECOMMENDED BY:
N/A
City's Representative

By:_____
Printed Name:_____
Title:_____

Date Signed:_____

RECOMMENDED BY:
N/A
Engineer of Record

By:_____
Printed Name:_____
Title:_____

Date Signed:_____

APPROVED BY:
CITY OF PORT ORANGE
Department Head

By:_____
Junos Reed, City Engineer

Date Signed:_____

City Manager

By:_____
Wayne Clark, City Manager

Date Signed:_____

If Council approval is required:

Affirmed:

By:_____
Donald O. Burnette, Mayor

_____
Robin L. Fenwick, MMC, City Clerk

Date Signed:_____

Date Signed:_____

CHANGE ORDER NO. 1
To the EJCDC Agreement dated February 21, 2023
McMahan Construction Co., Inc., Contractor

Project: ITB 22-10 Water Reclamation Facility East Master Lift Station Upgrades

The following changes are hereby made to the Contract Documents:

CHANGE IN CONTRACT PRICE:	**CHANGE IN CONTRACT TIMES:**
Original Contract Price: $4,058,000.00	Original Contract Times: Substantial Completion: 335 days *(NTP Issued July 11, 2023)* Final Completion: 365 days
Net changes from previous Change Order: N/A	Changes in contract time from previous Change Orders: N/A
Contract Price prior to this Change Order: $4,058,000.00	Contract Completion Date prior to this Change Order: July 11, 2024
Net Increase (decrease) of this Change Order: No. 1 $38,250.00	Changes in contract time requested this Change Order: No. 1 0 days
Contract Price with all approved Change Orders: $4,096,250.00	Contract Times with all approved Change Orders: Final Completion: July 11, 2024

CHANGES ORDERED:

I. GENERAL: This Change Order is necessary to cover changes in the work to be performed under the EJCDC Agreement entered into by and between the parties on February 21, 2023.

II. REQUIRED CHANGES: Change Order is necessary to provide additional spending authorization for the purchase an installation of a steel frame to remove and reinstall the emergency standby generator at the Water Reclamation Facility. No goods shall be delivered, nor services commenced hereunder until this Change Order has been fully executed by all parties.

III. JUSTIFICATION: Change Order No 1 is needed for the purchase and installation of a steel frame to be installed on an existing concrete pad. Work to include the removal of the existing non-functional standby generator and install of the new generator.

IV. PAYMENT: Payment for this Change Order shall be made in accordance with the terms of the EJCDC Agreement subject to a limit not to exceed $38,250.00, revised contract amount not to exceed $4,096,250.00. All payments shall be governed by the Local Government Prompt Payment Act as set forth in Florida Statutes Section 218.70 through 218.79, as amended.

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

Acknowledgments:

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

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

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

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

RECOMMENDED BY:
JUNOS REED
Department Project Manager

By:_____
Junos Reed, City Engineer

Date Signed: 7/19/2023

ACCEPTED BY:
JOHN JUSTUS, JR.
McMahan Construction Co., Inc.

By:_____
John Justus, Jr., Executive Vice President

Date Signed: 7/19/2023

RECOMMENDED BY:
N/A
City's Representative

By:_____
Printed Name:_____
Title:_____

Date Signed:_____

RECOMMENDED BY:
N/A
Engineer of Record

By:_____
Printed Name:_____
Title:_____

Date Signed:_____

APPROVED BY:
CITY OF PORT ORANGE
Department Head

By: _____
Junos Reed, City Engineer

Date Signed: 7/19/2023

City Manager

By: _____
Wayne Clark, City Manager

Date Signed: _____

If Council approval is required:

By: _____
Donald O. Burnette, Mayor

Date Signed: 8/1/2023

Affirmed:

_____
Robin L. Fenwick, MMC, City Clerk

Date Signed: 8/1/2023

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
McMahan Construction Co., Inc.
123 East Indiana Avenue, DeLand, Florida 32724 ("Contractor").

The Effective Date of this Agreement shall be _____ (If no date is specified then the Effective Date shall be the date on which the Agreement is signed by the last of the two parties.)

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:

1.02 *(1) Installation and operation of a temporary bypass pumping system; (2) Remove existing pumps and concrete pedestals and replace with new screw centrifugal pumps with new concrete pump pedestals; (3) Remove and replace the existing variable frequency drives (VFD's) and pump controls; (4) Remove existing plug valves and replace with new knife gate valves (5) Installation of knife gate isolation valves; (6) Remove and replace existing clock valves; (7) Removal of existing pipe and fittings; (8) furnishing and installing all required pipe, fittings, couplings, and adapters; (9) Modifications to the existing wet well; and (10) Leveling the well floor.*

ARTICLE 2 – THE PROJECT

2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

ITB 22-10 Water Reclamation Facility ("WRF") East Master Lift Station Upgrades

ARTICLE 3 – ENGINEER

3.01 *The part of the Project that pertains to the Work has been designed by the Project Engineer, Nicole E. McConnell, P.E. ("Engineer") and Stephen E. Bailey, P.E. ("Engineer") ") of Kimley-Horn and Associates, Inc., and shall act as Owner's representatives, 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 of the Essence*

A. All time limits for Substantial Completion and Final Completion as stated in the Contract Documents, particularly Paragraph 4.02 below, are of the essence of the Contract.

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B. All time limits for Milestone dates set forth in the Contract Documents are of the essence of the Contract.

4.02 *Days to Achieve Substantial Completion and Final Completion*

A. Unless as otherwise modified in a Notice to Proceed issued after the Effective Date of the Agreement or an allowable extension of time in accordance with Paragraph 12.02 of the General Conditions, the Work shall be substantially completed within 335 days after the Effective Date of the Agreement.

B. Unless as otherwise modified in a Notice to Proceed issued after the Effective Date of the Agreement or an allowable extension of time in accordance with Paragraph 12.02 of the General Conditions, the Work shall be finally completed in accordance with Paragraph 14.06 of the General Conditions within 30 days after the Effective Date of the Agreement.

C. If a Notice to Proceed is issued more than 60 days from the Effective Date of this Agreement, then the dates for Substantial Completion and the Final Completion shall be extended by the same number of days. (For example, if the Notice to Proceed is issued 63 days after the Effective Date of the Agreement, then the Substantial Completion and Final Completion dates shall be extended by 63 days.)

4.03 *Liquidated Damages*

A. Contractor and Owner agree and recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial loss that is not readily ascertainable as of the Effective Date of this Agreement if the Work is delayed and not Substantially Completed within the time period specified in Paragraph 4.02 above, plus any allowable extension of time in accordance with Paragraph 12.02 of the General Conditions. Contractor agrees and recognizes that any delay to Substantial Completion shall constitute a material breach. Accordingly, Owner and Contractor agree that as liquidated damages for delay, Contractor shall pay Owner $0.00 for each day that expires after the date the Work is required to be Substantially Completed until the Contractor achieves Substantial Completion with the Work. Contractor and Owner agree and recognize that the liquidated damages set forth herein shall not be treated as a penalty and are just damages that are proportionate to any damages that might reasonably be expected to follow from a delay to Substantial Completion.

B. Owner may withhold Contractor's final payment in order offset the liquidated damages that Contractor owes Owner. Owner may also withhold progress payments if Owner reasonably believes that Contractor's final payment will not sufficiency cover the liquidated damages that Contractor owes Owner.

ARTICLE 5 – CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to Paragraphs 5.01.A, 5.01.B, and 5.01.C below:

A. For all Work other than Unit Price Work, a lump sum of: $_____

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Any allowances specifically identified and called for in the Contract Documents are included in the above price in accordance with Paragraph 11.02 of the General Conditions.

B. For all Unit Price Work in accordance with Paragraph 11.03 of the General Conditions, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the actual quantity of that item:

UNIT PRICE WORK

Item No.	Description	Unit	Estimated Quantity	Bid Unit Price	Bid Price
	See Attachments				

Total of all Bid Prices (Unit Price Work) $4,058,000.00

The Bid Unit Prices set forth above are guaranteed prices. Although the Estimated Quantities are estimates and may increase or decrease based on determinations of Engineer, Contractor agrees and understands that the Bid Unit Prices shall remain the same irrespective of the quantities. Contractor understands that in agreeing to any Bid Unit Price it is agreeing to bear the risk associated with any material price increase or escalation. Owner agrees and understands that in agreeing to any Bid Unit Price it is agreeing to bear the risk associated with any material price decrease or reduction.

C. 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 Progress Payments*

A. Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions.

6.02 *Progress Payments; Retainage*

A. Progress payments shall be made on account of the Contract Price on the basis of Contractor's Applications for Payment during performance of the Work in accordance with Paragraph 14.02 of the General Conditions. All such payments will be measured by the schedule of values established as provided in Paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed). Progress payments will be made in an amount equal to the percentage of the Work completed in accordance with the Schedule of Values, less the aggregate of payments previously made, less the retainage, and less such amounts as Engineer may determine Owner may withhold, including, but not limited to, liquidated damages.

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

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6.03 *Final Payment*

A. Final Payment inclusive of retainage shall be made to Contractor in accordance with Paragraph 14.07 of the General Conditions.

ARTICLE 7 – INTEREST

7.01 All monies not paid in strict accordance with Florida Statute §218.735 shall bear interest as provided for therein.

ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS

8.01 In order to induce Owner to enter into this Agreement and in determining the Contract Price, Contractor makes the following representations:

A. Contractor has carefully examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.

B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.

D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities), if any, that have been identified in Paragraph SC-4.02 of the Supplementary Conditions as containing reliable "technical data," and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified in Paragraph SC-4.06 of the Supplementary Conditions as containing reliable "technical data." Contractor's receipt and study of such reports shall not relieve it of visiting the Site and becoming familiar with and satisfied with the Site conditions that may affect cost, progress, and performance of the Work.

E. Contractor has considered the information known to Contractor; 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 Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; and (3) Contractor's safety precautions and programs.

F. Based on the information and observations referred to in Paragraph 8.01.E above, Contractor does not consider that 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 Documents.

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G. 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.

H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.

I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 9 – CONTRACT DOCUMENTS

9.01 *Contents*

A. The Contract Documents consist of the following:

1. This Agreement (pages 1 to 10, inclusive).

2. Combination Payment and Performance Bond (pages 1 to 4, inclusive).

3. General Conditions (pages 1 to 69, inclusive).

4. Supplementary Conditions (pages 1 to 7, inclusive).

5. BID Specifications as listed in ITB 22-10 "Attachment 2" "East Master Lift Station Pump Design," as identified in "Section 3 - Specifications" (pages 1 to 324, not attached, on file with Junos Reed, P.E., City Engineering and Construction Manager).

6. DESIGN PLANS as listed in ITB 22-10 "Attachment 3" "East Master Lift Station Pump Upgrades," as identified in "Section 3 – "Specifications" (pages 1 to 29, not attached, on file with Junos Reed, P.E., City Engineering and Construction Manager).

7. NEW DRAWINGS as listed in Addendum No. 3 Dated November 9, 2022 of ITB 22-10 "Attachment 4" "New Drawings," (pages 1 to 9, not attached, on file with Junos Reed, P.E., City Engineering and Construction Manager)

8. Addendum No. 1 (page 1, inclusive).

9. Addendum No. 2 (pages 1 – 5, inclusive).

10. Addendum No. 3 (pages 1 – 4, inclusive).

11. Exhibits to this Agreement (enumerated as follows):

    a. Exhibit No. 1 Contractor's Bid Schedule of Unit Prices (page __, inclusive).

    b. Documentation submitted by Contractor prior to Notice of Award (N/A).

        1. Affidavit Regarding Workers' Compensation (page 1, inclusive).

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2. Leased Employee Affidavit Exhibit (page 1, inclusive).

c. Exhibit No. 2 Contractor's Proposal (page 1, inclusive).

d. Composite Exhibit No. 3 City's Invitation to Bid Request No. 22-10 (pages 1 to 149, inclusive).

12. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:

a. Notice to Proceed (pages _____ to _____, inclusive).

b. Work Change Directives.

c. Change Orders.

B. The documents listed in Paragraph 9.01.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 9.

D. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions.

ARTICLE 10 – MISCELLANEOUS

10.01 *Terms*

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

10.02 *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.

10.03 *Successors and Assigns*

A. 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.

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10.04 *Severability*

A. Any provision 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.

10.05 *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 10.05:

1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing 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.

B. Contractor certifies that in the event a Lien is recorded on the Project by any person or entity providing labor, services, or materials with respect to any portion of the Work, it will immediately transfer such lien to its payment bond or take other appropriate action to immediately remove the encumbrance.

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10.06 *No-Damage-for-Delay*

A. 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 considered this no-damage-for-delay provision and understands that it is not entitled to any damages whatsoever for a delay to its Work.

10.07 *No Intended Third-Party Beneficiaries*

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

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IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement. Counterparts have been delivered to Owner and Contractor. All portions of the Contract Documents have been signed or have been identified by Owner and Contractor or on their behalf.

CITY OF PORT ORANGE
Owner

_____

By: Donald O. Burnette

Title: Mayor

Date:_____

_____

Attest: Robin L. Fenwick, MMC

Title: City Clerk

Address for giving notices:
1000 City Center Circle
Port Orange, Florida 32129
(386) 506-5500

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McMahan Construction Co., Inc.
Contractor

By: Dean Kellogg

Title: President

Date:_____

Attest: _____

Title: _____

Address for giving notices:

123 East New York Avenue

DeLand, Florida 32724

Telephone: (386) 734-0223
E-Mail: jjustus@mcmahanfl.com

License No.: CGC010240

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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:	McMahan Construction Co., Inc.
Principal Business Address:	123 East Indiana Avenue DeLand, Florida 32724
Contact Person:	Dean Kellogg, President
Phone Number:	(386) 734-1071

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: $4,058,000.00 **City Case/Project No. ITB 22-10 Water Reclamation Facility East Master Lift Station Upgrades**

Description of Work: ITB 22-10 Water Reclamation Facility East Master Lift Station Upgrades
Project Location: Water Reclamation Facility at 817 Oak Street, Port Orange, Volusia County, Florida

Legal Description: Portions of: 817 Oak Street, Port Orange, Volusia County, Florida
See Exhibit "A"

Front Page

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

City of Port Orange Water Reclamation Facility
817 Oak Street, Port Orange, FL 32127

Full Parcel ID:
41-16-33-04-01-0341

Short Parcel ID:
6341-04-01-0341

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

EXHIBIT "A"

McMahan Construction Co., Inc.

ITB 22-10 Water Reclamation Facility East Master Lift Station Upgrades

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, **MCMAHAN CONSTRUCTION CO., 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 **FOUR MILLION FIFTY-EIGHT THOUSAND AND 00/100 DOLLARS** (**$4,058,000.00**), for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

THE CONDITION OF THIS BOND is that if Principal:

1. Performs the terms of that certain EJCDC Agreement having an effective date of _____, entered into by and between the Principal and the City, for Water Reclamation Facility East Master Lift Station Upgrades, 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 shall be deemed an original, this _____, day of _____, 2023.

Attest:

MCMAHAN CONSTRUCTION CO., INC.
(Name of Principal)

_____
(As to Corporate Principal) Secretary

By:_____
Dean Kellogg, 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.

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 12/29/2023

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	CONTACT NAME: Jamie Hanrahan	
Brown & Brown of Florida, Inc. P.O. Box 2412 Daytona Beach FL 32115-2415	PHONE (A/C, No, Ext): (386) 239-8882	FAX (A/C, No): (386) 323-9198
	E-MAIL ADDRESS: Jamie.Hanrahan@bbrown.com	

INSURED	INSURER(S) AFFORDING COVERAGE	NAIC #
MCMAHAN CONSTRUCTION CO INC P O BOX 223 DELAND FL 32721-0223	INSURER A : Berkley Assurance Company	39462
	INSURER B : Auto Owners Insurance Company	18988
	INSURER C : Travelers Excess and Surplus Lines Company	29696
	INSURER D : XL Specialty Insurance Company	37885
	INSURER E : Westchester Surplus Lines Ins	10172
	INSURER F : American Interstate Insurance Company	31895

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	[X] COMMERCIAL GENERAL LIABILITY [ ] CLAIMS-MADE [X] OCCUR [X] CONTRACTUAL LIABILITY GEN'L AGGREGATE LIMIT APPLIES PER: [ ] POLICY [X] PRO-JECT [ ] LOC [ ] OTHER:			VUMA0289381	11/01/2023	11/01/2024	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG 	$ 1,000,000 $ 100,000 $ 5,000 $ 1,000,000 $ 2,000,000 $ 2,000,000 $
B	AUTOMOBILE LIABILITY [X] ANY AUTO [ ] OWNED AUTOS ONLY [ ] SCHEDULED AUTOS [ ] HIRED AUTOS ONLY [ ] NON-OWNED AUTOS ONLY			50-921-676-00	11/01/2023	11/01/2024	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident) PIP	$ 1,000,000 $ $ $ $ 10,000
C	[X] UMBRELLA LIAB [X] OCCUR [X] EXCESS LIAB [ ] CLAIMS-MADE [ ] DED [X] RETENTION $ 10,000			CUP-7S407360-23NF	11/01/2023	11/01/2024	EACH OCCURRENCE AGGREGATE COMPLETED OPS AG	$ 4,000,000 $ 4,000,000 $ 4,000,000
F	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y / N [ ] (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N / A		AVWCFL3233612024	01/01/2024	01/01/2025	[X] PER STATUTE [ ] OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	 $ 1,000,000 $ 1,000,000 $ 1,000,000
D	EQUIPMENT FLOATER INSTALLATION/ BUILDERS RISK			UM00031576MA23A	11/01/2023	11/01/2024	RENTED EQUIPMENT INSTALLATION	500,000 2,000,000

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

SEE NOTES FOR POLICY COVERAGE FORMS
PROPERTY OWNERS AND CITY OF PORT ORANGE ARE ADDITIONAL INSUREDS AND A WAIVER OF SUBROGATION APPLIES, AS REQUIRED BY WRITTEN CONTRACT AND IF APPLICABLE, PER THE FORMS LISTED ON THE ATTACHED ADDITIONAL REMARKS SCHEDULE.

CERTIFICATE HOLDER

CITY OF PORT ORANGE
1000 CITY CENTER CIRCLE
PORT ORANGE FL 32129-4144

CANCELLATION

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

AUTHORIZED REPRESENTATIVE

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AGENCY CUSTOMER ID: _____

LOC #: _____

ADDITIONAL REMARKS SCHEDULE

Page ____ of ____

AGENCY	NAMED INSURED
Brown & Brown of Florida, Inc.	MCMAHAN CONSTRUCTION CO 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

CURRENT BLANKET POLICY FORMS

GENERAL LIABILITY
1.) CG2010 1219 - ADDITIONAL INSURED OWNERS, LESSEES OR CONTRACTORS(ADDITIONAL INSURED-ONGOING OPERATIONS)
2.) CG2037 1219 - ADDITIONAL INSURED- OWNERS, LESSEES OR CONTRACTORS-COMPLETED OPERATIONS
3.) CG2032 0413 - ADDITIONAL INSURED- ENGINEERS, ARCHITECTS OR SURVEYORS NOT ENGAGED BY THE NAMED INSURED
4.) CG2034 0413 - ADDITIONAL INSURED -LESSOR OF LEASED EQUIPMENT - AUTOMATIC STATUS WHEN REQUIRED IN A LEASE AGREEMENT
5.) VCAS2035 1110 - (PRIMARY & NON-CONTRIBUTORY)
6.) CG2404 1219 - (WAIVER OF SUBROGATION)
7.) VCAS 99 90 04 18 (NOTICE OF CANCELLATION TO OTHERS)

AUTO LIABILITY
1.) 58504 0115 - (ADDITIONAL INSURED)
2.) 58583 0115 - (WAIVER OF SUBROGATION)

UMBRELLA
1.) EU0001 0716 - EXCESS FOLLOW-FORM AND UMBRELLA LIABILITY INSURANCE (ADDITIONAL INSURED, PRIMARY & NON-CONTRIBUTORY, WAIVER OF SUBROGATION)
2.) IL T4 00 0519 - DESIGNATED PERSON OR ORGANIZATION - CANCELLATION OR NON RENEWAL
THE UMBRELLA APPLIES IN EXCESS OF THE GENERAL LIABILITY, AUTO LIABILITY, & EMPLOYERS LIABILITY.

EQUIPMENT
1.) CO 1072 04 02 - (BLANKET LOSS PAYEE)

ADDITIONAL POLICIES:

POLLUTION LIABILITY
POLICY # G70918687004
INSURER E-WESTCHESTER SURPLUS LINES INS-
EFF 1/1/22-1/1/24
LIMIT: $2,000,000 OCCURRENCE
$2,000,000 AGGREGATE

1.) ENV 3250 12 18 - ADDITIONAL INSURED ENDORSEMENT - ONGOING WORK OR OPERATIONS (BLANKET)
2.) ENV 3251 12 18 - ADDITIONAL INSURED ENDORSEMENT - PRODUCTS-COMPLETED OPERATIONS HAZARD (BLANKET)
3.) ENV 3253 12 18 - PRIMARY AND NON-CONTRIBUTORY - OTHER INSURANCE (BLANKET)
4.) ENV 3143 03 05 - WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

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CITY OF PORT ORANGE
NOTICE TO PROCEED

Issued By: **Junos Reed, P.E.**
City Engineer
1395 Dunlawton, Ave
Port Orange, FL 32129
Ph:(386)506-5754
jureed@port-orange.org

Issued To: **McMahan Construction Co, Inc.**
123 E. Indiana Ave
DeLand, Fl 32724

PROJECT TITLE: **ITB #22-10 East Master Lift Station Upgrades**
PO NO. **PO-002852**

This **Notice to Proceed** issued to your company is for the above referenced project and in accordance with the **EJCDC Agreement #CA7900** and all terms and conditions of the agreement between the City of Port Orange and McMahan Construction Co., Inc. The **effective date** of this **Notice to Proceed** is **July 11, 2023,** with a **Final Completion** by **July 11, 2024.**

.

Please sign below acknowledging and agreeing to the contents of this Notice to Proceed and return a copy of this form to the Junos Reed, City Engineer via email:

Project Manager: **Junos Reed**

All future correspondence or requests for changes to the contract must be addressed to the Project Manager.

ISSUED BY:

Owner: City of Port Orange

This 11th day of July 2023.

By: Junos Reed
Junos Reed

Title: City Engineer

ACCEPTANCE NOTICE:

Receipt of the foregoing Notice to Proceed is hereby acknowledged and agreed by:

Company: **McMahan Construction Co., Inc.**

This 11TH day of JULY, 2023

By: John Gustus Jr.
JOHN GUSTUS JR.

Title: VICE PRESIDENT

CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 8/21/2024

SUBJECT: (C7g) Ratification and approval of Volusia County Cooperative ITB #24-B-61LS for bulk fuel purchases from Sunoco LLC, Palmdale Oil Company, and Greens Energy Services, Inc.

DEPARTMENT: Public Works

GOAL: 5 - Fiscal Sustainability

RECOMMENDED MOTION: Move to ratify and authorize the purchase of bulk fuel from Sunoco, LLC, Palmdale Oil Company and Greens Energy pursuant to the Volusia County Cooperative ITB #24-B-61LS Contract for an amount not to exceed appropriated budget; and ratify the issuance of Emergency PO-2024002 to Sunoco, LLC in the amount of $75,000.

SUMMARY: Since 2014, the City has participated in a cooperative bid with a consortium overseen by Volusia County for bulk fuel purchases to take advantage of the joint purchasing power, allowing for the best possible pricing for the city.

In February 2024, Volusia County advertised bulk fuel purchases on behalf of consortium members including Volusia County, Volusia School Board, Votran, City of Daytona Beach, City of South Daytona, City of New Smyrna Beach, City of Deland, City of Edgewater, City of Ormond Beach and Flagler County ("Consortium").

In March, the Volusia County Council approved the award of bids for bulk fuel to multiple vendors, and contracts were awarded effective May 8, 2024. Master Agreements were awarded to the lowest three bidders for large loads, and the lowest three bidders for small loads. Sunoco, LLC and Palmdale Oil, number one and two bidders for large loads, and Greens Energy Services Inc., number one bidder for small loads are the contracts city staff is recommending for use. The initial contract term is three years with two one-year renewal options available with mutual consent.

Staff is requesting ratification by the City Council of the award by Volusia County on behalf of the Consortium, to Sunoco, LLC and Palmdale Oil, and Greens Energy Services, Inc. Services, and to approve the purchasing of bulk fuel from Sunoco, LLC, Palmdale Oil Company and Greens Energy Services, Inc., in accordance with the Volusia County ITB #24-B-61LS solicitation and the Master Contract.

The Volusia County ITB #24-B-61LS solicitation and the Master Contract shall constitute the contract documents. No additional contract documentation is required for purchases under this award.

In addition, staff requests ratification of the issuance of Emergency PO-2024002 issued for $75,000 to Sunoco, LLC, in accordance with Volusia County ITB #24-B-61LS solicitation and the Master Contract, ensuring sufficient fuel supply is on hand for the Hurricane season.

The cost associated with bulk fuel purchases is funded by the appropriated budget from the General Fund for Nondepartmental - Other General Government for Inventory Fuel, 001-0000-141-14101.

PRESENTER: Tom DiEulio

ATTACHMENTS:

1.	Master Agreement SUNOCO, LLC _ 5_13_2024 _ VS13254	Master Agreement SUNOCO, LLC _ 5_13_2024 _ VS13254.pdf
2.	Master Agreement PALMDALE OIL COMPANY INC. _ 5_16_2024 _ VS8766	Master Agreement PALMDALE OIL COMPANY INC. _ 5_16_2024 _ VS8766.pdf
3.	Master Agreement GREENS ENERGY SERVICES INC 6_17_2024 _ VS13227	Master Agreement GREENS ENERGY SERVICES INC 6_17_2024 _ VS13227.pdf
4.	ITB-24-B-61LS-2024-05-15-09-15-43	ITB-24-B-61LS-2024-05-15-09-15-43.docx
5.	Attachment A Required_Types_and_Limits_of_Insurance	Attachment A Required_Types_and_Limits_of_Insurance.pdf
6.	Attachment_B-_Fuel_Site_Information-_Revision_2	Attachment_B-_Fuel_Site_Information-_Revision_2.pdf
7.	24-B-61LS Bid Tabulation	24-B-61LS Bid Tabulation.pdf
8.	Volusia Cty Agenda 11721 Approval	Volusia Cty Agenda 11721 Approval.pdf
9.	COI for Sunoco, LLC	County of Volusia Sunoco insurance.pdf
10.	COI for Palmdale Oil Company	COI-9.2024 Palmdale.pdf
11.	COI for Greens Energy Services Inc	CO for Greens Energy Services Inc.pdf

Denyce Frey	Created/Initiated - 6/20/2024
Tom DiEulio	Approved - 6/20/2024
Jill Poolman	Approved - 6/21/2024
John McKinney	Approved - 6/26/2024
Matthew Jones	Approved - 8/7/2024
Wayne Clark	Approved - 8/8/2024
Tracee Cody	Final Approval - 8/9/2024

Master Agreement

NO. 860 12553 - 2

TERM: 2024-05-08 to 2027-05-08

Date Issued: 05/13/2024

Vendor contact:	**County contact:**	**Bill To:**
Name: Jessica Gonzalez	**Name:** BRIAN JONES	**County of Volusia**
Phone: 2603247926 **Ext.:**	**Phone:** 386-254-1594 **Ext.:** 11832	AS REQUIRED BY USING DEPARTMENT
E-mail: bidresearch@sunoco.com	**E-mail:** BSJones@volusia.org	VOLUSIA COUNTY, FL 32720

Vendor Name:	**Ship To:**
Vendor No. VS13254	AS REQUIRED BY USING DEPARTMENT
Sunoco, LLC Gladieux Energy 3801 West Chester Pike Newtown Square, PA 19073	VOLUSIA COUNTY, FL 32720

Solicitation Number:	24-B-61LS	**Purchasing**	LISA SMITH
Award Date:	2024-04-16	**Phone:**	386-822-5788 **Ext:** 15788
Award Authorization:	COUNCIL	**E-mail:**	mlsmith@volusia.org
		Payment Terms:	Net 45 Days, FOB Dest, Freight allowed

Document Description:
Bulk Fuel

Line Item	Commodity Code	Unit	Description	Unit Price or Contract Amount
1	40500	EA	Per attached Pricing Sheet in accordance with 24-B-61LS	0.000000

Pam Wilsky

Pam Wilsky, CPPO, CPPB
Purchasing & Contracts Director

County of Volusia
Sales Tax Exemption Number
85-8012622393C-9

Remainder of page is blank

A delivery order is required for the release of items / services from the referenced Master Agreement. If a solicitation number is referenced then the terms and conditions of said solicitation become part of the Master Agreement. Deviation from prices stated is not permitted without a signed corrected Change Order.

If vendor terms and conditions conflict with County of Volusia Terms and Conditions, the County's Terms and Conditions prevail. See reverse side for terms and conditions.

Purchase Order (PO) or Master Agreement (MA) Terms and Conditions

Providing any good or service constitutes acceptance of this entire PO or MA without exception. In the event this document is issued based on a solicitation or quote, the terms and conditions of the solicitation or quote prevail.

Acceptance. Products/Services purchased as result of this PO or MA may be tested for compliance with specifications. Items delivered not in conformance with the specifications may be rejected and returned at the Provider's expense. Those items and items not delivered by the delivery date specified in the accepted offer and/or PO or MA may be purchased on the open market.

Cancellation of Order. A request by either party to the PO to cancel the order at no cost.

Delivery. Title and risk of loss shall pass when items have been received, inspected, and accepted by County of Volusia ("County"). All associated shipping, insurance, and other related costs shall be borne by Provider.

Discontinued. Provider shall give County 30 (thirty) days advance notice of a discontinued item(s) so that County can purchase additional quantities of discontinued item(s). County must give written approval of replacement(s) if they exceed previous price or fail to meet quality, form, fit, or function of the discontinued item. Time is of the essence regarding Performance of Services and this PO or MA can be terminated by the County for convenience, non-appropriation of funds, or non-performance.

Disputes. If such dispute arises under this PO or MA and is not resolved informally by the parties within five (5) business days, the party bringing a claim ("Disputing Party") shall deliver to the first level representative of the other party a written statement ("Dispute Notice") describing the dispute. If the respective representatives cannot resolve the dispute within ten (10) days, the dispute shall be escalated through two higher levels of management. If the dispute has not been resolved within 25 (twenty- five) calendar days after delivery of the Disputing Party's notice, either party may give written notice to the other party declaring the resolution process terminated and pursue other legal recourse or initiate formal non-binding mediation before a single mediator, which shall be completed within 30 (thirty) days of initiation, in accordance with rules of practice and procedure adopted by the Supreme Court of Florida for court-ordered mediation, Rule 1.700, et seq., of the Florida Rules of Civil Procedure, and Chapter 44, Florida Statutes. If the dispute remains unresolved after conducting such mediation, then either party may proceed to finalize such termination remedies and commence litigation in a court of competent jurisdiction.

E-Verify. By providing any good or service to the County or accepting payment for same, Provider warrants and certifies it has registered with and uses the U.S. Department of Homeland Security's E-Verify system to verify the work authorization status of all new employees. Provider is subject to and agrees to abide by Sections 446.09 and 446.095, Fla. Stat. Provider shall not enter into a contract with a subcontractor without prior approval from the County; Provider will be required to comply with the provisions of Section 446.095, Fla. Stat.

Compliance with FEMA 2 CFR 200.318-326 and Appendix II Contract Provisions. This Agreement and the products/services provided may be utilized in the event of declared State/Federal Emergency and Contractors shall be prepared to comply with the requirements of the FEMA Super Circular CFR 200.318-326 and Appendix II Contract Provisions as amended. These documents can be found on the Internet at: https://www.gpo.gov/fdsys/granule/CFR-2014-title2-vol1/CFR-2014-title2-vol1-sec200-318

Governing Law/Jurisdiction/Venue. This PO or MA shall be governed by the laws of the State of Florida and venue for any litigation arising from this PO or MA shall be in the County of Volusia, Florida, and any trial shall be non-jury. Provider shall comply with all applicable laws and regulations.

Insurance. For goods and services delivered or performed by Provider on County premises, Provider certifies it maintains comprehensive general liability insurance and auto insurance in the amounts identified in the solicitation and/or contract and any amendments thereto pertaining to this PO or MA, or from an A.M. Best "A -" or better rated insurance firm authorized by the State of Florida Insurance Commissioner. The County reserves the right to require the "County of Volusia" be named as additional insured for projects when deemed necessary. For services performed off County premises and goods delivered by third party carriers, the Provider shall use such carriers that maintain such insurance coverage as set forth above.

Intellectual Property. Provider agrees to protect, defend, indemnify, and save the County, its agents, officials, including elected officials, and employees of the County harmless from and against any and all claims, demands, actions, and causes of action which may arise asserting that a copyright, trademark, trade secret, or patent ("Intellectual Property"), as provided under this PO or MA, infringes or misappropriates any third party's Intellectual Property. If Provider must pay a third party any license, royalty, or other such usage fee in order to deliver the item(s) under this PO or MA, such third party and usage fee must be specified in the Provider's offer to sell to the County.

Indemnification. The Contractor shall indemnify, defend and hold harmless the County and its employees, officers, elected and appointed officials, agents, attorneys, representatives, volunteers, divisions, departments, districts, authorities, and associated entities from and against all claims, damages, losses, and expenses, including, but not limited to attorney's fees, arising out of or resulting from the performance of this Agreement to the extent that any such claim, damage, loss and expense is caused by any negligent act or omission of the Contractor, anyone directly or indirectly employed by Contractor.

Modification & Assignment. County may unilaterally change, at no additional cost, the quantity and receiving point within the County for items not yet shipped. All other items must be mutually agreed upon in writing. County is not required to pay for defective items, back-orders, late deliveries, those quantities exceeding the PO or MA quantity, or items shipped at a higher price than stated on the PO or MA. Neither this PO or MA nor any interest herein shall be assigned, transferred, or encumbered by Provider except as authorized in writing by the County.

Notices. All notices given by one party to the other party under this PO or MA shall be delivered to the receiving party's address set forth on this PO either by hand, qualified courier, or e-mail and shall be deemed received the day after it is transmitted. For the County, it shall be addressed to the Purchasing and Contracts Department, 123 West Indiana Avenue, 3rd Floor, DeLand, Florida, 32720 or purchasing@volusia.org.

No Waiver. Except as expressly set forth herein, no failure or delay on the part of County in exercising any right, power, or remedy hereunder shall operate as or be deemed a waiver thereof, nor shall any single or partial exercise of any right, power, or remedy preclude any other or further exercise thereof, or the exercise of any other right, power, or remedy.

Order of Precedence. In the event of conflict between this PO or a Master Agreement (MA), the originating Volusia County contract and amendments thereto shall be controlling. This control shall pertain to all specifications and scopes of work included in the originating Volusia County contract and any amendments thereto.

Payment. Except for construction services, which shall be paid pursuant to the Florida Prompt Payment Act, County shall pay Provider within 45 (forty-five) days after receipt of an accurate and undisputed invoice, unless the County accepts a prompt payment discount from Provider and the goods or services are not defective. Invoice, packing slip, delivery receipt, order acknowledgement, and correspondence shall clearly indicate the PO or MA number. Any additional or different terms and conditions on Provider's documents shall be considered null and void. The County may deduct amounts it is due from Provider's payment or not pay disputed invoices until such dispute is resolved. Nothing in this PO or MA shall create any obligation on the part of the County to pay directly to any subcontractor of Provider any monies due to such subcontractor or claims of such subcontractor for amounts owed by Provider to subcontractor for goods or services provided under this PO or MA.

Sovereign Immunity. The County 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 the Agreement, Master Agreement, and/ or this Purchase Order to the contrary, nothing in any such documents shall be deemed as a waiver of immunity or the limitations of liability of the County beyond any statutory limited waiver of immunity or limits of liability which may have been or may be adopted by the Florida Legislature, and the cap on the amount and liability of the County for damages regardless of the number or nature of claims in tort, equity, or contract shall not exceed the dollar amount set by the legislature for tort. Nothing in the Agreement, Master Agreement, or this Purchase Order shall inure to the benefit of any third party for the purpose of allowing any claim against the County, which would otherwise be barred under the doctrine of sovereign immunity or by operation of law.

Taxes. County is exempt from Manufacturers' Federal Excise Tax (Exemption# 49-6000-885) and Florida sales tax (Exemption# 85-8012622393C-9). Certificates are available at www.volusia.org/purchasing. After accessing the foregoing website, select, "Doing Business with Volusia County" and "Consumer Certificate of Tax Exemption" from the available menu screens to see a copy of the certificates.

Termination for Convenience. The County may cancel the PO or MA in whole or part when it is in the best interest of the County with thirty (30) days notice.

UCC. In addition to any rights or remedies contained in this P.O., each party shall have rights, duties, and remedies available through the Uniform Commercial Code (UCC).

Warranty. Provider warrants that all Work or Services performed under this PO or MA shall be performed in a good and competent workmanlike manner to the satisfaction of the County, and materials shall be of good quality (unless otherwise stated on PO or MA), and free from defects and pursuant to specifications and requirements of the contract related to this PO or MA.

Volusia_References.pdf

PRICE TABLES

PRICING SHEET- OPIS DAILY LOW

Bidders shall submit pricing as a markup over OPIS Daily low as detailed in Section 4.3.A . Bidder(s) shall complete all fields.

Line Item	Fuel Type	Unit of Measure	Markup over OPIS daily low
1	Ultra Low Sulfur Diesel +/= 7500 gallons	GAL	$0.0579
2	Ultra Low Sulfur Diesel less than 7500 gallons	GAL	$0.50
3	E-10 Fuel +/= to 8000 gallons	GAL	$0.0501
4	E-10 Fuel less than 8000 gallons	GAL	$0.50
5	Gross No.2 Red-Dyed Fuel (Off Road) +/= 7500 gallons	GAL	$0.0579
6	Gross No.2 Red-Dyed Fuel (Off Road) less than 7500 gallons	GAL	$0.50

PRICING SHEET- OPIS DAILY AVERAGE

Bidders shall submit pricing as a markup over OPIS Daily average as detailed in Section 4.3.A . Bidder(s) shall complete all fields.

Line Item	Fuel Type	Unit of Measure	Markup over OPIS daily average
1	Ultra Low Sulfur Diesel +/= 7500 gallons	GAL	-$0.0037
2	Ultra Low Sulfur Diesel less than 7500 gallons	GAL	$0.50

Line Item	Fuel Type	Unit of Measure	Markup over OPIS daily average
3	E-10 Fuel +/= to 8000 gallons	GAL	-$0.0032
4	E-10 Fuel less than 8000 gallons	GAL	$0.50
5	Gross No.2 Red-Dyed Fuel (Off Road) +/= 7500 gallons	GAL	-$0.0037
6	Gross No.2 Red-Dyed Fuel (Off Road) less than 7500 gallons	GAL	$0.50

PRICING SHEET - SPLIT LOADS

Bidder(s) shall enter any additional fee for split loads. Bidder(s) shall enter zero dollars ($0) if no additional fee applies.

Line Item	Description	Quantity	Unit of Measure	Unit Cost	Total
1	Additional Fee for Split Loads (Quantity is an estimate only)	25	EA	$50.00	$1,250.00
TOTAL					**$1,250.00**

PRICING SHEET- ABOVE GROUND TANKS

Bidder(s) shall enter any additional fee for above ground tanks. Bidder(s) shall enter zero dollars ($0) if no additional fee applies.

Line Item	Description	Quantity	Unit of Measure	Unit Cost	Total
1	Additional fee for above ground tanks	1	EA	$55.00	$55.00
TOTAL					**$55.00**

PRICING SHEET- TANK WAGON

Bidder(s) shall enter any additional drop charge for tank wagon delivery. Bidder(s) shall enter zero dollars ($0) if no additional fee applies.

Line Item	Description	Quantity	Unit of Measure	Unit Cost	Total
1	Additional Drop Charge for tank wagon delivery	1	EA	$0.00	$0.00
TOTAL					**$0.00**

Master Agreement

NO. 860 12552 - 1

TERM: 2024-05-08 to 2027-05-08

Date Issued: 05/16/2024

Vendor contact:	**County contact:**	**Bill To:**
Name: Joe Culver	**Name:** BRIAN JONES	**County of Volusia**
Phone: 407-859-7281 **Ext.:** 801	**Phone:** 386-254-1594 **Ext.:** 11832	AS REQUIRED BY USING DEPARTMENT
E-mail: jculver@palmdaleoil.com	**E-mail:** BSJones@volusia.org	VOLUSIA COUNTY, FL 32720

Vendor Name:	**Vendor No.** VS8766	**Ship To:**
Palmdale Oil Company, Inc. 2153 Rayburn Street Orlando, FL 32824		AS REQUIRED BY USING DEPARTMENT VOLUSIA COUNTY, FL 32720

Solicitation Number:	24-B-61LS	**Purchasing**	LISA SMITH
Award Date:	2024-04-16	**Phone:**	386-822-5788 **Ext:** 15788
Award Authorization:	COUNCIL	**E-mail:**	mlsmith@volusia.org
		Payment Terms:	Net 45 Days, FOB Dest, Freight allowed

Document Description:
Bulk Fuel

Line Item	Commodity Code	Unit	Description	Unit Price or Contract Amount
1	40500	EA	per attached price sheet in accordance with 24-B-61LS.	0.000000

Pam Wilsky

Pam Wilsky, CPPO, CPPB
Purchasing & Contracts Director

County of Volusia
Sales Tax Exemption Number
85-8012622393C-9

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A delivery order is required for the release of items / services from the referenced Master Agreement. If a solicitation number is referenced then the terms and conditions of said solicitation become part of the Master Agreement. Deviation from prices stated is not permitted without a signed corrected Change Order.

If vendor terms and conditions conflict with County of Volusia Terms and Conditions, the County's Terms and Conditions prevail. See reverse side for terms and conditions.

Purchase Order (PO) or Master Agreement (MA) Terms and Conditions

Providing any good or service constitutes acceptance of this entire PO or MA without exception. In the event this document is issued based on a solicitation or quote, the terms and conditions of the solicitation or quote prevail.

Acceptance. Products/Services purchased as result of this PO or MA may be tested for compliance with specifications. Items delivered not in conformance with the specifications may be rejected and returned at the Provider's expense. Those items and items not delivered by the delivery date specified in the accepted offer and/or PO or MA may be purchased on the open market.

Cancellation of Order. A request by either party to the PO to cancel the order at no cost.

Delivery. Title and risk of loss shall pass when items have been received, inspected, and accepted by County of Volusia ("County"). All associated shipping, insurance, and other related costs shall be borne by Provider.

Discontinued. Provider shall give County 30 (thirty) days advance notice of a discontinued item(s) so that County can purchase additional quantities of discontinued item(s). County must give written approval of replacement(s) if they exceed previous price or fail to meet quality, form, fit, or function of the discontinued item. Time is of the essence regarding Performance of Services and this PO or MA can be terminated by the County for convenience, non-appropriation of funds, or non-performance.

Disputes. If such dispute arises under this PO or MA and is not resolved informally by the parties within five (5) business days, the party bringing a claim ("Disputing Party") shall deliver to the first level representative of the other party a written statement ("Dispute Notice") describing the dispute. If the respective representatives cannot resolve the dispute within ten (10) days, the dispute shall be escalated through two higher levels of management. If the dispute has not been resolved within 25 (twenty- five) calendar days after delivery of the Disputing Party's notice, either party may give written notice to the other party declaring the resolution process terminated and pursue other legal recourse or initiate formal non-binding mediation before a single mediator, which shall be completed within 30 (thirty) days of initiation, in accordance with rules of practice and procedure adopted by the Supreme Court of Florida for court-ordered mediation, Rule 1.700, et seq., of the Florida Rules of Civil Procedure, and Chapter 44, Florida Statutes. If the dispute remains unresolved after conducting such mediation, then either party may proceed to finalize such termination remedies and commence litigation in a court of competent jurisdiction.

E-Verify. By providing any good or service to the County or accepting payment for same, Provider warrants and certifies it has registered with and uses the U.S. Department of Homeland Security's E-Verify system to verify the work authorization status of all new employees. Provider is subject to and agrees to abide by Sections 446.09 and 446.095, Fla. Stat. Provider shall not enter into a contract with a subcontractor without prior approval from the County; Provider will be required to comply with the provisions of Section 446.095, Fla. Stat.

Compliance with FEMA 2 CFR 200.318-326 and Appendix II Contract Provisions. This Agreement and the products/services provided may be utilized in the event of declared State/Federal Emergency and Contractors shall be prepared to comply with the requirements of the FEMA Super Circular CFR 200.318-326 and Appendix II Contract Provisions as amended. These documents can be found on the Internet at: https://www.gpo.gov/fdsys/granule/CFR-2014-title2-vol1/CFR-2014-title2-vol1-sec200-318

Governing Law/Jurisdiction/Venue. This PO or MA shall be governed by the laws of the State of Florida and venue for any litigation arising from this PO or MA shall be in the County of Volusia, Florida, and any trial shall be non-jury. Provider shall comply with all applicable laws and regulations.

Insurance. For goods and services delivered or performed by Provider on County premises, Provider certifies it maintains comprehensive general liability insurance and auto insurance in the amounts identified in the solicitation and/or contract and any amendments thereto pertaining to this PO or MA, or from an A.M. Best "A -" or better rated insurance firm authorized by the State of Florida Insurance Commissioner. The County reserves the right to require the "County of Volusia" be named as additional insured for projects when deemed necessary. For services performed off County premises and goods delivered by third party carriers, the Provider shall use such carriers that maintain such insurance coverage as set forth above.

Intellectual Property. Provider agrees to protect, defend, indemnify, and save the County, its agents, officials, including elected officials, and employees of the County harmless from and against any and all claims, demands, actions, and causes of action which may arise asserting that a copyright, trademark, trade secret, or patent ("Intellectual Property"), as provided under this PO or MA, infringes or misappropriates any third party's Intellectual Property. If Provider must pay a third party any license, royalty, or other such usage fee in order to deliver the item(s) under this PO or MA, such third party and usage fee must be specified in the Provider's offer to sell to the County.

Indemnification. The Contractor shall indemnify, defend and hold harmless the County and its employees, officers, elected and appointed officials, agents, attorneys, representatives, volunteers, divisions, departments, districts, authorities, and associated entities from and against all claims, damages, losses, and expenses, including, but not limited to attorney's fees, arising out of or resulting from the performance of this Agreement to the extent that any such claim, damage, loss and expense is caused by any negligent act or omission of the Contractor, anyone directly or indirectly employed by Contractor.

Modification & Assignment. County may unilaterally change, at no additional cost, the quantity and receiving point within the County for items not yet shipped. All other items must be mutually agreed upon in writing. County is not required to pay for defective items, back-orders, late deliveries, those quantities exceeding the PO or MA quantity, or items shipped at a higher price than stated on the PO or MA. Neither this PO or MA nor any interest herein shall be assigned, transferred, or encumbered by Provider except as authorized in writing by the County.

Notices. All notices given by one party to the other party under this PO or MA shall be delivered to the receiving party's address set forth on this PO either by hand, qualified courier, or e-mail and shall be deemed received the day after it is transmitted. For the County, it shall be addressed to the Purchasing and Contracts Department, 123 West Indiana Avenue, 3rd Floor, DeLand, Florida, 32720 or purchasing@volusia.org.

No Waiver. Except as expressly set forth herein, no failure or delay on the part of County in exercising any right, power, or remedy hereunder shall operate as or be deemed a waiver thereof, nor shall any single or partial exercise of any right, power, or remedy preclude any other or further exercise thereof, or the exercise of any other right, power, or remedy.

Order of Precedence. In the event of conflict between this PO or a Master Agreement (MA), the originating Volusia County contract and amendments thereto shall be controlling. This control shall pertain to all specifications and scopes of work included in the originating Volusia County contract and any amendments thereto.

Payment. Except for construction services, which shall be paid pursuant to the Florida Prompt Payment Act, County shall pay Provider within 45 (forty-five) days after receipt of an accurate and undisputed invoice, unless the County accepts a prompt payment discount from Provider and the goods or services are not defective. Invoice, packing slip, delivery receipt, order acknowledgement, and correspondence shall clearly indicate the PO or MA number. Any additional or different terms and conditions on Provider's documents shall be considered null and void. The County may deduct amounts it is due from Provider's payment or not pay disputed invoices until such dispute is resolved. Nothing in this PO or MA shall create any obligation on the part of the County to pay directly to any subcontractor of Provider any monies due to such subcontractor or claims of such subcontractor for amounts owed by Provider to subcontractor for goods or services provided under this PO or MA.

Sovereign Immunity. The County 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 the Agreement, Master Agreement, and/ or this Purchase Order to the contrary, nothing in any such documents shall be deemed as a waiver of immunity or the limitations of liability of the County beyond any statutory limited waiver of immunity or limits of liability which may have been or may be adopted by the Florida Legislature, and the cap on the amount and liability of the County for damages regardless of the number or nature of claims in tort, equity, or contract shall not exceed the dollar amount set by the legislature for tort. Nothing in the Agreement, Master Agreement, or this Purchase Order shall inure to the benefit of any third party for the purpose of allowing any claim against the County, which would otherwise be barred under the doctrine of sovereign immunity or by operation of law.

Taxes. County is exempt from Manufacturers' Federal Excise Tax (Exemption# 49-6000-885) and Florida sales tax (Exemption# 85-8012622393C-9). Certificates are available at www.volusia.org/purchasing. After accessing the foregoing website, select, "Doing Business with Volusia County" and "Consumer Certificate of Tax Exemption" from the available menu screens to see a copy of the certificates.

Termination for Convenience. The County may cancel the PO or MA in whole or part when it is in the best interest of the County with thirty (30) days notice.

UCC. In addition to any rights or remedies contained in this P.O., each party shall have rights, duties, and remedies available through the Uniform Commercial Code (UCC).

Warranty. Provider warrants that all Work or Services performed under this PO or MA shall be performed in a good and competent workmanlike manner to the satisfaction of the County, and materials shall be of good quality (unless otherwise stated on PO or MA), and free from defects and pursuant to specifications and requirements of the contract related to this PO or MA.

PRICE TABLES

PRICING SHEET- OPIS DAILY LOW

Bidders shall submit pricing as a markup over OPIS Daily low as detailed in Section 4.3.A . Bidder(s) shall complete all fields.

Line Item	Fuel Type	Unit of Measure	Markup over OPIS daily low
1	Ultra Low Sulfur Diesel +/= 7500 gallons	GAL	$0.0619
2	Ultra Low Sulfur Diesel less than 7500 gallons	GAL	$0.229
3	E-10 Fuel +/= to 8000 gallons	GAL	$0.0569
4	E-10 Fuel less than 8000 gallons	GAL	$0.229
5	Gross No.2 Red-Dyed Fuel (Off Road) +/= 7500 gallons	GAL	$0.0619
6	Gross No.2 Red-Dyed Fuel (Off Road) less than 7500 gallons	GAL	$0.229

PRICING SHEET- OPIS DAILY AVERAGE

Bidders shall submit pricing as a markup over OPIS Daily average as detailed in Section 4.3.A . Bidder(s) shall complete all fields.

Line Item	Fuel Type	Unit of Measure	Markup over OPIS daily average
1	Ultra Low Sulfur Diesel +/= 7500 gallons	GAL	$0.0219
2	Ultra Low Sulfur Diesel less than 7500 gallons	GAL	$0.189
3	E-10 Fuel +/= to 8000 gallons	GAL	$0.0169

Line Item	Fuel Type	Unit of Measure	Markup over OPIS daily average
4	E-10 Fuel less than 8000 gallons	GAL	$0.189
5	Gross No.2 Red-Dyed Fuel (Off Road) +/= 7500 gallons	GAL	$0.0219
6	Gross No.2 Red-Dyed Fuel (Off Road) less than 7500 gallons	GAL	$0.0169

PRICING SHEET - SPLIT LOADS

Bidder(s) shall enter any additional fee for split loads. Bidder(s) shall enter zero dollars ($0) if no additional fee applies.

Line Item	Description	Quantity	Unit of Measure	Unit Cost	Total
1	Additional Fee for Split Loads (Quantity is an estimate only)	25	EA	$0.00	$0.00
TOTAL					**$0.00**

PRICING SHEET- ABOVE GROUND TANKS

Bidder(s) shall enter any additional fee for above ground tanks. Bidder(s) shall enter zero dollars ($0) if no additional fee applies.

Line Item	Description	Quantity	Unit of Measure	Unit Cost	Total
1	Additional fee for above ground tanks	1	EA	$0.00	$0.00
TOTAL					**$0.00**

PRICING SHEET- TANK WAGON

Bidder(s) shall enter any additional drop charge for tank wagon delivery. Bidder(s) shall enter zero dollars ($0) if no additional fee applies.

Line Item	Description	Quantity	Unit of Measure	Unit Cost	Total
1	Additional Drop Charge for tank wagon delivery	1	EA	$0.00	$0.00
TOTAL					**$0.00**

Master Agreement

NO. 860 12555 - 1

TERM: 2024-04-08 to 2027-04-08

Date Issued: 06/17/2024

Vendor contact:	**County contact:**	**Bill To:**
Name: Steven Leavitt	**Name:** BRIAN JONES	**County of Volusia**
Phone: 407-282-5000 **Ext.:**	**Phone:** 386-254-1594 **Ext.:** 11832	AS REQUIRED BY USING DEPARTMENT
E-mail: SLEAVITT@GREENSENERGY.COM	**E-mail:** BSJones@volusia.org	VOLUSIA COUNTY, FL 32720

Vendor Name:	**Vendor No.** VS13227	**Ship To:**
GREENS ENERGY SERVICES INC 186 N GOLDENROD ROAD ORLANDO, FL 32807		AS REQUIRED BY USING DEPARTMENT VOLUSIA COUNTY, FL 32720

Solicitation Number:	24-B-61LS	**Purchasing**	LISA SMITH
Award Date:	2024-04-16	**Phone:**	386-822-5788 **Ext:** 15788
Award Authorization:	COUNCIL	**E-mail:**	mlsmith@volusia.org
		Payment Terms:	Net 45 Days, FOB Dest, Freight allowed

Document Description:
Bulk Fuel

Line Item	Commodity Code	Unit	Description	Unit Price or Contract Amount
1	40500	EA	Per attached Pricing Sheet in accordance with 24-B-61LS	0.000000

Pam Wilsky

Pam Wilsky, CPPO, CPPB
Purchasing & Contracts Director

County of Volusia
Sales Tax Exemption Number
85-8012622393C-9

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A delivery order is required for the release of items / services from the referenced Master Agreement. If a solicitation number is referenced then the terms and conditions of said solicitation become part of the Master Agreement. Deviation from prices stated is not permitted without a signed corrected Change Order.

If vendor terms and conditions conflict with County of Volusia Terms and Conditions, the County's Terms and Conditions prevail. See reverse side for terms and conditions.

Purchase Order (PO) or Master Agreement (MA) Terms and Conditions

Providing any good or service constitutes acceptance of this entire PO or MA without exception. In the event this document is issued based on a solicitation or quote, the terms and conditions of the solicitation or quote prevail.

Acceptance. Products/Services purchased as result of this PO or MA may be tested for compliance with specifications. Items delivered not in conformance with the specifications may be rejected and returned at the Provider's expense. Those items and items not delivered by the delivery date specified in the accepted offer and/or PO or MA may be purchased on the open market.

Cancellation of Order. A request by either party to the PO to cancel the order at no cost.

Delivery. Title and risk of loss shall pass when items have been received, inspected, and accepted by County of Volusia ("County"). All associated shipping, insurance, and other related costs shall be borne by Provider.

Discontinued. Provider shall give County 30 (thirty) days advance notice of a discontinued item(s) so that County can purchase additional quantities of discontinued item(s). County must give written approval of replacement(s) if they exceed previous price or fail to meet quality, form, fit, or function of the discontinued item. Time is of the essence regarding Performance of Services and this PO or MA can be terminated by the County for convenience, non-appropriation of funds, or non-performance.

Disputes. If such dispute arises under this PO or MA and is not resolved informally by the parties within five (5) business days, the party bringing a claim ("Disputing Party") shall deliver to the first level representative of the other party a written statement ("Dispute Notice") describing the dispute. If the respective representatives cannot resolve the dispute within ten (10) days, the dispute shall be escalated through two higher levels of management. If the dispute has not been resolved within 25 (twenty- five) calendar days after delivery of the Disputing Party's notice, either party may give written notice to the other party declaring the resolution process terminated and pursue other legal recourse or initiate formal non-binding mediation before a single mediator, which shall be completed within 30 (thirty) days of initiation, in accordance with rules of practice and procedure adopted by the Supreme Court of Florida for court-ordered mediation, Rule 1.700, et seq., of the Florida Rules of Civil Procedure, and Chapter 44, Florida Statutes. If the dispute remains unresolved after conducting such mediation, then either party may proceed to finalize such termination remedies and commence litigation in a court of competent jurisdiction.

E-Verify. By providing any good or service to the County or accepting payment for same, Provider warrants and certifies it has registered with and uses the U.S. Department of Homeland Security's E-Verify system to verify the work authorization status of all new employees. Provider is subject to and agrees to abide by Sections 446.09 and 446.095, Fla. Stat. Provider shall not enter into a contract with a subcontractor without prior approval from the County; Provider will be required to comply with the provisions of Section 446.095, Fla. Stat.

Compliance with FEMA 2 CFR 200.318-326 and Appendix II Contract Provisions. This Agreement and the products/services provided may be utilized in the event of declared State/Federal Emergency and Contractors shall be prepared to comply with the requirements of the FEMA Super Circular CFR 200.318-326 and Appendix II Contract Provisions as amended. These documents can be found on the Internet at: https://www.gpo.gov/fdsys/granule/CFR-2014-title2-vol1/CFR-2014-title2-vol1-sec200-318

Governing Law/Jurisdiction/Venue. This PO or MA shall be governed by the laws of the State of Florida and venue for any litigation arising from this PO or MA shall be in the County of Volusia, Florida, and any trial shall be non-jury. Provider shall comply with all applicable laws and regulations.

Insurance. For goods and services delivered or performed by Provider on County premises, Provider certifies it maintains comprehensive general liability insurance and auto insurance in the amounts identified in the solicitation and/or contract and any amendments thereto pertaining to this PO or MA, or from an A.M. Best "A -" or better rated insurance firm authorized by the State of Florida Insurance Commissioner. The County reserves the right to require the "County of Volusia" be named as additional insured for projects when deemed necessary. For services performed off County premises and goods delivered by third party carriers, the Provider shall use such carriers that maintain such insurance coverage as set forth above.

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Indemnification. The Contractor shall indemnify, defend and hold harmless the County and its employees, officers, elected and appointed officials, agents, attorneys, representatives, volunteers, divisions, departments, districts, authorities, and associated entities from and against all claims, damages, losses, and expenses, including, but not limited to attorney's fees, arising out of or resulting from the performance of this Agreement to the extent that any such claim, damage, loss and expense is caused by any negligent act or omission of the Contractor, anyone directly or indirectly employed by Contractor.

Modification & Assignment. County may unilaterally change, at no additional cost, the quantity and receiving point within the County for items not yet shipped. All other items must be mutually agreed upon in writing. County is not required to pay for defective items, back-orders, late deliveries, those quantities exceeding the PO or MA quantity, or items shipped at a higher price than stated on the PO or MA. Neither this PO or MA nor any interest herein shall be assigned, transferred, or encumbered by Provider except as authorized in writing by the County.

Notices. All notices given by one party to the other party under this PO or MA shall be delivered to the receiving party's address set forth on this PO either by hand, qualified courier, or e-mail and shall be deemed received the day after it is transmitted. For the County, it shall be addressed to the Purchasing and Contracts Department, 123 West Indiana Avenue, 3rd Floor, DeLand, Florida, 32720 or purchasing@volusia.org.

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Taxes. County is exempt from Manufacturers' Federal Excise Tax (Exemption# 49-6000-885) and Florida sales tax (Exemption# 85-8012622393C-9). Certificates are available at www.volusia.org/purchasing. After accessing the foregoing website, select, "Doing Business with Volusia County" and "Consumer Certificate of Tax Exemption" from the available menu screens to see a copy of the certificates.

Termination for Convenience. The County may cancel the PO or MA in whole or part when it is in the best interest of the County with thirty (30) days notice.

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Warranty. Provider warrants that all Work or Services performed under this PO or MA shall be performed in a good and competent workmanlike manner to the satisfaction of the County, and materials shall be of good quality (unless otherwise stated on PO or MA), and free from defects and pursuant to specifications and requirements of the contract related to this PO or MA.

PRICE TABLES

PRICING SHEET- OPIS DAILY LOW

Bidders shall submit pricing as a markup over OPIS Daily low as detailed in Section 4.3.A . Bidder(s) shall complete all fields.

Line Item	Fuel Type	Unit of Measure	Markup over OPIS daily low
1	Ultra Low Sulfur Diesel +/= 7500 gallons	GAL	$0.10
2	Ultra Low Sulfur Diesel less than 7500 gallons	GAL	$0.17
3	E-10 Fuel +/= to 8000 gallons	GAL	$0.10
4	E-10 Fuel less than 8000 gallons	GAL	$0.17
5	Gross No.2 Red-Dyed Fuel (Off Road) +/= 7500 gallons	GAL	$0.10
6	Gross No.2 Red-Dyed Fuel (Off Road) less than 7500 gallons	GAL	$0.17

PRICING SHEET- OPIS DAILY AVERAGE

Bidders shall submit pricing as a markup over OPIS Daily average as detailed in Section 4.3.A . Bidder(s) shall complete all fields.

Line Item	Fuel Type	Unit of Measure	Markup over OPIS daily average
1	Ultra Low Sulfur Diesel +/= 7500 gallons	GAL	$0.06
2	Ultra Low Sulfur Diesel less than 7500 gallons	GAL	$0.11
3	E-10 Fuel +/= to 8000 gallons	GAL	$0.06

Line Item	Fuel Type	Unit of Measure	Markup over OPIS daily average
4	E-10 Fuel less than 8000 gallons	GAL	$0.11
5	Gross No.2 Red-Dyed Fuel (Off Road) +/= 7500 gallons	GAL	$0.06
6	Gross No.2 Red-Dyed Fuel (Off Road) less than 7500 gallons	GAL	$0.11

PRICING SHEET - SPLIT LOADS

Bidder(s) shall enter any additional fee for split loads. Bidder(s) shall enter zero dollars ($0) if no additional fee applies.

Line Item	Description	Quantity	Unit of Measure	Unit Cost	Total
1	Additional Fee for Split Loads (Quantity is an estimate only)	25	EA	$0.00	$0.00
TOTAL					$0.00

PRICING SHEET- ABOVE GROUND TANKS

Bidder(s) shall enter any additional fee for above ground tanks. Bidder(s) shall enter zero dollars ($0) if no additional fee applies.

Line Item	Description	Quantity	Unit of Measure	Unit Cost	Total
1	Additional fee for above ground tanks	1	EA	$0.00	$0.00
TOTAL					$0.00

PRICING SHEET- TANK WAGON

Bidder(s) shall enter any additional drop charge for tank wagon delivery. Bidder(s) shall enter zero dollars ($0) if no additional fee applies.

Line Item	Description	Quantity	Unit of Measure	Unit Cost	Total
1	Additional Drop Charge for tank wagon delivery	1	EA	$60.00	$60.00
TOTAL					$60.00

INVITATION FOR BID

24-B-61LS

BULK FUEL

County of Volusia

123 W. Indiana Ave.

DeLand, FL 32720

RELEASE DATE: February 16, 2024

DEADLINE FOR QUESTIONS: March 4, 2024

RESPONSE DEADLINE: March 19, 2024, 3:01 pm

RESPONSES MUST BE SUBMITTED ELECTRONICALLY TO:

https://procurement.opengov.com/portal/volusia

County of Volusia
INVITATION FOR BID
Bulk Fuel

I. Introduction .....
II. Terms and Conditions .....
III. General Terms and Conditions .....
IV. Scope of Work .....
V. Pricing Proposal .....
VI. Vendor Questionnaire .....
VII. Definitions .....

Attachments:

A - Required Types and Limits of Insurance

B - Attachment B- Fuel Site Information- Revision 2

C - Volusia Bid_Submittal_Form(492426)

D - Federal_Contract_Provisions_

E - Volusia References_Form(492427)

1. Introduction

1.1. Summary

The County of Volusia and other entities, knows as the Consortium, are seeking qualified fuel contractors to supply bulk fuel.

1.2. Contact Information

Myra Lisa Smith
Purchasing Analyst II
123 W. Indiana Avenue, Room 302
DeLand, FL 32720
Email: mlsmith@volusia.org
Phone: (386) 822-5788

Department:
Fleet Management

1.3. Timeline

Release Project Date	February 16, 2024
Question Submission Deadline	March 4, 2024, 11:59pm
Proposal Submission Deadline	March 19, 2024, 3:01pm Microsoft Teams meeting Join on your computer, mobile app or room device https://www.microsoft.com/en-us/microsoft-teams/join-a-meeting Meeting ID: 213 233 692 064 Passcode: gPYNoU Or call in (audio only) +1 386-456-3387,,628672925# United States, Daytona Beach Phone Conference ID: 628 672 925#

2. Terms and Conditions

2.1. Special Conditions

A. Bid Closing Date
Bids must be received through the County's ePocurement Portal before 3:01 pm on Tuesday, March 19, 2024. Bids received after this time will not be considered.

B. No Pre-bid Conference will be held.

2.2. Authorized Official

The bid submission and all required forms must be submitted/signed by an official authorized to legally bind the Bidder to all Bid provisions. A Memorandum of Authority may be submitted, to document that the individual is authorized to commit the firm to a contract.

2.3. Definition of Responsive and Responsible for this Bid

Each Bid submittal shall be evaluated for conformance as responsive and responsible using the following criteria:

A. Proper submittal of ALL documentation as required by this Bid. (Responsive)

B. The greatest benefits to Volusia County as it pertains to: (Responsible)

1. Cost; Markup above OPIS Daily low and OPIS Daily average, additional fees; split loads, above ground tank delivery, and tank wagon drop charges that may be deemed in the best interest of the County.

2. Delivery shall be no later than one (1) calendar day from receipt of release order, unless stated otherwise, from the ordering entity.

3. All Scope of Work requirements associated with this Bid.

4. Past Performance. In order to evaluate past performance, all Bidders are required to submit a list of three (3) references / relevant projects completed within the last three (3) years that are the same or similar in magnitude to this ITB. The County of Volusia shall not be listed as a reference;

5. Financial Stability: All Respondents shall be prepared to supply a financial statement upon request, preferably a certified audit of the last available fiscal year.

Bidders are reminded that award may not necessarily be made to the lowest Bid. Rather, award will be made to the lowest responsive, responsible, Bidder whose Bid represents the best overall value to the County when considering all evaluation factors.

2.4. Local Preference Availability

This project is not funded by monies that prohibit the local preference provision and local preference does apply per the General Terms and Conditions section Local Preference.

2.5. Payment Terms

1. The County will remit full payment on all undisputed invoices within forty-five (45) days from receipt by the appropriate person(s) (to be designated at time of Agreement) of the invoice(s) or receipt of all products or services ordered.
2. Pursuant to Chapter 218, Florida Statutes, the County will pay interest not to exceed one percent (1%) per month on all undisputed invoices not paid within thirty (30) days after the due date.
3. The County has the capability of Electronic Funds Transfer (EFT). List any discounts for prompt payment and/or willingness to accept Electronic Funds Transfer (EFT) and the discount to be applied to such payments. Contractors offering prompt payment discounts, for example 1% - net 10, the discount shall be taken if the check issue date is within specified time period from date of invoice.
By submitting a Bid (offer) to the County of Volusia, Florida, the Contractor expressly agrees that, if awarded an Agreement, the County may withhold from any payment monies owed by the Contractor to the County for any legal obligation between the Bidder and the County including, but not limited to, real property taxes, personal property taxes, fees, and commissions.

2.6. Award Term

The County is looking to promote partnership relationships within the policies and procedures of public procurement. Pursuant toward that end, the successful Contractor(s) shall be awarded an Agreement for an initial three (3) year term with the option for (2) subsequent one (1) year renewals.. All renewals will be contingent upon mutual written agreement and, when applicable, approval of County Council.

2.7. Price Redeterminations

Once each year during the term of the Contract, including any extension or renewal periods thereof, the Contractor may, but is not obligated to, petition the Director of Purchasing and Contracts for one or more price redeterminations where such price redetermination(s) is/are necessitated by documented increases in the cost of wages, fuel, or materials. Petitions for price redeterminations shall be made within thirty (30) days of the anniversary date of the Contract (i.e., the calendar day and month when the Contract became effective) and only after the Contract has been in effect for at least one year. Any such petition shall be made pursuant to the provisions of this section and only for those price redetermination categories specified herein. Unless otherwise expressly set forth in this Agreement, no other price redeterminations shall be allowed. All price redeterminations, once issued, shall be prospective from the date of approval unless otherwise approved by a duly executed amendment to this Agreement.

2.8. Basis for Price Redeterminations

The Contractor may petition the Director of Purchasing and Contracts for price redetermination based on the increased costs of wages, fuel, or materials. Price redeterminations will be based solely upon changes in pricing or costs documented by either the Employment Cost Index (ECI) or Producer Price Index (PPI), whichever is applicable, as published by the Bureau of Labor Statistics. The base index number for the ECI will be for the quarter in which the ITB opens. The base index number for the PPI will be for the month the ITB opens. Any subsequent price redeterminations will use the last price redetermination approved for that price redetermination category as the “base index number.” The County shall have the right to audit the Contractor’s records, including, but not limited to, payroll,

materials, and fuel cost records, to verify or otherwise investigate the validity of any price redetermination request.

2.9. Price Redetermination Calculation.

All Price Redeterminations shall be calculated as follows:
Example: Contractor indicated on the Submittal Form that thirty percent (30%) of the cost to provide the product/service is directly attributed to the redetermination category (wages, fuel, or materials).
Current applicable PPI = ... $200.50
Base index PPI = ... - $179.20
PPI increase dollars = ... $21.30
PPI increase percentage ($21.30 ¸ $179.20 = .1189).....11.9%
Unit cost of the service is..... $100.00
30% of $100.00 is directly attributed to the redetermination category.... $30.00
$30.00 × 11.9% = ... $3.57
New unit price for the product/service is ($100 + $3.57)..... $103.57

2.10. Expiration Upon Failure to Agree to Price Redetermination.

If the County and the Contractor cannot agree to a price redetermination pursuant to the terms and conditions of this section, then the Agreement will automatically expire without penalty or further expense to either party after a period of six (6) months following the Contractor's initial request for such price redetermination. Requests for price redeterminations not made in accordance with the provisions of this section shall be deemed null and void and shall not be a valid reason or pretext for expiration or termination of the Agreement. If the Agreement expires pursuant to the terms and conditions of this section, the County reserves the right, at no expense, penalty, or consequence to the County, to award any remaining tasks thereunder to the next available most responsive and responsible Contractor.

2.11. Termination

1. County may terminate this Agreement upon at least thirty (30) days prior written notice to Contractor.

2. Contractor may terminate this Agreement upon at least one hundred eighty (180) days prior written notice to County.

3. Upon receipt of notice of termination by the County from Contractor or upon delivery of notice of termination from the County to Contractor, Contractor shall:

3.1. Stop work under the Agreement on the date and to the extent specified in County's Notice of Termination;3.2. Inform County of the extent to which performance is completed;

3.2. Inform County of the extent to which performance is completed;

3.3. Place no further orders or subcontracts for materials, services or facilities except as may be necessary for completion of such portion of the Work/Services under the Agreement as is not terminated and with the prior approval of the County; and,

3.4. Assign to the County, in the manner, at the times, and to the extent directed by the County, all of the right, title and interest of the Contractor under the orders and subcontracts so terminated.

4. For all undisputed outstanding invoices submitted to the County prior to the effective date of the termination and subject to Section Award Term, Section Payment Terms and this Section Termination, the County shall cause payments to be made to Contractor within forty five (45) days of receipt of invoice. Contractor shall invoice the County for any sums Contractor claims to be owed by County under this Agreement for work performed from the last invoice to the effective date of termination. County shall review such invoice for payment and County shall pay any undisputed amount within forty five (45) days.

5. With the approval of the County and to the extent required by the County, the Contractor shall, upon termination, settle all outstanding liabilities and all claims arising out of such termination. County's approval of such settlements shall be final for all the purposes of a termination under this Section Termination. In addition, Contractor shall transfer title and deliver to the County, in the manner, at the times, and to the extent, if any, directed by the County, Deliverables, work-in-progress, reports, models, studies, and other materials produced as a part of, or acquired in connection with the performance of the Work/Services terminated.

6. If Contractor fails to cure a breach within ten (10) calendar days after receipt of notice from the County of said breach, the County may take over the Work/Services and complete the Work/Services, and the Contractor shall be liable to the County for any increased cost of the Project reasonably incurred by the County to complete the Contractor's unfinished Work/Services. As such, the County may apply unpaid Compensation due and owing to the Contractor prior to the default as a set off against the costs incurred by the County for taking over such Work/Services.

7. The right of termination provided to the County and the Contractor herein shall be cumulative of all other remedies available at law.

8. All provisions of this Agreement which impose or contemplate continuing obligations on a party will survive the expiration or termination of this Agreement.

2.12. New Material

Unless otherwise provided for in this specification, the Contractor represents and warrants that the goods, materials, supplies, or components offered to the County under this Agreement are new, not used or reconditioned, and are not of such age or so deteriorated as to impair their usefulness or safety and that the goods, materials, supplies, or components offered are current production models of the respective manufacturer. If the Contractor believes that furnishing used or reconditioned goods, materials, supplies, or components will be in the County’s interest, the Contractor shall so notify the County Procurement Analyst in writing no later than fourteen (14) working days prior to the date set for opening of Bids in accordance with section Revisions, Addenda, Questions & Answers. The notice shall include the reasons for the request and any benefits that may accrue if the County authorizes the bidding of used or reconditioned goods, materials, supplies, or components.

2.13. Damages

Due to the nature of the services to be provided and the potential impact to the County for loss, the Contractor cannot disclaim consequential or special damages related to the performance of this Agreement. The Contractor shall be responsible and accountable for any and all damages, directly or indirectly, caused by the actions or inaction of its employees, staff, or Subcontractors. There are no limitations to this liability.

2.14. Compliance with FEMA 2 CFR 200.318-326 and Appendix II Contract Provisions

This Agreement and the products/services provided may be utilized in the event of declared State/Federal Emergency, and Contractors shall comply with the applicable sections of Exhibit III, Federal Contract Provisions.

2.15. FEMA Federal Contract Provisions - Documentation

Please fill out and submit the attached Federal Contract Provisions.

2.16. Wage Price Redetermination.

When requesting a price redetermination based upon an increase in wage costs, the Contractor shall refer to and utilize the Employment Cost Index, Total Compensation, Private Industry, Index Number and Occupational Group as prepared by the Bureau of Labor Statistics in the U.S. Department of Labor https://stats.bls.gov/data/. The base figure will be tied to NO VALUE under the heading Service Providing Industries. Wage price re-determination increases shall be granted only by reason of wage increases associated with the Contractor's employees or subcontractors performing work or services pursuant to the Agreement.

Minimum Wage Price Redetermination. If the minimum wage increases during the term of the Agreement, including any renewal or extension period thereunder, the Contractor may petition the Director of Purchasing and Contracts for price redetermination for those job categories where the pay to the Contractor's employee(s) is the current minimum wage. Upon verification of the information provided, the County will grant an increase of exactly the amount of the minimum wage increase (not the percentage increase). The Contractor must increase the pay to the employee(s) by the amount the Contractor has requested, which shall not exceed the amount of the minimum wage increase. The amount paid to the Contractor will be the increase plus any written and documented increase in FICA, Medicare, and Workers' Compensation insurance. The Contractor must supply written documentation of any other increase that is beyond the scope and control of the Contractor. All written documentation must satisfy the reasonable expectations of the Director of Purchasing and Contracts and Internal Auditor.

Example: Minimum wage increases from $7.31 to $7.56 per hour. The Contractor may petition for an increase of $0.25 per hour to be paid to the affected employee(s) and shall provide written and documented cost increases for FICA, Medicare and Workers' Compensation. The resulting increase in costs shall be incorporated into fees/rates billed to the County.

If the Contractor bills the County at a higher price according to any price redetermination granted by the

County, and the Contractor fails to increase the hourly rate paid to the employee for the same period, the Contractor will be considered in Agreement default and the Agreement will be immediately terminated.

2.17. Fuel Price Redetermination

If/when the price of fuel increases by a minimum of ten (10%) percent, the Contractor may petition the Director of Purchasing and Contracts for a fuel price redetermination. As a condition of petitioning for a fuel price increase, the Contractor shall be required to petition for a fuel price redetermination decrease if/when the price of fuel decreases by a minimum of ten (10%) percent. Failure to make such petition may be grounds for Agreement termination and shall entitle the County to a refund of the cumulative increase in pay to the Contractor due to any prior fuel price redetermination increase(s). Fuel price redetermination must be based solely upon changes as documented by the Producer Price Index (PPI) for the commodities “Unleaded Gasoline - WPU057104” or “#2 diesel fuel - WPU057303,” as such may be applicable to the Contractor’s operations in connection with the Contractor’s performance of the Agreement.

3. General Terms and Conditions

3.1. Submission of Offers:

All offers shall be submitted through the County's ePROCUREMENT PORTAL. The submission of responses prior to the specified date and time is solely and strictly the responsibility of the Bidder. Any submittal received after the specified date and time will not be considered. Responses shall be submitted as directed by the County. Additional information may be submitted with the response. No offer may be modified after acceptance.

3.2. Bidder's Responsibility:

The Bidder, by submitting a Bid, represents that:
1. The Bidder has read and understands the ITB in its entirety and that the Bid is made in accordance therewith;
2. The Bidder possesses the capabilities, resources, and personnel necessary to provide efficient and successful service to the County;
3. The Bidder has made all investigations and examinations necessary to ascertain site and/or local conditions and requirements affecting the full performance of the Agreement and to verify any representations made by the County of Volusia, Florida, upon which the Bidder will rely. If the Bidder receives an award because of its Bid Submittal, failure to have made such investigations and examinations will in no way relieve the Bidder from its obligations to comply in every detail with all provisions and requirements of the Agreement, nor will a plea of ignorance of such conditions and requirements be accepted as a basis for any claim by the Bidder for additional compensation or relief; and,
4. The Bidder will be held responsible for any and all discrepancies, errors, etc., in discounts or rebates which are discovered during the Agreement term or up to and including three (3) fiscal years following the County's annual audit.

3.3. Execution of Offer:

Offer shall contain a signature in the space(s) provided of a representative authorized to legally bind the Bidder to the provisions therein. All spaces requesting information from the Bidder or asking a question of the Bidder shall be completed.

3.4. Opening:

Pursuant to Section 119.071, Florida Statutes, Bids or proposals ("responses") and the completed tabulation will be available for inspection within thirty (30) days of response opening. Contact the Purchasing and Contracts Office during regular business hours to inspect responses and the completed tabulation or go to the County's ePROCUREMENT PORTAL for inspection of the completed tabulation. The foregoing notwithstanding, if, prior to the County's making responses available for inspection, the County rejects all responses and concurrently provides notice of the County's intent to reissue the solicitation, then the County may avail itself of the exemption for rejected responses set forth in Section 119.071, Florida Statutes, to the extent such Section may apply. Bid openings and public meetings may be attended either in person or remotely. Bid openings may be accessed remotely as described in the introduction timeline section of this solicitation. In accordance with the American Disabilities Act and

Section 286.26, Florida Statutes, persons with disabilities needing a special accommodation to participate in the proceedings, or an interpreter to participate in any proceedings, should contact the County's ADA Coordinator at 386-248-1760 for assistance at least two (2) business days before any meeting date. Assisted listening system receivers are available for the hearing impaired and can be obtained from the Deputy Clerk by contacting the County's ADA Coordinator at 386-248-1760. Read the full ADA Notice under The American with Disabilities Act (Title II), atwww.volusia.org/core/fileparse.php/4175/urlt/ADANotice.pdf. Read the County of Volusia Grievance Procedure under The Americans with Disabilities Act (Title II).

3.5. Public Records Law.

Pursuant to section 119.0701(2)(a), Florida Statutes, the County is required to provide Contractor with this statement and establish the following requirements as contractual obligations pursuant to the Agreement:

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 386-736-5935, purchasing@volusia.org, by mail, Purchasing and Contracts Division, Attn: Public Records Custodian, 123 W. Indiana Ave. Rm. 302 DeLand, FL 32720.

By entering into this Contract, Contractor acknowledges and agrees that any records maintained, generated, received, or kept in connection with, or related to the performance of services provided under, this Contract are public records subject to the public records disclosure requirements of section 119.07(1), Florida Statutes, and Article I, section 24 of the Florida Constitution. Pursuant to section 119.0701, Florida Statutes, any Contractor entering into a contract for services with the County is required to:

1. Keep and maintain public records required by the County to perform the services and work provided pursuant to this Contract.
2. Upon request from the County's custodian of public records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Contract term and following completion or termination of the Contract if the Contractor does not transfer the records to the County.
4. Upon completion or termination of the Contract, transfer, at no cost, to the County all public records in the possession of the Contractor or keep and maintain public records required by the County to perform the service. If the Contractor transfers all public records to the County upon completion or termination of the Contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion or termination of the Contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the County, upon request from the County's custodian of public records, in a format that is compatible with the information technology systems of the County.

Requests to inspect or copy public records relating to the County's Contract for services must be made directly to the County. If Contractor receives any such request, Contractor shall instruct the requestor to

contact the County. If the County does not possess the records requested, the County shall immediately notify the Contractor of such request, and the Contractor must provide the records to the County or otherwise allow the records to be inspected or copied within a reasonable time.
Contractor acknowledges that failure to provide the public records to the County within a reasonable time may be subject to penalties under section 119.10, Florida Statutes. Contractor further agrees not to release any records that are statutorily confidential or otherwise exempt from disclosure without first receiving prior written authorization from the County. Contractor shall indemnify, defend, and hold the County harmless for and against any and all claims, damage awards, and causes of action arising from the Contractor's failure to comply with the public records disclosure requirements of section 119.07(1), Florida Statutes, or by Contractor's failure to maintain public records that are exempt or confidential and exempt from the public records disclosure requirements, including, but not limited to, any third party claims or awards for attorney's fees and costs arising therefrom. Contractor authorizes County to seek declaratory, injunctive, or other appropriate relief against Contractor from a Circuit Court in Volusia County on an expedited basis to enforce the requirements of this section.

3.6. Clarification/Correction of Entry/Minor Irregularities:

The County of Volusia reserves the right to allow for the clarification of questionable entries and the correction of OBVIOUS MISTAKES. The County reserves the right to waive minor irregularities in Bid Submittals, providing such action is in the best interest of the County. Minor irregularities are defined as those that have no adverse effect on the County's best interests, and will not affect the outcome of the selection process by giving the Bidder an advantage or benefit not enjoyed by other Bidders.

3.7. Revisions, Addenda, Questions & Answers:

1. It is incumbent upon each Bidder to carefully examine this solicitation's specifications, scope of work/service, terms, and conditions. The posting of answers through the County's eProcurement Portal is the only official methods by which interpretation, clarification, or additional information can be given. Questions and exceptions concerning any Section of this ITB shall be directed through the question and answer section of the County's eProcurement Portal.
2. If it becomes necessary for the County to revise or clarify any part of this ITB the solicitation will be updated on the County's eProcurement Portal by one of the following methods: the posting of answers to questions received; the revision of solicitation language/documentation. It is each Bidder's responsibility to check the County's eProcurement Portal for any posted answers, and/or solicitation changes. Each Respondent shall ensure that they have reviewed all questions & answers and/or changes to this ITB before submitting their proposal. By submitting a response, Respondents acknowledge that they have reviewed all posted answers, and/or solicitation changes prior to the posted closing date and time.
3. Each answer issued by the County shall become a material part of this solicitation. Answers posted by the County, and/or changes made to the solicitation shall become a material part of this solicitation.
4. Questions and exceptions shall be submitted before 11:59 pm on Monday, March 4, 2024. Thereafter, no further questions or exceptions will be accepted or reviewed by the County and Bidders' right to submit questions or exceptions will terminate and any questions or exceptions not previously made shall be deemed waived. Oral representations will not be binding on the County.

3.8. Incurred Expenses:

This ITB does not commit the County to make an award nor shall the County be responsible for any cost or expense which may be incurred by any Bidder in preparing and submitting a reply, or any cost or expense incurred by any Bidder prior to the execution of a purchase order or Contract/Agreement.

3.9. Disadvantaged Businesses:

The County Council has adopted policies, which assure and encourage the full participation of Disadvantaged Business Enterprises (DBE) in the provision of goods and services. The County encourages joint ventures between majority-owned firms and qualified disadvantaged / minority / women-owned firms.

3.10. Local Preference:

The County Council has established a policy to encourage participation of local businesses in the provision of goods and services. The County will endeavor to assist local businesses to achieve this goal. Effective January 1, 2012, Volusia County adopted a local Bid preference. A Bidder or prime contractor which has a permanent location at least six (6) months prior to the Bid closing, as proven by a business tax receipt, as stated in Volusia County Ordinance 2-269.5 in Brevard, Lake, Orange, Osceola, Seminole or Volusia County ("Local"), shall be granted a preference of three percent (3%) of the total Bid price or quote. A Bidder which is a prime contractor and is utilizing subcontractors, and the Bid price or quote of the work to be performed by all subcontractors, that qualify as a local business, constitutes fifty-one percent (51%) or greater of the total work to be performed through subcontracting, a two percent (2%) Bid preference will apply. In the event that a prime contractor qualifies for a preference and subcontractor qualifies for a preference, the preference shall not exceed a total of five percent (5%). Preference shall not be given to Bids where the difference of the total Bid price or quote exceeds twenty-five thousand dollars ($25,000.00) from the nearest competing Bid price or quote for that solicitation or if a county listed in 2-269.5 does not reciprocate, as stated in 2-269.5, the County will not offer a preference to this County.

This section does not apply to any purchase that is funded, in whole or in part, by an entity prohibiting local preference by grant agreement or applicable federal, state, or local law. Solicitations for emergency purchases subject to Section 2-275 of the Code are additionally exempt. All Bidders, including prime and subcontractors, awarded an Agreement as a part of this process must maintain its status as a local business through the term of the Agreement. Any Bidder, including prime and subcontractors, awarded an Agreement as a result of this preference will be required to post any job openings for this project with the Center for Business Excellence (CBE). Noncompliance with the requirements of this section will be deemed as a material breach and may be subject to Agreement termination or disqualification from bidding on future projects.

3.11. Pricing:

Unless otherwise specified prices offered shall remain firm for a period of at least ninety (90) days from the date of bid opening prior to award; all pricing of goods shall include FOB DESTINATION, all packing, handling, shipping charges and delivery to any point(s) within the County to a secure area or inside delivery; all prices of services shall include all expenses necessary to provide the service at the location specified.

3.12. Unusual Costs:

The Contractor may petition the County at any time for an additional rate adjustment on the basis of extraordinary and unusual changes in the costs of operation that could not reasonably be foreseen by a prudent operator and which, by all reasonable expectations, will continue for at least one (1) year. If the Contractor petitions for such an increase, the Contractor shall also petition for a rate reduction on the basis of extraordinary and unusual changes in the costs of operation that could not reasonably be foreseen by a prudent operator and which, by all reasonable expectations, will continue for at least one (1) year; failure to make such petition may be grounds for Agreement termination.

The Contractor's request shall contain substantial proof and justification to support the need for the rate adjustment. The County may request from the Contractor, and the Contractor shall provide, such further information as may be reasonably necessary in making its determination. The County shall approve or deny the request, in whole or in part, within sixty (60) days of receipt of the request and all other additional information required by the County. Any price redetermination shall be solely based upon the documentation provided and the County reserves the right to rescind any price relief granted should the circumstances change and prices go down.

3.13. Additional Terms & Conditions:

The County of Volusia reserves the right to reject offers containing terms or conditions contradictory to those requested in the ITB specifications.

3.14. Taxes:

County is exempt from Manufacturers' Federal Excise Tax (Exemption# 49-6000-885) and Florida sales tax (Exemption# 85- 8012622393C-9). Certificates are available at www.volusia.org/purchasing. After accessing the foregoing website, select, "Doing Business with Volusia County" and "Consumer Certificate of Tax Exemption" from the available menu screens to see a copy of the certificates.

3.15. Payment Terms:

Unless otherwise stated in the Special Conditions, the County will remit full payment on all undisputed invoices within forty-five (45) days from receipt by the appropriate person(s) (to be designated at time of Agreement) of the correct invoice(s) or receipt of all products or services ordered in accordance with F.S.S. 218.74

3.16. Discounts:

All discounts except those for prompt payment shall be considered in determining the lowest net cost for evaluation purposes. All discounts shall remain firm for the term of the Agreement.

3.17. Meets/Minimum Specifications:

The specifications listed in the scope of service are the minimum required performance specifications for this ITB; they are not intended to limit competition nor specify any particular Bidder, but to ensure that the County receives quality services. The Bidder represents that all offers to this ITB shall meet or exceed the minimum requirements specified.

3.18. Brand Name or Equal:

If items requested by this ITB have been identified in the specifications by a Brand Name "OR EQUAL" description, such identification is intended to be descriptive and not restrictive and is to indicate the quality and characteristics of products that will be acceptable. Offers proposing "equal" products will be considered for award if such products are clearly identified in the offer and are determined by the County to meet fully the salient characteristic requirements listed in the specifications.

Unless the Bidder clearly indicates in his/her offer that he/she is proposing an "equal" product, the offer shall be considered as offering the same brand name product referenced in the specifications.

If the Bidder proposes to furnish an "equal" product, the brand name of the product to be furnished shall be clearly identified. The evaluation of offers and the determination as to equality of the product offered shall be the responsibility of the County and will be based on information furnished by the Bidder. The Purchasing and Contracts Division is not responsible for locating or securing any information which is not identified in the response and reasonably available to the Purchasing and Contracts Division. To ensure that sufficient information is available the Bidder shall furnish as part of the response all descriptive material necessary for the Purchasing and Contracts Division to determine whether the product offered meets the salient characteristics required by the specifications and establish exactly what the Bidder proposes to furnish and what the County would be binding itself to purchase by making an award.

3.19. Samples:

When required, samples of products shall be furnished with response to the County at no charge. Samples may be tested and will not be returned to the Bidder. The result of any and all testing shall be made available upon written request.

3.20. Silence of Specifications:

The apparent silence of these specifications or any supplemental specifications as to details or the omission from same of any detailed description concerning any point, shall be regarded as meaning that only the best commercial practices are to prevail and that only materials of first quality and correct type, size, and design are to be used. All workmanship shall be first quality. All interpretations of specifications shall be made upon the basis of this statement.

3.21. Change in Scope of Work/Service:

1. The County may order changes in the work/service consisting of additions, deletions, or other revisions within the general scope of the Agreement. No claims may be made by the Contractor that the scope of the project or of the Contractor's services has been changed, requiring changes to the amount of compensation to the Contractor or other adjustments to the Agreement, unless such changes or adjustments have been made by written amendment or change order to the Agreement signed by the County Representative, County Director of Purchasing and Contracts, and the Contractor.

2. If the Contractor believes that any particular work/service is not within the scope of work/service of the Agreement, is a material change, or will otherwise require more compensation to the Contractor, the Contractor must immediately notify the County's Representative in writing of this belief. The Contractor and County shall negotiate modifications to the Agreement in good faith and agree upon

equitable adjustment for any changes in services or other obligations required of the Contractor due to such modifications. The Contractor must assert its right to an adjustment under this clause within thirty (30) days from the date of receipt of the written order.

3. The County reserves the right to negotiate with the awarded Contractor(s) without completing the competitive bidding process for materials, products, and/or services similar in nature to those specified within this ITB for which requirements were not known when the ITB was released.

3.22. Governing Laws/Venue:

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. Jurisdiction over and venue for any controversies or legal issues arising out of this Agreement shall, if in state court, be exclusively in the 7th Judicial Circuit in and for Volusia County, Florida, or, if in federal court, in the Middle District of Florida, Orlando Division. By entering into this Agreement, Contractor and County hereby expressly waive any rights either party may have to a trial by jury of any civil litigation related to this Agreement, and, unless otherwise expressly provided herein, each agrees to bear its own costs and attorney's fees relating to any dispute arising under this Agreement.

3.23. Assignment:

Contractor may not assign or otherwise convey Contractor's rights and/or obligations under this Agreement without obtaining County's prior written consent, which consent County may withhold, limit and/or condition in County's sole discretion, including, but not limited to, requiring the Contractor or his/her proposed successor in interest to post a performance bond. Any consent by the County under this Section shall be by written amendment to the Agreement in a form and substance specified by the County in its sole discretion. If Contractor desires to assign or otherwise convey its rights and/or obligations under this Agreement, Contractor shall no less than thirty (30) days prior to the assignment's proposed effective date, provide County with a written request for County's consent. Failure to provide such notice may result in the County assessing a processing fee of Five Hundred Dollars (US $500.00); however, payment of such fee shall not entitle the Contractor to the County's acceptance or approval of its request for assignment.

Nothing herein shall preclude the right of the County to waive its rights under this Section but no waiver shall be granted by the County without a written and duly executed amendment to the Agreement.

3.24. Content of Invitation/Response:

The contents of this ITB, all terms, conditions, specifications, and requirements included herein and the accepted and awarded response thereto may be incorporated into an agreement to purchase and become legally binding. Any terms, conditions, specifications, and/or requirements specific to the item or service requested herein shall supersede the requirements of these "General Terms and Conditions."

3.25. Disclosure of Bid Content:

All material submitted becomes the property of the County and may be returned only at the County's option. The County has the right to use any or all ideas presented in any reply to this Bid. Selection or rejection of any Bid Submittal does not affect this right. The County of Volusia, Florida, is governed by the Public Record Law, Chapter 119, Florida Statutes (F.S.).

3.26. Limitation of Liability/Indemnification:

Indemnification.

The Consultant shall indemnify and hold harmless the County including its districts, authorities, separate units of government established by law, ordinance or resolution, partners, elected and non-elected officials, employees, agents, volunteers, and any party with whom the County has agreed by contract to provide additional insured status and the State of Florida, including its officers and employees, from and against all liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the Consultant or its subcontractors, agents, employees, or any persons employed or utilized by the Consultant in the performance of the Consultant's obligations or services under this Contract. Such obligations or services shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exhaust as to a party or person describe in this Contract.

In all claims against the County, Contractor's indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or any benefits payable by or for Contractor, or its employees, agents, contractors, or subcontractors.

Indemnification for Grant Funded Projects. For any agreements that are funded or may in future be funded by Federal Emergency Management Agency (FEMA) Public Assistance grants or other Federal or State grants or program, the following shall apply: Contractor shall indemnify, defend and hold harmless the Florida Department of Emergency Management, its employees and/or their contractors (FDEM) and the government of the United States, its employees and/or their contractors (US), from and against all claims, damages, losses, and expenses, including, but not limited to, attorney's fees arising out of, resulting from, or incident to Contractor's performance of its obligations in whole or part of this Agreement, unless such injury or damage is occasioned solely by the fault, negligence, or willful misconduct of the FDEM, or US.

In all claims against FDEM or US, Contractor's indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or any benefits payable by or for Contractor, or its employees, agents, contractors, or subcontractors

3.27. Infringement Claim:

For all licensed software or derivate works of the licensed software used by County under the resulting Agreement, Contractor agrees to protect, defend, indemnify, and hold harmless County, its agents, elected officials and employees of County from and against any and all claims, demands, actions, and causes or action which may arise asserting that all or any part of Contractor's licensed software or applications that are owned and licensed by Contractor to County for use thereof by County, infringes or misappropriates any third party's valid state patent, copyright, trademark, or any trade secret protected under United States law. In the event of an infringement claim, Contractor shall have the option: (i) to procure for County the right to continue using any product or service found to be infringing; (ii) to replace any such infringing product or service with a non-infringing product or service; or (iii) to modify such infringing product or service to make it non-infringing. Contractor shall have no obligation under

this Section if the Infringement Claim is based upon the use of the system in combination with other hardware or software applications not furnished by Contractor, or if such a claim arises from County's modification of the system without the authorization of Contractor.

3.28. Sovereign Immunity:

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

3.29. Compliance with Federal E-Verify Regulations

Contractor covenants and agrees to the following provisions, as required by law:

A. If and to the extent the Agreement meets the criteria set forth at 48 C.F.R. § 52.222-54(e), the criteria of 48 C.F.R. § 52.222-54 are hereby incorporated by reference into this Agreement as if fully set forth herein.

B. Contractor and any of Contractor's Subcontractors shall register with and utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility and work authorization status of all new employees hired by Contractor (or Contractor's Subcontractors) on or after the effective date of this Agreement and thereafter during the remaining term of the Agreement.

C. In the event Contractor enters into a subcontract, Contractor shall require, via written contract, the Subcontractor agree to: (i) register with and utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired on or after the effective date of the subcontract and thereafter during the remaining term of the subcontract; and (ii) provide Contractor with an affidavit stating that the Subcontractor does not employ, contract with, or subcontract with an unauthorized alien. Contractor shall maintain a copy of such affidavit for the duration of this Agreement or the subcontract, whichever is longer. Contractor shall provide a copy of such affidavit to the County before the Subcontractor begins any work associated with the Agreement. If the County has a good faith belief that a subcontractor knowingly violated the requirements set forth in this Section or Sections 448.09(1) or 448.095 of the Florida Statutes, but also has a good faith belief Contractor

otherwise complied with this Section and applicable law, the County shall promptly notify Contractor and order Contractor to immediately terminate its contract with the Subcontractor. Failure to comply with said order shall constitute a material breach of this Agreement.

D. If the County has a good faith belief Contractor has knowingly violated, or if Contractor is found to have violated, this Section; Section 448.09(1), Florida Statutes; Section 448.095, Florida Statutes; or the presidential Executive order and subsequent Federal Acquisition Regulation (FAR) rule requiring federal contractors to use E-Verify, if applicable, then the following shall be true: (i) such violation shall be a material breach of this Agreement by Contractor; (ii) Contractor shall indemnify, defend, and hold harmless the County from any resulting costs or expenses, including fines or penalties levied by a government agency and the County's loss or repayment of grant funds; (iii) the County may terminate this Agreement immediately and without penalty and such termination shall not be or be considered a breach of this Agreement; and (iv) Contractor shall be liable for any additional costs incurred by the County as a result of the termination of the Agreement. Contractor acknowledges and understands that if the County terminates this Agreement in accordance with this Section, Contractor shall be ineligible for award of a public contract for at least 1 year after the date on which the Agreement was terminated.

3.30. Public Entity Crimes

Pursuant to paragraph 287.133(2)(a), Florida Statutes, a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies 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 in section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.

By entering into this Agreement, the Contractor represents and warrants that it is not on the convicted vendor list and not under investigation for violation of any state or federal law relating to public entity crimes. The Contractor further represents and warrants that its subcontractors and implementer, if any, are not on the convicted vendor list and not under investigation for violation of any state or federal law relating to public entity crimes.

3.31. Patents, Copyright, and Royalties:

The supplier/provider, without exception, shall indemnify and save harmless the County of Volusia, its officers, agents and employees from liability of any nature of kind, including cost and expenses for or on account of any copyrighted, registered, patented, or unpatented invention, process, or article manufactured or used in the provision of goods and/or services, including use by the County of Volusia.

If the supplier/provider uses any design, device, or materials covered by letters, patent, copyright, or registration, it is mutually agreed and understood without exception that the quoted price shall include all royalties or costs arising from the use of such design, device, or materials in any way involved.

3.32. Use of County Logo:

The County owns and retains all proprietary rights in its logos, trademarks, trade names, and copyrighted images (Intellectual Property). As such, nothing in this solicitation permits or shall be construed as authorizing Bidder to use or display County's Intellectual Property on Bidder's submittal documents or proposal (including any exhibits attached thereto) submitted to County by or on behalf of Bidder in response to this solicitation. The County has the right to redact the County Logo displayed on any proposal submitted.

3.33. Training:

Unless otherwise specified suppliers/providers may be required at the convenience of and at no expense to the County to provide training to County personnel in the operation and maintenance of any item purchased as a result of this ITB.

3.34. Acceptance:

Products purchased as a result of this ITB may be tested for compliance with specifications. Items delivered not conforming to specifications may be rejected and returned at Bidder's expense. Those items and items not delivered by the delivery date specified in accepted offer and/or purchase order may be purchased on the open market. Any increase in cost may be charged against the Bidder.

3.35. Safety Warranty:

Any awarded Contractor including dealers, distributors, and/or manufacturers shall be responsible for having complied with all Federal, State, and local standards, regulations, and laws concerning the product or service specified, and the use thereof, applicable and effective on the date of manufacture or use or date in service including safety and environmental standards as apply to both private industry and governmental agencies.

3.36. Safety:

The Contractor shall take the necessary precautions and bear the sole responsibility for the safety of the methods employed by the Contractor in performing the work. The Bidder shall at all times comply with the regulations set forth by federal, state, and local laws, rules, and regulations concerning "OSHA" and all applicable state labor laws, regulations, and standards. The Contractor shall indemnify and hold harmless the County from and against all liabilities, suits, damages, costs, and expenses (including attorney's fees and court costs) which may be imposed on the County because of the Contractor, Subcontractor, or supplier's failure to comply with the regulations.

3.37. Warranty:

The Bidder agrees that, unless otherwise specified, the product and/or service furnished as a result of this ITB and award thereto shall be covered by the most favorable commercial warranty the Bidder gives to any customer for comparable quantities of such products and/or services and that the right and

remedies provided herein are in addition to and do not limit any rights afforded to the County of Volusia by any other provision of the ITB/offer.

3.38. Award:

The County reserves the right to award the Agreement to the Bidder(s) that the County deems to offer the lowest/most responsive and responsible Bid(s), as defined in the solicitation. The County is therefore not bound to accept a Bid based only on lowest price. In addition, the County has the sole discretion and reserves the right to cancel this ITB, to reject any/all Bids, to waive any/all informalities and/or irregularities, or to re-advertise with either the identical or revised specifications, if it is deemed to be in the best interest of the County to do so. Nothing prohibits the County from rejecting / rebidding when responses exceed budget and the County must change the solicitation to lower costs. The County also reserves the right to make multiple awards based on experience and qualifications or to award only a portion of the items and/or services specified, if deemed to be in the County's best interest or award only a portion of the solicitation.

3.39. Other Agencies:

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

3.40. FOB Destination:

The F.O.B. point for this Agreement and for all purchases made under it shall be as specified by the using department (in accordance with the Bid Submittal Form), in Volusia County, Florida. Delivery will not be complete until the using department has accepted each item. Delivery to a common carrier shall not constitute delivery to the ordering agency. All disputes shall be between the Contractor and the carrier.

3.41. Special Conditions:

County facilities are administrative facilities that provide services to the Volusia County public and any agencies that it serves. As such, activities in all buildings are critical to the provisioning of services to the public and shall not be interrupted by the Contractor's work activities.

3.42. Licenses, Certificates, and Permits:

1. The County reserves the right to require proof that the Bidder is an established business and is abiding by the ordinances, regulations, and laws of their community and the state of Florida, such as but not limited to: Business Tax Receipts, business licenses, Florida sales tax registration, Federal Employers Identification Number, Registration with the Florida Department of State, Division of Corporations' Sunbiz at www.sunbiz.org, AND;
2. The Bidder shall be required, upon notification of recommendation of award, to register with the Florida Department of State Division of Corporations at www.sunbiz.org in order to provide services

under the resulting Agreement.
3. If a license is required, the Bidder shall be licensed to perform the required work in accordance with the laws of the State of Florida and local ordinances. Bidder shall also verify that his/her subcontractors are licensed to perform the work in accordance with the laws of the State of Florida and local ordinances.
4. At time of Bid submittal, Contractor shall hold the required licensure to be the prime Contractor for all work to be performed under the resulting Agreement. If Contractor proposes to use a Subcontractor or sub-consultant to perform any work under the resulting Agreement such subcontractor and/or sub-consultant shall, at the time of Bid submittal, hold the required licensure for all work to be performed under the resulting Agreement as a subcontractor and shall maintain such license(s) in full force and effect during the term of the resulting Agreement. All licenses and permits required to perform Contractor's duties under the resulting Agreement whether such license or permit is required by the federal government, State of Florida, Volusia County, or any municipality, shall be at Bidder's sole cost and expense, and shall not be a cost of the County. All required licenses and permits shall be maintained in full force and effect during the term of the resulting Agreement.

3.43. Records & Right to Audit:

County shall have the right to audit the books, records, and accounts of Contractor and its Subcontractors that are related to the resulting Contract. Contractor and its Subcontractors shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the resulting Contract. Contractor shall preserve and make available, at reasonable times for examination and audit by County, all financial records, supporting documents, statistical records, and any other documents pertinent to this Contract for a retention period of five (5) years after completion or termination of the Contract, and any renewals, as required by Item 65, General Records Schedule GS1-SL for State and Local Government Agencies, effective February 19, 2015 and the Florida Public Records Act (Chapter 119, Florida Statutes). Contractor shall, by written Contract, require its Subcontractors to agree to the requirements and obligations of this Section. Audits will be subject to applicable privacy and confidentiality laws and regulations and Contractor's privacy and confidentiality policies and procedures.

3.44. Claim Notice:

The Contractor shall immediately report in writing to the County's designated representative or agent any incident that might reasonably be expected to result in any claim under any of the coverage mentioned herein. The Contractor agrees to cooperate with the County in promptly releasing reasonable information periodically as to the disposition of any claims, including a résumé of claims experience relating to all Contractor operations at the County project site. The designated representative for the County shall be:

Name: County of Volusia, Florida
Human Resources/Risk Management Division
Address: 125 W. New York Avenue, Suite 141
DeLand, Florida 32720

Telephone: 386-736-5963
Fax: 386-822-5006

3.45. Waiver of Claims:

Once this Agreement expires, or final payment has been requested and made, the awarded Contractor shall have no more than thirty (30) calendar days to present or file any claims against the County concerning this Agreement. After that period, the County will consider the Contractor to have waived any right to claims against the County concerning this Agreement.

3.46. Compliance with Laws and Regulations:

The Contractor shall be responsible to know and to apply all applicable federal and state laws, all local laws, ordinances, rules, regulations (including but not limited to the following statutes: Americans with Disabilities Act (ADA),Titles I, II and III of the ADA; Federal Immigration Reform and Control Act of 1986 (as amended); and Title VII of the Civil Rights Act of 1964 (as amended), and all orders and decrees of bodies or tribunals having jurisdiction or authority which in any manner affect the work, or which in any way affect the conduct of the work. Contractor shall observe and comply with all such laws, ordinances, rules, regulations, orders, and decrees for all work or services performed under this Agreement. The Contractor shall indemnify, defend and hold harmless the County and all its officers, agents, servants, or employees against any liability or claim made against the County arising from or based on the violation of any such law, ordinance, rule, regulation, order, or decree caused or committed by Contractor, its representatives, Subcontractors, sub-consultants, professional associates, agents, servants, or employees.

Pursuant to Section 287.05701, Florida Statutes, vendors are hereby notified that:

The County shall not request documentation of or consider a vendors social, political or ideological interests when determining if the vendor is a responsible vendor: and

The County may not give preference to a vendor based on the vendors social, political or ideological interests.

3.47. For Internet/Web Services:

For the purposes of this paragraph, any Services or products offered to public via the internet or online must comply with WCAG 2.0 AA in order to be deemed ADA compliant. The County will provide Contractor with prompt written notice with respect to any ADA deficiencies of which the County is aware and Contractor will promptly correct such deficiencies. If the County, the Department of Justice or other governmental entity tasked with the enforcement of the ADA (“Enforcement Agency”) notes any deficiency in the facilities, practices, services, or operations of the Contractor furnished or provided in connection with this Agreement, Contractor shall, at no additional charge or cost to the County, immediately cure any such deficiencies without delay to the satisfaction of such Enforcement Agency. Contractor further agrees that it shall, to the extent permitted by law, indemnify, defend, and hold harmless the County against any and all claims, sanctions, or penalties assessed against the County, which claims, sanctions, or penalties arise or otherwise result from Contractor’s failure to comply with the ADA or WCAG 2.0 AA, for online or internet Services or products.

3.48. Scrutinized Companies-FL Statute Section 287.135 and 215.473:

Contractor must certify that the company is not participating in a boycott of Israel. For Contracts for goods or services of one million dollars or more, Contractor must also certify that Contractor is not on the Scrutinized Companies that Boycott Israel List, not on the Scrutinized Companies with Activities in Sudan List, and not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has not been engaged in business operations in Cuba or Syria. Subject to limited exceptions provided in state law. The County will not contract for the provision of goods or services with (i) any company participating in a boycott of Israel, and, (ii) for Contracts for goods or services of one million dollars or more, any other scrutinized company as described above. Contractor must submit the certification form. Submitting a false certification shall be deemed a material breach of contract. The County shall provide notice, in writing, to the Contractor of the County's determination concerning the false certification. The Contractor shall have five (5) Calendar days from receipt of notice to refute the false certification allegation. If such false certification is discovered during the active contract term, the Contractor 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 Contractor does not demonstrate that the County's determination of false certification was made in error then the County shall have the right to terminate the Contract and seek civil remedies pursuant to Section 287.135, Florida Statutes, as amended from time to time.

3.49. Modifications Due to Public Welfare or Change in Law:

The County shall have the power to make changes in the Agreement as the result of changes in law and/or ordinances of Volusia County to impose new rules and regulations on the Contractor under the Agreement relative to the scope and methods of providing services as shall, from time to time, be necessary and desirable for the public welfare. The County shall give the Contractor notice of any proposed change and an opportunity to be heard concerning those matters. The scope and method of providing services as referenced herein shall also be liberally construed to include, but is not limited to, the manner, procedures, operations and obligations, financial or otherwise, of the Contractor. In the event any future change in Federal, State or County law or the ordinances of Volusia County materially alters the obligations of the Contractor, or the benefits to the County, then the Agreement shall be amended consistent therewith. Should these amendments materially alter the obligations of the Contractor, then the Contractor or the County shall be entitled to an adjustment in the rates and charges established under the Agreement. Nothing contained in the Agreement shall require any party to perform any act or function contrary to law. The County and Contractor agree to enter into good faith negotiations regarding modifications to the Agreement, which may be required in order to implement changes in the interest of the public welfare or due to change in law. When such modifications are made to the Agreement, the County and the Contractor shall negotiate in good faith, a reasonable and appropriate adjustment for any changes in services or other obligations required of the Contractor directly and demonstrably due to any modification in the Agreement under this clause.

3.50. Right to Require Performance:

1. The failure of the County or Contractor at any time to require performance by the other of any provision hereof shall in no way affect the right of the County or Contractor thereafter to enforce same,

nor shall waiver by the County of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of any provision itself.

2. In the event of failure of the Contractor to deliver services in accordance with the Agreement terms and conditions, the County, after due written notice, may procure the services from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies that the County may have.

3.51. Force Majeure:

Neither party shall be liable for any failure or delay in the performance of its obligations under the Agreement to the extent such failure or delay necessarily results from the occurrence of a Force Majeure Event beyond the control or reasonable anticipation of either party, including, but not limited to, compliance with any unanticipated government law or regulation not otherwise in effect at the time of execution of this Agreement, acts of God, acts of domestic or international terrorism, any virus, bacterium, or other microorganism capable of inducing physical distress, illness, or disease, whether due to a pandemic or otherwise, unforeseeable governmental acts or omissions, fires, strikes, natural disasters, wars, riots, transportation problems, and/or any other unforeseeable cause whatsoever beyond the reasonable control of the parties (and such cause being referred to as a "Force Majeure Event"). Accordingly, the parties further agree that:
1. Upon the occurrence of Force Majeure Event, the non-performing party shall be excused from any further performance of those obligations under this Agreement that are affected by the Force Majeure Event for as long as (a) the Force Majeure Event continues; and (b) the non-performing party continues to use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay.
2. Upon the occurrence of a Force Majeure Event, the non-performing party shall notify the other party of the occurrence of such event and describe in reasonable detail the effect(s) of such event upon the party's performance of its obligations and duties pursuant to this Agreement. Such notice shall be delivered or otherwise communicated to the other party within three (3) business days following the failure or delay caused by the Force Majeure Event, or as soon as possible after such failure or delay if the Force Majeure Event precludes the non-performing party from providing notice within such time period.
3. In the event of a Force Majeure Event, the time for performance by the parties under the applicable statement of work shall be extended for a period of time equal to the time lost by reason of such cause through execution of a Change Order pursuant to the terms of the Agreement.

3.52. Contractor's Personnel:

During the performance of the Agreement, the Contractor agrees to the following:
1. The Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, handicap, or national origin, except when such condition is a bona fide occupational qualification reasonably necessary for the normal operations of the Contractor. The Contractor agrees to post in conspicuous places, visible to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
2. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the

Contractor, shall state that such Contractor is an Equal Opportunity Employer.
3. The Contractor shall be responsible for ensuring that its employees, agents, and subcontractors comply with all applicable laws and regulations and meet federal, state, and local requirements related to their employment and position;
4. The Contractor certifies that it does not and will not during the performance of the Agreement employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986, as amended;
5. Notices, advertisements, and solicitations placed in accordance with federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section;
6. The Contractor shall include the provisions of the foregoing paragraphs 1, 2, 3, 4, and 5, above, in every subcontract or purchase order so that the provisions will be binding upon each Contractor;
7. The Contractor and any Subcontractor shall pay all employees working on this Agreement not less than minimum wage specified in the Fair Labor Standards Act (29 CFR 510-794) as amended;
8. Any information concerning the County, its products, services, personnel, policies, or any other aspect of its business learned by the Contractor or personnel furnished by the Contractor in the course of providing services pursuant to the Agreement and exempt from disclosure pursuant to Section 119.01, F.S., shall be held in confidence and shall not be disclosed by the Contractor or any employee or agents of the Contractor or personnel furnished by the Contractor, without the prior written consent of the County; and
9. Both Contractor and Subcontractors awarded an Agreement as a result of Section Local Preference, shall register all open positions related to this Agreement with the Center for Business Excellence (CBE), and submit appropriate affidavit showing compliance.

3.53. County/Contractor Relationship:

1. Any awarded Contractor shall provide the services required herein strictly under a contractual relationship with the County and is not, nor shall be, construed to be an agent or employee of the County. As an independent Contractor the awarded Contractor shall pay any and all applicable taxes required by law; shall comply with all pertinent Federal, State, and local statutes including, but not limited to, the Fair Labor Standards Act, The Americans with Disabilities Act, the Federal Civil Rights Act, and any and all relevant employment laws. The Contractor shall be responsible for all income tax, FICA, and any other withholdings from its employees' or Subcontractor’s wages or salaries. Benefits for same shall be the responsibility of the Contractor including, but not limited to, health and life insurance, mandatory Social Security, retirement, liability/risk coverage, and workers' and unemployment compensation.
2. The Contractor shall hire, compensate, supervise, and terminate members of its work force; shall direct and control the manner in which work is performed including conditions under which individuals will be assigned duties, how individuals will report, and the hours individuals will perform.
3. The Contractor shall not be provided special space, facilities, or equipment by the County to perform any of the duties required by the Agreement, nor shall the County pay for any business, travel, or training expenses or any other Agreement performance expenses not explicitly set forth in the specifications.
4. The Contractor, except as expressly set forth herein, shall not be exclusively bound to the County and may provide professional services to other private and public entities as long as it is not in direct conflict and does not provide a conflict of interest with the services to be performed for the County.

3.54. Disqualification of Bidders:

One (1) Bid: Only one (1) Bid submittal from an individual firm, partnership or corporation under the same or under different name will be considered. If a Bidder submitted more than one (1) Bid for the work involved, all Bids submitted from such Bidder will be rejected. Collusion among Bidders: If it is believed that collusion exists among the Bidders, the Bids of all participants in such collusion shall be rejected and no participants in such collusion will be considered in future proposals for the same work.

3.55. Debarment: Purpose and Intent.

The county endeavors to solicit offers from, award contracts to, and consent to subcontracts with responsible vendors and contractors only. To further this policy, the county asserts its authority to debar certain vendors and contractors from participating in solicitations pursuant to the policies and procedures herein. The serious nature of debarment requires that this sanction be imposed only when it is in the public interest for the county's protection and not for purposes of punishment. Debarment is intended as a remedy in addition to, and not in substitution of, the evaluation of the responsibility of county vendors and contractors, and this policy and the procedures provided for herein shall not supplant or supersede county's authority to reject or otherwise terminate vendors or contractors based on findings of non-responsibility on a case-by-case basis. Further information regarding the County's policies and procedures in regards to DEBARMENT may be found at https://www.volusia.org/core/fileparse.php/5896/urlt/Debarment-Policy-final-3-27-17.pdf

3.56. For purposes of this ITB and evaluation of responses hereto the following shall apply:

Unit prices shall prevail over extended prices; written matter shall prevail over typed matter; numbers spelled in word form shall prevail over Arabic numerals ("one" over "1"). When not inconsistent with context words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

3.57. Dispute Resolution:

1. Good Faith Efforts to Resolve. The parties to this Agreement shall exercise their best efforts to negotiate and settle promptly any dispute that may arise with respect to this Agreement in accordance with the provisions set forth in this Section 56, Dispute Resolution. The Contractor and County Project Manager shall use reasonable efforts to arrange personal meetings and/or telephone conferences as needed, at mutually convenient times and places, to address and work toward resolution of issues that arise in performance of this Agreement and any applicable statement of Work or Services. Issues shall be escalated to successive management levels as needed.
2. Informal Dispute Resolution. If a dispute develops between the parties concerning any provision of this Agreement, or the interpretation thereof, or any conduct by the other party under these agreements, and the parties are unable to resolve such dispute within five (5) business days or longer, that party, known as the Invoking Party, through its applicable Project Manager, shall promptly bring the disputed matter to the attention of the non-Invoking Party's Project Manager or designated

representative, as the case may be, of the other party in writing ("Dispute Notice") in order to resolve such dispute.

3. Discovery and Negotiation / Recommended Procedures. Upon issuance of a Dispute Notice, the Project Managers or designated representative shall furnish to each other all non-privileged information with respect to the dispute believed by them to be appropriate and germane. The Project Managers shall negotiate in an effort to resolve the dispute without the necessity of any formal proceeding. If such dispute is not resolved by the Project Managers or designated representative within five (5) County Work Days of issuance of the Dispute Notice, or such other time as may be mutually allowed by the Project Managers as being necessary given the scope and complexity of the dispute, the Project Managers may, depending upon the nature, scope, and severity of the dispute, escalate the dispute as indicated below:

County Work Days	Contractor's Representative	
10	Contractor's Project Manager	C
10	Contractor's Sr. Vice President of Sales	Directo
20	Contractor's COO or President	D

4. Formal Dispute Resolution. At any point after issuance of a Dispute Notice under this section, either party may request and initiate formal non-binding mediation before a single mediator, which mediation shall be completed within thirty (30) days of initiation or such longer time as may be agreed upon by both parties as being necessary for the mutual selection of a mediator and scheduling of such mediation. Any such mediation shall be convened and conducted in accordance with the rules of practice and procedure adopted by the Supreme Court of Florida for court-ordered mediation, Rule 1.700 et seq. of the Florida Rules of Civil Procedure, and Chapter 44,
Florida Statutes. If the dispute remains unresolved after conducting such mediation, then either party may proceed to finalize any pending termination remedies and commence litigation in a court of competent jurisdiction. Each party shall bear its own costs and attorney's fees for mediation or arbitration of an issue arising under this Agreement.

5. Right to Terminate Reserved. Regardless of the dispute resolution procedures provided for in this Section, Dispute Resolution, nothing herein shall affect, delay, or otherwise preclude a party from terminating this Agreement in accordance with the provisions of Special Conditions, Termination, it being understood that these dispute resolution procedures are intended as a means of resolving disputes both during the term of this Agreement and after termination or expiration thereof.

3.58. Content of Invitation/Response:

The contents of this ITB, all terms, conditions, specifications, and requirements included herein and the accepted and awarded response thereto may be incorporated into an agreement to purchase and become legally binding. Any terms, conditions, specifications, and/or requirements specific to the item or service requested in this invitation to bid shall supersede the requirements as specified in the *General Terms and Conditions* section of this solicitation.

Submission of Offers
The County of Volusia is requesting written bids for the service and/or product(s) detailed within this solicitation. If your company is interested in submitting a bid to provide this service and/or product(s), please provide the requested information in this ITB, complete the included forms, and submit these documents via your response through the County's ePROCUREMENT PORTAL by the date and time posted. Bids received after the posted date and time may not be considered. Do not submit confidential information, proprietary information and/or trade secrets.

3.59. Authorized Signatory

Vendor acknowledges that the name and title of the signatory (the "Authorized Signatory"), as completed below, is authorized to execute contracts/agreements with the County of Volusia, and that submitting a bid via the County's eProcurement Portal shall be the act of and attributable to the Authorized Signatory to bind the company. By submitting this Agreement electronically, the Authorized Signatory does thereby adopt the electronic or conformed submittal as authorized firm commitment and for use as an official record by the County of Volusia.

3.60. REVISIONS | ADDENDA | QUESTIONS & ANSWERS

All answers to questions of substance will be publicly published via the County's eProcurement Portal, Question & Answer feature.

Participants are required to review all revisions and answers to questions published. Revisions within the Solicitation as well as responses posted through the 'Question & Answer' feature are authoritative and shall be considered an addendum to the Solicitation. All information in this Solicitation, including information provided through the 'Question & Answer' feature are incorporated into the Solicitation or any Contract resulting from this Solicitation.

3.61. Insurance Requirements

Required Types of Insurance

The Contractor shall purchase and maintain at its own expense, during the term of the Agreement, the types and amounts of insurance with limits no less than those shown in the Required Types and Limits of Insurance Chart associated with this solicitation, in the form and from companies satisfactory to the County. The Required Types and Limits of Insurance Chart is a listing and general summary of insurance policies required and is not intended to be comprehensive as to the requirements of each specific policy. Contractors shall review the additional requirements in this section and ensure that the insurance policies comply with the specific terms and conditions therein.

For the purposes of indemnification of the County or an endorsement or insurance coverage under this Agreement/Contract under which the County is a "named insured", "additional named insured", or "additional insured", the term "County" includes the County of Volusia (a body corporate and politic and a subdivision of the State of Florida), including its districts, authorities, separate units of government

established by law, ordinance or resolution, partners, elected and non-elected officials, employees, agents, volunteers, and any party with whom the County has agreed by contract to provide additional insured status.

Regardless of anything submitted as proof of insurance, Contractor shall comply with all requirements as stated in the solicitation and/or contract documents.

3.62. Subcontractors and Independent Contractors

All subcontractors & independent contractors utilized by Contractor to provide services to County and its employees under this Agreement/Contract shall be required to maintain all insurance policies with the same terms, conditions, and requirements required of the Contractor in the Required Types and Limits of Insurance Chart and described below in this Exhibit.

3.63. Claims Made Basis Insurance Policies

All insurance policies written on a Claims Made Form shall maintain a retroactive date prior to or equal to the effective date of the Agreement. The Contractor shall purchase a Supplemental Extended Reporting Period ("SERP") with a minimum reporting period of not less than three (3) years in the event the policy is canceled, not renewed, switched to occurrence form, or any other event which requires the purchase of a SERP to cover a gap in insurance for claims which may arise under or related to the Agreement. The Contractor's purchase of the SERP shall not relieve the Contractor of the obligation to provide replacement coverage. In addition, the Contractor shall require the carrier immediately inform the Contractor, the County Risk Manager, and the Purchasing and Contracts Division of any contractual obligations that may alter its professional liability coverage under the Agreement.

3.64. Risk Retention Groups and Pools

Contractor shall not obtain an insurance policy required under this Agreement from a Risk Retention Group or Pool.

3.65. Minimum Required Policies and Limits

Minimum underlying policies, coverages, and limits shall include all policies listed in the Required Types and Limits of Insurance Chart.

3.66. Additional Insured, Policies, Coverages, Limits, Primary and Non-Contributory Basis

Under all insurance policies where the County is required to be an additional insured, the coverage and limits provided to the County under Contractor's insurance policies shall be that listed in the Required Types and Limits of Insurance Chart or the Contractor's actual limits, whichever is higher. All coverage provided to the County as an additional insured by said policies shall be primary and shall not be additional to or contributing with any other insurance carried by or for the benefit of the County with any other insurance available to the County. The Contractor shall utilize ISO Form CG 20 38 04 13 and CG 20 37 04 13 or equivalent to provide additional insured status to the County and any party to whom the County is contractually bound to provide additional insured status under a commercial general liability policy.

3.67. Workers' Compensation

Workers' Compensation insurance is required for all employees of the Contractor, employed or hired to perform or provide work or services under the Agreement or that is in any way connected with work or services performed under the Agreement, without exclusion for any class of employee, and shall comply fully with the Florida Workers' Compensation Law (Chapter 440, Florida Statutes, Workers' Compensation Insurance) and include Employers' Liability Insurance with limits no less than the statutory. Policy shall include a waiver of subrogation in favor of the County. If Contractor is using a "leased employee" or an employee obtained through a professional employer organization ("PEO"), Contractor is required to have such employees covered by worker's compensation insurance in accordance with Florida Worker's Compensation law and the insurance carrier of the PEO execute a waiver of subrogation in favor of the County, its employees and insurers.

(1) Contractor and its Subcontractors, or any associated or subsidiary company doing work on County property or under the Agreement must be named in the Workers' Compensation coverage or provide proof of their own Workers' Compensation coverage, without exclusion of any class of employee, and with a minimum of the statutory limits per occurrence for Employer's liability coverage. Further, if the Contractor's Subcontractors fail to obtain Workers' Compensation insurance and a claim is made against the County by the uncovered employee of said Subcontractor of the Contractor, the Contractor shall indemnify, defend, and hold harmless the County from all claims for all costs including attorney's fees and costs arising under said employee(s) Workers' Compensation insurance claim(s).

3.68. Commercial General Liability Insurance

The Contractor shall acquire and maintain Commercial General Liability insurance, with limits of not less than the amounts shown in the Required Types and Limits of Insurance Chart. Contractor shall not obtain an insurance policy wherein the policy limits are reduced by defense and claim expenses. Such insurance shall be issued on an occurrence basis and include coverage for the Contractor's operations, independent Contractors, Subcontractors and "broad form" property damage coverages protecting itself, its employees, agents, Contractors or subsidiaries, and their employees or agents for claims for damages caused by bodily injury, property damage, or personal or advertising injury, and products liability/completed operations including what is commonly known as groups A, B, and C. Such policies shall include coverage for claims by any person as a result of actions directly or indirectly related to the employment of such person or entity by the Contractor or by any of its Subcontractors arising from work or services performed under the Agreement. Public liability coverage shall include either blanket contractual insurance or a designated contract contractual liability coverage endorsement, indicating expressly the Contractor's Agreement to indemnify, defend and hold harmless the County as provided in the Agreement. The commercial general liability policy shall provide coverage to County when it is required to be named as an additional insured either by endorsement or pursuant to a blanket additional insured endorsement, for those sources of liability which would be covered by the latest edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01), as filed for use in the State of Florida by the Insurance Services Office, without the attachment of any endorsements excluding or limiting coverage for Bodily Injury, Property Damage, Products/Completed Operations, Independent Contractors, Property of County in Contractor's Care, Custody or Control or Property of County on which contracted operations are being performed, Explosion, Collapse or Underground

hazards (XCU Coverage, Contractual Liability or Separation of Insureds. When County is added as additional insured by endorsement, ISO Endorsements CG 20 38 and CG 20 37 or their equivalent shall be used and shall provide such additional insured status that is at least as broad as ISO form CG 20 10 11 85. If County has agreed by separate contract to require Contractor to name another party as an additional insured, Contractor shall add said party as an additional insured to the commercial general liability policy by ISO Endorsement CG 20 38. Contractor shall require its subcontractors performing work under this Agreement to add the County and any other party that the County has agreed by separate contract to require Contractor to name as an additional insured to their Commercial General Liability policy as an additional insured by ISO Endorsement CG 20 38. All commercial general liability policies shall provide a waiver of subrogation in favor of the County and any other party required by this Agreement to be named as an additional insured.

3.69. Motor Vehicle Liability

The Contractor shall secure and maintain during the term of the Agreement motor vehicle coverage in the split limit amounts of no less than the amounts shown in the Required Types and Limits of Insurance Chart, per person, per occurrence for bodily injury and for property damage or a combined single limit of the amount shown above with “Any Auto”, Coverage Symbol 1, providing coverage for all autos operated regardless of ownership, and protecting itself, its employees, agents or lessees, or subsidiaries and their employees or agents against claims arising from the ownership, maintenance, or use of a motor vehicle. The County shall be an additional insured under this policy when required in the Required Types and Limits of Insurance Chart.

3.70. Transportation Pollution Liability

Contractor shall purchase coverage for liability caused by pollution conditions arising out of the operations of Contractor and its sub-contractors on a first and third party basis. The County shall be named as additional insured. Coverage shall apply to Misdelivery of Liquid Products, bodily injury, sickness, disease, mental anguish or shock, including death and medical monitoring; property damage and environmental damage, including loss of use of damaged property or of property that has not been physically injured; cleanup & remediation expenses and regulatory actions; including costs and expenses incurred in the investigation, defense, or settlement of claims. The policy shall include coverage for loading, transporting, and unloading of fuel at client sites. Coverage shall apply to sudden and non-sudden pollution conditions including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water, provided such conditions are not naturally present in the environment in the concentration or amounts discovered. Policy shall include a severability of interest or separation of insured provision (no insured vs. insured exclusion) and be endorsed to be primary and non-contributory with any other coverage or self-insurance maintained by the County. Policy shall be endorsed with a waiver of subrogation in favor of County.

3.71. Primary and Excess Coverage

Any insurance required may be provided by primary and excess insurance policies.

3.72. Insurance Requirements

A. General Insurance Requirements:

(1) All insurance policies shall be issued by insurers licensed and/or duly authorized under Florida Law to do business in the State of Florida and all insuring companies are required to have a minimum rating of A- and a Financial category size of VIII or greater in the "Best Key Rating Guide" published by A.M. Best & Company, Inc.

(2) Approval by County of any policy of insurance shall not relieve Contractor from its responsibility to maintain the insurance coverage required herein for the performance of work or services by the Contractor or its Subcontractors for the entire term of the Agreement and for such longer periods of time as may be required under other clauses of the Agreement.

(3) Waiver of Subrogation. The Contractor hereby waives all rights against the County and its Subcontractors for damages by reason of any claim, demand, suit or settlement (including workers' compensation) for any claim for injuries or illness of anyone, or perils arising out of the Agreement. The Contractor shall require similar waivers from all its Subcontractors. Contractor's insurance policies shall include a waiver of subrogation in favor of the County. This provision applies to all policies of insurance required under the Agreement (including Workers' Compensation, and general liability).

(4) County Not Liable for Paying Deductibles. For all insurance required by Contractor, the County shall not be responsible or liable for paying deductibles for any claim arising out of or related to the Contractor's business or any Subcontractor performing work or services on behalf of the Contractor or for the Contractor's benefit under the Agreement.

(5) Cancellation Notices. During the term of the Agreement, Contractor shall be responsible for promptly advising and providing the County Risk Manager and the Purchasing and Contracts divisions with copies of notices of cancellation or any other changes in the terms and conditions of the original insurance policies approved by the County under the Agreement within two (2) business days of receipt of such notice or change.

(6) Deductibles. Contractors that maintain and administer a self-insured retention or a large deductible program exceeding the insurance requirements listed in this solicitation using a formal program to fund either program may submit an exception in accordance with the solicitation section detailing Questions, Exceptions, and Addenda, to be considered for this solicitation.

The request must include a summary of the program's design, funding method, and the program's supporting financial information. If additional information is necessary, the County will request more specific information, which must be provided by the Contractor. The County Risk Manager will review the information submitted and determine whether the program is acceptable to the County.

Contractors with no formal risk management program in place to manage and fund deductibles or self-insured retentions may not be considered. Subject to County approval, Contractor may obtain a letter of credit in the amount equivalent to the deductible, which shall remain in effect during the term of the Agreement at no additional cost to the County.

(7) Contractor's obligations or services shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity or insurance defense of additional or named insureds which would otherwise exhaust or be unavailable as to a party or person described in this Contract.

3.73. Proof of Insurance

A. The Contractor shall be required to furnish evidence of all required insurance in the form of certificates of insurance, which shall clearly outline all hazards covered as itemized herein, the amounts of insurance applicable to each hazard and the expiration dates.

B. The Contractor shall furnish proof of insurance acceptable to the County prior to or at the time of execution of the Agreement and the Contractor shall not commence work or provide any service until the Contractor has obtained all the insurance required under the Agreement and such insurance has been filed with and approved by the County. Upon request from the County, the Contractor shall furnish copies of all requested policies and any changes or amendments thereto, immediately, to the County, the County Risk Manager, and Purchasing and Contracts Divisions, prior to the commencement of any contractual obligations. The Agreement may be terminated by the County, without penalty or expense to County, if at any time during the term of the Agreement proof of any insurance required hereunder is not provided to the County.

C. All certificates of insurance shall clearly indicate that the Contractor has obtained insurance of the type, amount and classification required by this Section. No work or services by Contractor or its Subcontractors shall be commenced until County has approved these policies or certificates of insurance. Further, the Contractor agrees that the County shall make no payments pursuant to the terms of the Agreement until all required proof or evidence of insurance has been provided to the County. The Agreement may be terminated by the County, without penalty or expense, if proof of any insurance required hereunder is not provided to the County.

D. The Contractor shall file replacement certificates with the County at the time of expiration or termination of the required insurance occurring during the term of the Agreement. In the event such insurance lapses, the County expressly reserves the right to renew the insurance policies at the Contractor’s expense or terminate the Agreement but County has no obligation to renew any policies.

E. The provisions of these sections, Required Types of Insurance; Insurance Requirements; and Proof of Insurance, shall survive the cancellation or termination of the Agreement.

3.74. Please provide Proof of Insurance

Please provide Proof of Insurance - evidence of required insurance coverage or proof of insurability in the amounts indicated. If available, a properly completed ACORD Form is preferable. Upon award, final forms must contain the correct solicitation and/or project number and Volusia County contact person.

Firms that have owner/operators that have filed a "Notice of Election to be Exempt" shall submit a copy with the response.

3.75. Acknowledgement of Bid Tabulation

All responses accepted by the County of Volusia are subject to the County's Terms and Conditions. Any and all additional Terms and Conditions submitted by respondent(s) are rejected and shall have no force and effect. Bids from the respondent(s) listed on the bid tabulation are the only responses received timely as of the closing date and time. All other responses submitted in response to the solicitation, if any, are rejected as late.

4. Scope of Work

4.1. Bulk Fuel

The following entities, who from this point forward shall be known as the Consortium, are seeking qualified fuel Contractors to supply bulk fuel.

- County of Volusia (including Daytona Beach International Airport)
- Volusia County School Board
- VOTRAN (Volusia County's mass transit system)
- The City of Daytona Beach
- The City of Port Orange
- The City of South Daytona
- The City of New Smyrna Beach
- The City of Ormond Beach
- The City of DeLand
- Flagler County
- City of Edgewater

The following quantities are being provided as estimates only and in no way represent a guarantee of future expenditure. The Consortium will not be obligated to purchase any minimum or maximum amount of fuel during the term of the Agreement resulting from this ITB. The Consortium reserves the right to add or remove members at any time.

Estimated Annual Usage in Gallons

Customer	Diesel	Unleaded	Off Road
Volusia County	769,000	1,080,000	250,317
School Board	583,500	87,000	0
VOTRAN	608,560	274,600	700
Daytona Beach	102,000	536,000	0
South Daytona	8,500	43,000	0
Ormond Beach	54,000	104,500	0
New Smyrna Beach	60,000	135,000	5,000
Port Orange	62,000	145,000	2,000
DeLand	40,000	180,000	0
Flagler County	100,000	450,000	0
Edgewater	70,227	71,690	0
Daytona Beach Airport	13,000	8,000	0

4.2. Fuel Requirements

A. Ultra Low Sulfur Diesel Fuel with sulfur content between 0 ppm - 15 ppm.

B. Ethanol (10%)

C. No. 2 Red-Dyed fuel for off-road use with sulfur content between 0ppm – 15ppm.

4.3. Pricing

A. All prices shall be based on Oil Price Information Service (OPIS) pricing and invoiced as net gallons. The Consortium is seeking an OPIS Daily low and OPIS Daily average price plus markup, not inclusive of taxes, but including delivery to all locations, overhead, profit, and any other costs incurred by the Contractors. All pricing submitted in Section 5 on both Pricing Sheets shall be verified next to 6 months of OPIS data to confirm the best interest for the Consortium. The months used for verification will be February 2023, June 2023, July 2023, August 2023, December 2023, and January 2024. All data collected for evaluation originated from OPIS Pad 1 report for Orlando, Florida terminal. The Consortium will choose which submitted pricing mark up, OPIS Daily Low or Daily Average, to accept.

B. Daily pricing shall be based on the 6:45 a.m. OPIS Report. This pricing shall be in effect until the prices change at 6 p.m. the same calendar day. Any deliveries loaded at 6 p.m. or after shall be priced based on the 6:45 a.m. OPIS report for the following day. OPIS documentation may be requested and required in settling of any pricing errors throughout the term of the bid. Contractors shall bid full loads (8,000 for E-10 or 7,500 for diesel only deliveries) and short drops (less than 8,000 for E-10 or 7500 for diesel only deliveries).

C. Contractors shall provide invoices and bill of ladings for all fuel drops electronically no later than six (6) business days following the date of the delivery. Invoices shall be sent to each Consortium member who are responsible for paying their own invoices.

D. Contractors shall complete pricing in Sections indicated below. Pricing Sheets shall include the following information:

1. ***Pricing –*** Bidders shall submit pricing as a markup over OPIS Daily low and OPIS Daily average on Section 5 Pricing Sheets as detailed in Section 4.3.A.

2. ***Terminal –*** Bidders shall define which terminal will be utilized to supply fuel (i.e. Tampa, Orlando, Jacksonville, Port Canaveral, Port Everglades, or other). Answer shall be entered in Section 6 Vendor Questionnaire Number 15.3.

3. ***Delivery Times –*** Delivery shall be required no later than one (1) calendar day from receipt of release order. Answer shall be entered in Section 6 Vendor Questionnaire Number 15.4.

4. ***Additional Fees –*** Bidders may submit pricing on any other fees that will be part of the Contractors mark up such split loads, above ground tank delivery, and tank wagon drop charges in Section 5 Pricing Sheets.

    a. Split loads may consist of different products to the same location or different or same product to multiple locations.

    b. The following is a list of possible number of split loads per user:

i. Volusia County – approximately 3-4 times a month

ii. Volusia County School Board – Less than a 12 a year, between DeLand and Pierson locations

iii. City of Ormond Beach – approximately twice a year

iv. City of DeLand – orders one truck of diesel and splits that between two separate locations approximately four times a year

v. VOTRAN – very seldom and only in an emergency situation

vi. City of New Smyrna Beach – typically delivery is made to all fire stations in one day from the same truck

vii. City of Daytona Beach – 2-3 times a year; unleaded gas and premium

viii. Flagler County – Never

ix. City of Port Orange – may request split loads for hurricane prep.

x. City of Edgewater – Never

4.4. Fuel site and Pumps

Attachment B- Fuel Site Information provides the Facility Identification (FACID) number and current location of each fuel site, including tank attributes, hours of operation, and the project manager assigned to each location.

4.5. Quality Standards/EPA Violations

All fuel provided shall comply with governmental regulations and conform to all specifications regarding environmental and quality standards set forth by the State of Florida**.** In addition, the Environmental Protection Agency (EPA) has directed that fines will be levied for any fuel found not to be in compliance with the Sulfur content on the Ultra Low Sulfur Diesel fuel. The Contractors shall be responsible for any fines, freight costs and replacement of fuel product for fuel found to be in non-compliance by the EPA.

4.6. Conditions for Emergency, Hurricane, or Disaster

Before, during, and after a public emergency, disaster, hurricane, fire, flood, or other acts of God, the Contractors shall provide fuel to all Consortium members on a “first priority” basis. All Consortium members shall be given priority when allocations become available.

The Consortium expects to pay a fair and reasonable price for all fuel in the event of a disaster, emergency, fire, or hurricane. In the event that fuel is provided to the Consortium from areas outside of the contracting ports, additional freight costs may be allowed. This shall be communicated and agreed upon by both the Contractors and the Consortium Project Managers before deliveries are made. Contractors shall furnish a twenty-four (24) hour phone number in the event of such an emergency.

4.7. Delivery and Penalties

Delivery shall be no later than one (1) calendar day from receipt of release order, unless stated otherwise, from the ordering entity. Failure to deliver fuel during within 24-hours may result in the Contractors covering any costs arising from having to order fuel from an alternate vendor. Penalties may include any extra price per gallon over agreed upon contract pricing and any additional freight costs incurred. This is for normal operations only.

5. Pricing Proposal

PRICING SHEET- OPIS DAILY LOW

Bidders shall submit pricing as a markup over OPIS Daily low as detailed in Section 4.3.A . Bidder(s) shall complete all fields.

Line Item	Fuel Type	Unit of Measure	Markup over OPIS daily low
1	Ultra Low Sulfur Diesel +/= 7500 gallons	GAL	
2	Ultra Low Sulfur Diesel less than 7500 gallons	GAL	
3	E-10 Fuel +/= to 8000 gallons	GAL	
4	E-10 Fuel less than 8000 gallons	GAL	
5	Gross No.2 Red-Dyed Fuel (Off Road) +/= 7500 gallons	GAL	
6	Gross No.2 Red-Dyed Fuel (Off Road) less than 7500 gallons	GAL	

PRICING SHEET- OPIS DAILY AVERAGE

Bidders shall submit pricing as a markup over OPIS Daily average as detailed in Section 4.3.A . Bidder(s) shall complete all fields.

Line Item	Fuel Type	Unit of Measure	Markup over OPIS daily average
1	Ultra Low Sulfur Diesel +/= 7500 gallons	GAL	
2	Ultra Low Sulfur Diesel less than 7500 gallons	GAL	
3	E-10 Fuel +/= to 8000 gallons	GAL	
4	E-10 Fuel less than 8000 gallons	GAL	
5	Gross No.2 Red-Dyed Fuel (Off Road) +/= 7500 gallons	GAL	
6	Gross No.2 Red-Dyed Fuel (Off Road) less than 7500 gallons	GAL	

PRICING SHEET - SPLIT LOADS

Bidder(s) shall enter any additional fee for split loads. Bidder(s) shall enter zero dollars ($0) if no additional fee applies.

Line Item	Description	Quantity	Unit of Measure	Unit Cost	Total
1	Additional Fee for Split Loads (Quantity is an estimate only)	25	EA		
TOTAL					

PRICING SHEET- ABOVE GROUND TANKS

Bidder(s) shall enter any additional fee for above ground tanks. Bidder(s) shall enter zero dollars ($0) if no additional fee applies.

Line Item	Description	Quantity	Unit of Measure	Unit Cost	Total
1	Additional fee for above ground tanks	1	EA		
TOTAL					

PRICING SHEET- TANK WAGON

Bidder(s) shall enter any additional drop charge for tank wagon delivery. Bidder(s) shall enter zero dollars ($0) if no additional fee applies.

Line Item	Description	Quantity	Unit of Measure	Unit Cost	Total
1	Additional Drop Charge for tank wagon delivery	1	EA		
TOTAL					

6. Vendor Questionnaire

6.1. Do you agree to this special condition.*

By checking yes, the vendor agrees to the special conditions as contained in this section:

Due to the nature of the services to be provided and the potential impact to the County for loss, the Contractor cannot disclaim consequential or special damages related to the performance of this Agreement. The Contractor shall be responsible and accountable for any and all damages, directly or indirectly, caused by the actions or inaction of its employees, staff, or Subcontractors. There are no limitations to this liability.

☐ Yes
☐ No

*Response required

6.2. Do you agree to comply with the E-verify requirements? *

The 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 / Consultant on or after the effective date of this Agreement and thereafter during the remaining term

of the Agreement, including Subcontractors. Any subcontract entered into by Contractor with any Subcontractor performing work under

this contract shall include the following language: "The Subcontractor 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 on or after the effective date of this Agreement and

thereafter during the remaining term of the Agreement." The Contractor covenants and agrees that if it is found in violation of this section

or the Executive Order, such violation shall be a material breach of this Agreement and Contractor shall indemnify, defend and hold

harmless the County from any fines or penalties levied by a government agency, including the loss or repayment of grant funds by the

County.

☐ Yes
☐ No

*Response required

6.3. Do you agree to comply with the FEMA federal contract provisions?*

This Agreement and the products/services provided may be utilized in the event of declared State/Federal Emergency, and Contractors shall comply with the applicable sections of Exhibit III, Federal Contract Provisions.

☐ Yes
☐ No

*Response required

6.4. Please complete and upload the Federal Contract Provisions. *

Please download the below documents, complete, and upload.

- Federal_Contract_Provisions...

*Response required

6.5. Contractor/Proposer attestation*

By checking yes, the Contractor/Proposer acknowledges that information provided in the response is true and correct and agrees to all terms and conditions contained in this solicitation and related exhibits. Contractor/Proposer further agrees and acknowledges that no proprietary or confidential information has been submitted and that the submission of a response is final. Responses may be withdrawn by the Contractor/Proposer prior to the closing/offer date. Following the closing/offer date, Contractor/Proposer understands that a response may not be withdrawn.
By submitting this proposal or entering into this contract, Contractor/Proposer acknowledges that all documents submitted are public records and agrees that any records maintained, generated, received, or kept in connection with, or related to the performance of services or delivery of products provided under this proposal or contract are public records subject to the public records disclosure requirements of Florida Statutes sec. 119 et seq., and Article I, section 24 of the Florida Constitution.

☐ Yes
☐ No

*Response required

6.6. Submission of Offers *

The County of Volusia is requesting written bids for the service and/or product(s) detailed within this solicitation. If your company is interested in submitting a bid to provide this service and/or product(s), please provide the requested information in this ITB, complete the included forms, and submit these documents via your response through the County's eProcurement Portal by the date and time posted. Bids received after the posted date and time may not be considered. Do not submit confidential information, proprietary information and/or trade secrets.

****By checking yes, the vendor acknowledges the information provided above regarding offer submission.**

☐ Yes
☐ No

*Response required

6.7. Name and Title of Authorized Agent of the firm (from General Terms and Conditions)*

Vendor acknowledges that the name and title of the signatory (the "Authorized Signatory"), as completed below, is authorized to execute contracts/agreements with the County of Volusia, and that submitting a bid via the County's eProcurement Portal shall be the act of and attributable to the Authorized Signatory to bind the company. By submitting this Agreement electronically, the Authorized Signatory does thereby adopt the electronic or conformed submittal as authorized firm commitment and for use as an official record by the County of Volusia.

If the below-named individual is not an authorized agent of the firm, as listed with the Florida Division of Corporations (Sunbiz), a Memorandum of Authority shall be uploaded giving that individual authorization to commit the firm to a contract.

Please provide the Complete Name and Title which shall indicate acknowledgment.

*Response required

6.8. Do you or any owner(s), principal(s), or officer(s) of your firm currently serve on any Volusia County board(s) or committee(s)?*

Please indicate response.

☐ Yes
☐ No

*Response required

6.9. If you indicated YES to Volusia County board/committee question above...

If you indicated YES to the question above regarding owners, principals, or officers of the firm serving on any Volusia County board(s) or committee(s), please list the individual's full name(s) and the board(s) and/or committee(s) on which they serve.

6.10. Scope of Work (from General Terms and Conditions)*

By checking 'yes', vendor acknowledges that they have fully read and understand the above Scope of Work / Technical Specifications and will furnish said product or services according to the specifications or scope of work detailed within this ITB if awarded.

☐ Yes
☐ No

*Response required

6.11. REVISIONS | ADDENDA | QUESTIONS & ANSWERS *

By selecting YES below, participants are confirming that they have reviewed revisions and all answers to questions published and any addenda up until the bid closing date and have given consideration to all information in preparing the response to this solicitation. Selecting YES will serve as confirmation of acknowledgement.

☐ Yes
☐ No

*Response required

6.12. Please provide Proof of Insurance*

Please provide Proof of Insurance - evidence of required insurance coverage or proof of insurability in the amounts indicated. If available, a properly completed ACORD Form is preferable. Upon award, final forms must contain the correct solicitation and/or project number and Volusia County contact person.

Firms that have owner/operators that have filed a "Notice of Election to be Exempt" shall submit a copy with the response

*Response required

6.13. Hold Harmless Agreement. *

Please download the below documents, complete, and upload.

- Hold_Harmless_Agreement(492...

*Response required

6.14. Forms

*6.14.1. Bid Submittal Form **

Please download the Bid Submittal form from the attachment section, complete and upload.

*Response required

*6.14.2. W9**

*Response required

*6.14.3. Florida Department of State, Division of Corporations' Detail by Entity Name Report **

Florida Department of State, Division of Corporations' Detail by Entity Name Report

Provide a Florida Department of State, Division of Corporations' detail by entity name report for your firm, available at www.sunbiz.org. The Respondent shall be required, upon notification of recommendation of award, to register with the Florida Department of State Division of Corporations at www.sunbiz.org in order to provide services under the resulting Contract.

*Response required

*6.14.4. Certification Affidavit by Prime Contractor as Local Business**

Certification Affidavit by Prime Contractor as Local Business

Vendor acknowledges that, as the respondent:

● Vendor has been in business for a minimum of six (6) months prior to the date of this submission

● Vendor acknowledges the ability to provide proof of local business presence from a local jurisdiction if required per Volusia County local preference ordinance found at

https://www.volusia.org/core/fileparse.php/4537/urlt/Local-Preference-from-MuniCode.pdf

By selecting 'Yes', I acknowledge the local preference requirements and understand these requirements shall remain for the entire term of the agreement. I further understand that failure to notify the County of Volusia of any change in status as a result of an awarded agreement may result in breach.

☐ Yes
☐ No

*Response required

*6.14.5. Certification Affidavit of Subcontractor as Local Business **

The respondent certifies to the best of its knowledge and belief, that any subcontractor/supplier in accordance with a response to this solicitation:

● Subcontractor/supplier has been in business for a minimum of six (6) months prior to the date of this submission

● Subcontractor/supplier acknowledges the ability to provide proof of local business presence from a local jurisdiction if required per Volusia County local preference ordinance found at

https://www.volusia.org/core/fileparse.php/4537/urlt/Local-Preference-from-MuniCode.pdf

By selecting 'Yes', I acknowledge the subcontractor local preference requirements and understand these requirements shall remain for the entire term of the agreement. I further understand that failure to notify the County of Volusia of any change in status as a result of an awarded agreement may result in breach.

☐ Yes
☐ No

*Response required

*6.14.6. Conflict of Interest **

The award of this solicitation is subject to Chapter 112, Florida Statutes. All respondents must disclose with their response the name of any officer, director, or agent who is also an employee of the County of

Volusia. Further, all respondents must disclose the name of any County of Volusia employee who owns, directly or indirectly, an interest of the Respondent's/Supplier's firm or any of its subsidiaries associated with this project. I certify that this proposal is made without prior understanding, agreement or connection with any corporation, firm or person submitting a proposal for the same services, and is in all respects fair and without collusion or fraud.

Respondent shall select 'No' if a conflict of interest as defined in this question does NOT exist. Please select 'Yes' if a conflict of interest as defined in this question DOES exist and shall be further described in the explanation below.

☐ Yes
☐ No

*Response required

*6.14.7. Enter explanation of the conflict of interest as indicated above. **

If no conflict of interest enter :NONE

*Response required

*6.14.8. . Public Entity Crime**

Public Entity Crimes - Pursuant to Section 287.133(12)(a) of the Florida Statutes, a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a Submittal Package (Bid Response) on a contract to provide any goods or services to a public entity, may not submit a bond on a contract with a public entity for the construction or repair of a public building or public work, may not submit Submittal Package (Bid Response) 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 in Section 287.017 for Category Two ($25,000) for a period of 36 months from the date of being placed on the convicted vendor list. Respondent should read carefully all provisions of 287.133 and 287.134, Florida Statutes (2005).

By selecting 'Yes', the Respondent represents and warrants that the submission of its response/proposal does not violate Section 287.133, Florida Statutes (2005), nor Section 287.134, Florida Statutes (2005) or their successor. In addition to the foregoing, the Respondent represents and warrants that Respondent, Respondent’s subcontractors and Respondent’s implementer, if any, is not under investigation for violation of such statutes.

☐ Yes
☐ No

*Response required

*6.14.9. Scrutinized Companies Certification **

Per State of Florida Statute s. 287.135(5) Suppliers (companies) must acknowledge and agree to the 'Certification Regarding Prohibition Against Contracting with Scrutinized Companies' paragraph listed below. Respondents shall agree by marking the option below. Respondents neglecting to respond may be disqualified from consideration of award and deemed non-responsive.

I hereby certify that neither the responding entity, nor any of its wholly owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of such entities or business associations, that exists for the purpose of making profit have been placed on the Scrutinized Companies That Boycott Israel List created pursuant to s. 215.4725 of the Florida Statutes, or are engaged in a boycott of Israel.

In addition, if this solicitation is for a contract for goods or services where the total contract value is one million dollars ($1,000,000) or more, I hereby certify that neither the responding entity, nor any of its wholly owned subsidiaries, majority- owned subsidiaries, parent companies, or affiliates of such entities or business associations, that exists for the purpose of making profit are on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to s. 215.473 of the Florida Statutes, or are engaged in business operations in Cuba or Syria as defined in said statute.

I understand and agree that the County may immediately terminate any contract resulting from this Solicitation upon written notice if the responding entity (or any of those related entities of respondent as defined above by Florida law) are found to have submitted a false certification or any of the following occur with respect to the company or a related entity: (i) it has been placed on the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel, or (ii) for any contract for goods or services of one million dollars ($1,000,000) or more, it 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, or it is found to have been engaged in business operations in Cuba or Syria.

By selecting 'Yes', the respondent acknowledges and agrees to the 'Certification Regarding Prohibition Against Contracting with Scrutinized Companies.'

☐ Yes
☐ No

*Response required

*6.14.10. Drug-Free Workplace **

By selecting "Yes", Respondent hereby acknowledges it has implemented the requirements of Florida statute 287.087 and is in compliance with the requirements of a drug-free workplace program.

☐ Yes
☐ No

*Response required

*6.14.11. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion **

By selecting 'Yes', the Respondent certifies to the best of its knowledge and belief, that the firm and any subcontractor/supplier in accordance with a response to this solicitation:

● are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency

● have not within a three-year period preceding this bid proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.

● are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in the previous paragraph of this certification.

● have not within a three (3) year period preceding this bid proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

☐ Yes
☐ No

*Response required

*6.14.12. Enter explanation of the 'No' response to the Certification Regarding Debarment,**

Enter explanation of the 'No' response to the Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion.

OR

Enter NONE if not applicable

*Response required

6.15. Additional Information

*6.15.1. Fuel Terminal Location**

Bidder(s) shall enter which terminal will be utilized to supply fuel.

*Response required

*6.15.2. Delivery and/or availability**

Delivery shall be no later than one (1) calendar day from receipt of release order, unless stated otherwise, from the ordering entity.

Please confirm that your firm can comply with this timeline.

*Response required

6.15.3. Additional Fee Information

Bidder(s) may add any explanation of additional fees that may apply.

*6.15.4. Do you accept electronic funds transfer (EFT)? **

☐ Yes
☐ No

*Response required

*6.15.5. If YES to EFT question above, provide percentage: **

If you indicated YES to accepting Electronic Funds Transfer, what percentage discount will you offer when accepting payment via EFT?

*Response required

*6.15.6. Payment Terms **

Will you offer a discount for payment terms less than the County's NET45? If so, please provide the % and day requirement for the discount. (Example: 5% for payment within 30 days)

*Response required

*6.15.7. Please submit your total number of employees. **

*Response required

*6.15.8. Are you a sole proprietor? **

☐ Yes
☐ No

*Response required

*6.15.9. Fuel Redetermination**

The following information is required in order to be considered for a future price redetermination for fuel.

Assuming that the prices quoted include costs for vehicles, maintenance, repair, insurance, fuel, wages, insurances and other employee benefits, materials, overhead, operating expenses, etc., what percentage of the rate is directly attributed to the cost of fuel?

The total for all of the pricing redetermination percentages in these sections shall not exceed 100.

Complete percentage amount below:

*Response required

*6.15.10. Which fuel type does your firm use primarily: ***

☐ diesel fuel
☐ gasoline

☐ other
*Response required

*6.15.11. Wage Redetermination ***

The following information is required in order to be considered for a future price redetermination for wages.

Assuming that the prices quoted include costs for vehicles, maintenance, repair, insurance, fuel, wages, materials, overhead, operating expenses, etc., what percentage of the rate is directly attributed to the cost of wages?

The total for all of the pricing redetermination percentages in these sections shall not exceed 100.

Complete percentage amount below:

*Response required

*6.15.12. References **

Please download the below documents, complete, and upload.

- References_Form(492427).pdf

*Response required

7. Definitions

As used in this Bid, the following terms shall have the meanings set forth below:

Agreement: Result from this solicitation between the County and the Contractor, which is this Bid, along with any written addenda and other written documents, which are expressly incorporated by reference.

Agreement Administrator: The Director of Purchasing and Contracts or designee shall serve as Agreement Administrator. The Agreement Administrator shall be responsible for addressing any concerns within the scope of the Agreement. Any changes to the resulting Agreement shall be made in writing and authorized by the Director of Purchasing and Contracts.

Bid: A Contractor's offer to the County in response to an invitation to bid (ITB) issued by a purchasing authority. Bidder: One who submits a response to an invitation to bid (ITB).

Contractor: The person or entity duly authorized, upon award of an invitation to bid (ITB), to have an Agreement with the County to provide the product and/or services set forth herein and incurring liability for the same.

Contractor's Project Manager: The Project Manager has responsibility for administering this Agreement for the successful Bidder(s) and will be designated prior to the issue of the resulting Master Agreement or Purchase Order.

County: Shall mean the County of Volusia (a body corporate and politic and a subdivision of the State of Florida) including its districts, authorities, separate units of government established by law, ordinance or resolution, partners, elected and non-elected officials, employees, agents, volunteers, and any party with whom the County has agreed by contract to provide additional insured status.

County's Project Manager(s): The Project Manager(s) have responsibility for the day-to-day administration of the resulting Agreement for the County and will be designated prior to award of the resulting Master Agreement or Purchase Order.

Day: The word "day" means each calendar day or accumulation of calendar days.

Director: The Director of Purchasing and Contracts for the County of Volusia, Florida.

Master Agreement: The payment vehicle through with the successful Bidder(s) shall be compensated. This Agreement will be issued in accordance with the specifications, terms, and conditions of this Bid document and shall be valid for a specified period of time with a specific dollar value, which shall not be exceeded annually.

Person or Persons: An individual, firm, partnership, corporation, association, executor, administrator, trustee, or other legal entity, whether singular or plural, masculine or feminine, as the context may require.

Preference: The method of the reducing the proposed Bid or quote price by a designated percentage for the sole purpose of determining the lowest price when compared to other prices submitted during a competitive solicitation.

Protest: See process at www.volusia.org/purchasing.

Purchase Order: The County's written document to the Contractor formalizing the proposed transaction, such as a description of item(s)/services, delivery location, payment terms, invoice address and transportation. If there are any conflicts between the Purchase Order and the resulted awarded ITB the terms of the ITB shall prevail.

Subcontractor: A person other than a materialman or laborer who enters into a contract with a Contractor for the performance of any part of the Agreement documents.

Figure 1:

TYPE OF INSURANCE		
WORKERS COMPENSATION ☒ Waiver of Subrogation in favor of County, Volusia County School Board, VOTRAN, City of Daytona Beach, City of Port Orange, City of South Daytona, City of New Smyrna Beach, City of DeLand, City of Edgewater, City of Ormond Beach, Flagler County	Florida Statutory Coverage	
COMMERCIAL GENERAL LIABILITY ☒ Occurrence Basis ☒ Contractual Liability ☒ Contractor, its subcontractors & independent contractors shall name as Additional Insureds: County, Volusia County School Board, VOTRAN, City of Daytona Beach, City of Port Orange, City of South Daytona, City of New Smyrna Beach, City of DeLand, City of Edgewater, City of Ormond Beach, Flagler County ☒ Waiver of Subrogation in favor of County, Volusia County School Board, VOTRAN, City of Daytona Beach, City of Port Orange, City of South Daytona, City of New Smyrna Beach, City of DeLand, City of Edgewater, City of Ormond Beach, Flagler County ☒ Primary & non-contributory with any insurance or self-insurance maintained by all Additional Insureds.	EACH OCCURRENCE	$ 1,000,000
	GENERAL AGGREGATE	$ 2,000,000
	Premises-Operations	$ 1,000,000
	Products & Completed Ops	$ 1,000,000
	Personal & Adv Inj.	$ 1,000,000
	Fire Damage	$
		$
AUTO LIABILITY ☒ Any Auto ☒ Contractor, its subcontractors & independent contractors shall name as Additional Insureds: County, Volusia County School Board, VOTRAN, City of Daytona Beach, City of Port Orange, City of South Daytona, City of New Smyrna Beach, City of DeLand, City of Edgewater, City of Ormond Beach, Flagler County ☒ Waiver of Subrogation in favor of County, Volusia County School Board, VOTRAN, City of Daytona Beach, City of Port Orange, City of South Daytona, City of New Smyrna Beach, City of DeLand, City of Edgewater, City of Ormond Beach, Flagler County	Combined Single Limit	$ 1,000,000
	Bodily Injury (Per person)	$
	Bodily Injury (Per accident)	$
	Property Damage (Per Accident)	$

TRANSPORTATION POLLUTION LIABILITY ☒ Contractor, its subcontractors & independent contractors shall name as Additional Insureds: County, Volusia County School Board, VOTRAN, City of Daytona Beach, City of Port Orange, City of South Daytona, City of New Smyrna Beach, City of DeLand, City of Edgewater, City of Ormond Beach, Flagler County ☒ Waiver of Subrogation in favor of County, Volusia County School Board, VOTRAN, City of Daytona Beach, City of Port Orange, City of South Daytona, City of New Smyrna Beach, City of DeLand, City of Edgewater, City of Ormond Beach, Flagler County ☒ Primary & non-contributory with any insurance or self-insurance maintained by all Additional Insureds. ☒ Coverage shall include loading, unloading, and transport of fuel. ☒ Misdelivery of Liquid Products	$ 3,000,000 per claim $ 3,000,000 Aggregate
CANCELLATION: Thirty (30) days written notice of cancellation is required to the Certificate Holder:	
Certificate Holder: County of Volusia Purchasing & Contracts Division 123 W. Indiana Avenue, Room 302 DeLand, FL 32720 ATTN: Lisa Smith	

Fuel Sites
Attachment B
Fuel Site Information

DW = double walled
AST = Above Ground Tank
UST = Under Ground Tank

Volusia County

FACID	Site Name	Tank Attributes	Project Manager	Special Delivery Requirements	Estimated Annual ULSD	Estimated Annual Off Road	Estiamted Annual Gasoline
9809259	Indian Lake Road 1336 Indian Lake Road Daytona Beach 32724	1 ea. 12,000 gal Vehicular Gasoline, DW, steel AST. 1 ea. 10,000 gal Vehicular Diesel, DW steel AST 1 ea. 10,000 gal Vehicular Gasoline, DW, steel AST	Name:Craig Conner 386-254-1858 x11857 cconner@volusia.org	None	42,000		473,000
9103512	Tomoka Landfill 1990 Tomoka Farms Rd Daytona Beach 32124	1 ea. 12,000 gal Vehicular Diesel ASTs, DW, Steel. 1 ea. 10,000 Vehiclular Off- Road Disel, DW 1 ea 12,000 gal Vehicular Gasoline, DW steel AST	Name:Craig Conner 386-254-1858 x11857 cconner@volusia.org	None	65,000	213,000	22,000
8622777	Deland Road & Bridge 2560 West Highway 44 Deland 32720	1 ea. 10,000 gal Vehicular Gasoline UST, DW, Fiberglass. 1 ea. 10,000 gal Vehicular Diesel UST, DW, Fiberglass	Name:Craig Conner 386-254-1858 x11857 cconner@volusia.org	None	9,900		128,000
8522683	Osteen Road & Bridge 200 North Highway 415 Osteen 32764	1 ea. 12,000 gal Compartmented AST, 6/6 Vehicular Diesel/Vehicular Gasoline. DW, Steel.	Name:Craig Conner 386-254-1858 x11857 cconner@volusia.org	None	18,000		102,000
8622679	NSB Road & Bridge 534 North Old Dixie Highway New Smyrna Beach 32168	1 ea. 12,000 gal Compartmented AST, 6/6 Vehicular Diesel/Vehicular Gasoline. DW, Steel.	Name:Craig Conner 386-254-1858 x11857 cconner@volusia.org	None	77,000		128,000
9810955	Transfer Station 261 Deland Crossings Blvd. Deland 32724	1 ea 12,000 gal Vehicular Diesel AST, DW, Steel. 1 ea. 12,000 gal Vehicular Gasoline AST, DW Steel.	Name:Craig Conner 386-254-1858 x11857 cconner@volusia.org	None	105,000		189,000
9400111	EVAC 122 Carswell Ave. 112 Carswell Ave. Holly Hill, 32017	1 ea. 4,000 gal Vehicular Diese AST, DW, Steel	Name:Craig Conner 386-254-1858 x11857 cconner@volusia.org	An 18 wheeler truck cannot make deliveries to this location due to the small area to turn around in. A tank wagon style truck can. The fuel is then pumped into a fill that is located on top of the tank with a nozzle style hose. There is a ladder on site so the driver can reach the fill.	100,000		

Flagler County

FACID	Site Name	Tank Attributes	Project Manager	Special Delivery Requirements	Estimated Annual ULSD	Estimated Annual Off Road	Estiamted Annual Gasoline
9807845	Flagler County 1769 E. Moody Blvd. Bunnell, Fl 2110	1 ea 30,000 Gal above ground double wall for Unleaded fuel 1 ea. 30,000 gal above ground double wall for Diesel. Electronic monitoring of interstice and continuous automatic tank gauge system.	Andrew Pearson 386-313-4178 apearson@flaglercounty.org	None	100,000		450,000

City of Daytona Beach

FACID	Site Name	Tank Attributes	Project Manager	Special Delivery Requirements	Estimated Annual ULSD	Estimated Annual Off Road	Estiamted Annual Gasoline
9700983	Bethune Point WWTP 1 Shady Place Daytona Beach, FL 32114	1 ea.6,000 gal Vehicular Diesel AST, DW 1 ea.1,000 gal Vehicular Diesel, AST, DW.	Robert Campbell 386-671-8684 (C) 386-451-2620 campbellr@codb.us	None	4,500		0
8631491	Fire Station #3 945 N. Halifax Ave. Daytona Beach, FL 32114	1 ea. 1,000 gal Vehicular Diesel DW fiberglass UST	Robert Campbell 386-671-8684 (C) 386-451-2620 campbellr@codb.us	None	6,300		
8622691	Westside Regional WWTP 3651 LPGA Blvd. Daytona Beach, FL 32117	2 ea. 6,000 gal Vehicular diesel DW steel AST. 1 ea. 4,000 gal Vehicular Diesel DW steel AST. 1 ea. 12,000 gal Vehicular Diesel DW steel UST. 1 ea. 12,000 gal Unleaded Gas DW steel UST.	Robert Campbell 386-671-8684 (C) 386-451-2620 campbellr@codb.us	None	10,000		89,000
8622689	Public Works Complex 950 Bellevue Avenue Daytona Beach, FL 32114	2 ea. 12,000 gal Unleaded gas DW steel AST. 1 ea. 12,000 gal Vehicular Diesel DW steel AST. 1 ea. 2,000 gal Premium gas. DW steel AST.	Robert Campbell 386-671-8684 (C) 386-451-2620 campbellr@codb.us	None	46,000		365,000
8517330	Golf & Country Club 600 Wilder Blvd. Daytona Beach, FL 32114	1 ea. 1,000 gal Vehicular Diesel DW steel AST. 1ea. 2,000 gal Unleaded Gas DW steel AST.	Brian Jaquet 386-671- 3502 jaquetbrian@codb.us	None	2,000		61,000

9300590	Lift Station #1110 1612 Richard Petty Blvd Daytona Beach, FL 32115	1 ea. 1,000 gal Vehicular Diesel DW steel AST.	Robert Campbell 386-671-8684 (C) 386-451-2620 campbellr@codb.us	None	Unk		
8631492	Fire Station #4 1675 Mason Ave. Daytona Beach, FL 32114	1 ea. 1,000 gal Vehicular Diesel DW steel AST.	Robert Campbell 386-671-8684 (C) 386-451-2620 campbellr@codb.us	None	12,000		
9300589	Lift Station #1162 2020 Beville Road Daytona Beach, FL 32115	1 ea. 1,000 gal Vehicular Diesel DW steel AST.	Robert Campbell 386-671-8684 (C) 386-451-2620 campbellr@codb.us	None	Unk		
9300588	Lift Station #1105 647 Shady Place Daytona Beach, FL 32114	1 ea. 1,000 gal Vehicular Diesel DW steel AST.	Robert Campbell 386-671-8684 (C) 386-451-2620 campbellr@codb.us	None	0		
9818612	Lift Station # 148 Halifax Medical Center	1 ea, 660 gal generator Diesel DW steel AST.	Robert Campbell 386-671-8684 (C) 386-451-2620 campbellr@codb.us	None	Varries based on hurrican activity.		
9818847	Lift Station # 151 337 High Tide Lane Daytona Beach, FL 32124	1 ea, 740 gal generator Diesel DW steel AST.	Robert Campbell 386-671-8684 (C) 386-451-2620 campbellr@codb.us	None	Varries based on hurrican activity.		
9819189	First Step Shelter 3889 W. ISB Daytona Beach, FL 32124	1 ea, 876 gal Diesel DW steel AST.	Robert Campbell 386-671-8684 (C) 386-451-2620 campbellr@codb.us	None	3,500		
9819860	Heineman St Potable Tank PS 705 N. Clyde Morris Blvd. Daytona Beach, fl 32114	1 ea, 3052 gal Diesel DW steel AST.	Robert Campbell 386-671-8684 (C) 386-451-2620 campbellr@codb.us	None	3,000		

City of Ormond Beach

FACID	Site Name	Tank Attributes	Project Manager	Special Delivery Requirements	Estimated Annual ULSD	Estimated Annual Off Road	Estiamted Annual Gasoline
9100520	Fleet Operations 500 N Orchard St Ormond Beach, FL 32174	1 ea. 12,000 gal Vehicular Gasoline, DW, Fiberglass UST. 1 ea. 12,000 Diesel. DW Fiberglass UST 1 ea. 6,000 AGT, Gasoline, Concrete DW	Kevin Gray 386-676-3265 (C) 386-316-7725 kevin.gray@ormondbeach.org	None	45,000		104,000
8622685	Transfer Station & WW PLT 550 N Orchard St Ormond Beach	1 ea 6,000 gal Off-Road Diesel UGT, SW. 1 ea. 2000 gal Off-Road Diesel, SW 1 ea. 4,000 gal Off-Road Diesel SW, AGT 1 ea. 6500 Gal Off-Road Diesel, SW Steel AGT	Kevin Gray 386-676-3265 (C) 386-316-7725 kevin.gray@ormondbeach.org	None		6,000	
9801353	Water Plant 301 Jefferson St Ormond Beach	1 ea. 6,000 gal Off-Road Diesel, DW Concrete AGT. 1 ea. 5,200 Off-Road Diesel, DW Concrete AGT 1 ea. 2,000 Off-Road Diesel , SW Steel AGT	Kevin Gray 386-676-3265 (C) 386-316-7725 kevin.gray@ormondbeach.org	None		2,000	

Volusia County School Board

FACID	Site Name	Tank Attributes	Project Manager	Special Delivery Requirements	Estimated Annual ULSD	Estimated Annual Off Road	Estiamted Annual Gasoline
8631507	Daytona Transportation 1648 Hancock Blvd. Daytona Beach, Fl. 32114	1 ea. 10,000 gal Vehicular Gasoline,DW, Steel AST 3 ea. 10,000 Diesel, DW Steel AST	Chris Boyer 386-258-4677 x50542 Cell 386-717-0665 cjboyer@volusia.k12.fl.us	None	202,000		27,000
8841492	New Smyrna Beach Transportation 1294 Turnbull Bay Rd. New Smyrna Beach, Fl. 32169	1 ea. 10,000 gal Vehicular Gasoline, DW, FG UST. 1 ea. 10,000 Diesel. DW FG UST	Chris Boyer 386-258-4677 x50542 Cell 386-717-0665 cjboyer@volusia.k12.fl.us	None	72,000		10,000
9202882	Deltona Transportation 2101 Eutace Ave. Deltona, Fl. 32725	1 ea. 10,000 gal Vehicular Diesel, DW, FG UST. 1 ea. 6,000 Gasoline. DW FG UST. 1 ea. 20,000 gal Diesel DW Steel AST	Chris Boyer 386-258-4677 x50542 Cell 386-717-0665 cjboyer@volusia.k12.fl.us	None	173,000		23,000

9047255	Deland Transportation 1301 Shapiro Dr. Deland, Fl. 32724	1 ea. 10,000 gal Vehicular Gasoline, DW, FG UST. 1 ea. 10,000 Diesel. DW FG UST	Chris Boyer 386-258-4677 x50542 Cell 386-717-0665 cjboyer@volusia.k12.fl.us	None	135,000		27,000

City of Port Orange

FACID	Site Name	Tank Attributes	Project Manager	Special Delivery Requirements	Estimated Annual ULSD	Estimated Annual Off Road	Estiamted Annual Gasoline
8731587	Public Works 407 Virginia Avenue Port Orange, FL 32127	1 ea. 12,000 gal Vehicular Gasoline, DW, steel UST. 1 ea. 12,000 Low Sulfur Diesel. DW steel UST	Jim McBride 386-506-5579 (C) 386-527-6834 jmcbride@port-orange.org	None	55,000		50,000
8944554	City Center Annex 1395 Dunlawton Ave Port Orange, Fl. 32129	1 ea. 12,000 gal Vehicular Gasoline, DW, steel UST. 1 ea. 2,000 gal Low Sulfur Dyed Diesel for backup generator only.	Jim McBride 386-506-5579 (C) 386-527-6834 jmcbride@port-orange.org	None		2,000	95,000
9803333	Fire Station 74 6701 Airport Road Port Orange, FL. 32128	1 ea. 3,000 gal Low Sulfur Diesel, DW steel UST.	Jim McBride 386-506-5579 (C) 386-527-6834 jmcbride@port-orange.org	None	Backup generator site. Off Road usage will vary because of hurricanes and storms.		
8942981	Cambridge Basin Generator 5839 Trailwood Dr. Port Orange, FL. 32129	1 ea. 3,000 gal Low Sulfur Dyed Diesel, DW steel AST.	Jim McBride 386-506-5579 (C) 386-527-6834 jmcbride@port-orange.org	None	Backup generator site. Off Road usage will vary because of hurricanes and storms.		
9811682	Port Orange Police Dept 4545 S. Clyde Morris Blvd. Port Orange, FL. 32129	2 ea. 2,500 gal Low Sulfur Dyed Diesel, DW steel AST.	Jim McBride 386-506-5579 (C) 386-527-6834 jmcbride@port-orange.org	None	Backup generator site. Off Road usage will vary because of hurricanes and storms.		
8731583	Garnsey Water Plant 4400 Wellfield Dr. Port Orange, FL. 32129	1 ea. 5,200 gal Low Sulfur Dyed Diesel, DW steel AST.	Christina Potts 386-506-5773 cpotts@port-orange.org	None	Backup generator site. Off Road usage will vary because of hurricanes and storms.		
9103196	Port Orange Wastewater Plant 817 Oak St. Port Orange, FL. 32127	2 ea. 4,000 gal Low Sulfur Dyed Diesel, DW steel AST for Generators	Steve Parnell 386-506-5786 sparnell@port-orange.org	None	Backup generator site. Off Road usage will vary because of hurricanes and storms.		

City of New Smyrna Beach

FACID	Site Name	Tank Attributes	Project Manager	Special Delivery Requirements	Estimated Annual ULSD	Estimated Annual Off Road	Estiamted Annual Gasoline
8622701	NSB Public Works 124 Industrial Park Ave New Smyrna Beach 32168	1 ea. 10,000 Gal Vehicular Gasoline, SW, steel AST 1 ea. 10,000 Gal Vehicular Diesel, SW, steel AST	Heath Hall 386-424-2210 Cell 386-527-4400 hhall@cityofnsb.com	None	45,000		135,000
9807269	NSB Fire Station 51 151 Williamson Blvd. New Smyrna Beach 32168	1 ea. 1,000 Vehicular Diesel, DW	Heath Hall 386-424-2210 Cell 386-527-4400 hhall@cityofnsb.com	None	6,000		
9811632	NSB Fire Station 52 500 E. Third Ave. New Smyrna Beach 32168	1 ea. 1,000 Vehicular Diesel, DW	Heath Hall 386-424-2210 Cell 386-527-4400 hhall@cityofnsb.com	None	6,000		
9812197	NSB Police Station 246 Industrial Park Ave New Smyrna Beach 32168	1 ea. 6,500 GalOff Road Diesel, DW	Heath Hall 386-424-2210 Cell 386-527-4400 hhall@cityofnsb.com	None	Backup generator site. Off Road usage will vary because of hurricanes and storms.		
9812196	NSB Fire Station 53 238 Industrial Park Ave New Smyrna Beach 32168	1 ea. 2,000 GalOff Road Diesel, DW	Heath Hall 386-424-2210 Cell 386-527-4400 hhall@cityofnsb.com	None	Backup generator site. Off Road usage will vary because of hurricanes and storms.		
8734991	NSB Golf Course 1000 Wayne Ave New Smyrna Beach 32168	1 ea. 1,000 Gal Compartmented AST 5/5 Vehicular Gasoline/ Off Road Diesel, DW	Heath Hall 386-424-2210 Cell 386-527-4400 hhall@cityofnsb.com	None	Backup generator site. Off Road usage will vary because of hurricanes and storms.		

Non-regulated	NSB Sports Complex 1800 Turnbull Bay Rd New Smyrna Beach 32168	1 ea. 500 Gal Compartmented AST 2.5/2.5 Vehicular Gasoline/Off Road Diesel, DW, steel AST	Heath Hall 386-424-2210 Cell 386-527-4400 hhall@cityofnsb.com	None	Backup generator site. Off Road usage will vary because of hurricanes and storms.		

VOTRAN

FACID	Site Name	Tank Attributes	Project Manager	Special Delivery Requirements	Estimated Annual ULSD	Estimated Annual Off Road	Estiamted Annual Gasoline
8517745	Volusia County Transit 950 Big Tree Road South Daytona, Fl 32119	2 ea. 15,000 gal Vehicular Diesel UST, DW, Fiberglass. 1 ea. 2,500 gal Vehicular Gasoline UST,DW,Fiberglass	Rick Kazawitch 386-756-7496 x4121 (C) 386- 566-5560 rkazawitch@volusia.org	None	466,000		169,000
9806496	924 E. Rhode Island Ave Orange City, Fl 32763	2 ea. 12,000 gal diesel AST's 1 ea. 5,000 gals unleaded AST	Rick Kazawitch 386-756-7496 x4121 (C) 386- 566-5560 rkazawitch@volusia.org	None	138,000		88,000

City of South Daytona

FACID	Site Name	Tank Attributes	Project Manager	Special Delivery Requirements	Estimated Annual ULSD	Estimated Annual Off Road	Estiamted Annual Gasoline
8622688	City of South Daytona 1770 Segrave St. South Daytona, Fl	1 ea. 10,000 gal 3/7 Vehicular Diesel, Gasoline DW AST.	Mark Smith 386 322-3084 (C) 386-233-5701 msmith@southdaytona.org	Need a small tank wagon truck	9,500	1,000 dependant upon hurrican season	43,000

City of DeLand

FACID	Site Name	Tank Attributes	Project Manager	Special Delivery Requirements	Estimated Annual ULSD	Estimated Annual Off Road	Estiamted Annual Gasoline
8622696	City of DeLand, Public Works 1102 S Garfield Ave DeLand, FL, 32724	1 ea. 3,000 gal Vehicular Diesel, DW AST 1 ea. 10, 000 Vehicular Unleaded DW AST	Jeff Malik 386-626-7198 malikj@deland.org	None	32,000		66,000
8622696	City of DeLand, Fire Station 82 257 W. International Speedway DeLand, FL, 32720	1 ea. 3,000 gal Vehicular Diesel, DW AST	Jeff Malik 386-626-7198 malikj@deland.org	None	32,000		

Daytona Beach International Airport

FACID	Site Name	Tank Attributes	Project Manager	Special Delivery Requirements	Estimated Annual ULSD	Estimated Annual Off Road	Estiamted Annual Gasoline
648517331	DBIA Fire Pump Gen. 700 Catalina Ave. Daytona Beach 32114 Adjacent to Terminal Building Escort Required	1 ea. 600 gal Emergency Generator Diesel AST, Vaulted Steel.	Dwayne Book 386-547-0038 dbook@flydab.com	Special access requirment but no equipment requirements.	300		
649806958	DBIA Main Terminal Generator 700 Catalina Avenue #300 Daytona Beach 32114 At service entrance to terminal Escort Required	1 ea. 6000 gal Emergency Generator Diesel. DW, Steel.	Dwayne Book 386-547-0038 dbook@flydab.com	Special access requirment but no equipment requirements.	3,000		
649813448	DBIA Air Cargo Building 401 Innovation Way, Daytona Beach 32114 Entrance requires escort	1 ea. 1300 Emergency Generator, DW, Steel	Dwayne Book 386-547-0038 dbook@flydab.com	Special access requirment but no equipment requirements.	500		
649806809	DBIA Electrical Vault 700 Catalina Ave. # 300, Daytona Beach 32114 Adjacent to Fire Station 17 Escort required	1 ea. 1000 gal Emergency Generator Diesel AST, Vaulted Steel DW.	Dwayne Book 386-547-0038 dbook@flydab.com	Special access requirment but no equipment requirements.	1,000		
649815952	Fire Station #17 2316 Bellevue Ave.Daytona Beach 32114	1 ea. 4000 gal Diesel AST DW Steel	Dwayne Book 386-547-0038 dbook@flydab.com	Special access requirment but no equipment requirements.	2,000		

649815378	DBIA Fuel Farm 301 Innovation Way Daytona Beach, 32114 Escort Required	1 ea. 2000 gal Vehicular Gasoline AST, Vaulted Steel 1 ea. 2000 gal Vehicular Diesel AST, Vaulted Steel.	Dwayne Book 386-547-0038 dbook@flydab.com	Special access requirment but no equipment requirements.	2,000		2,000
City of Edgewater							
FACID	**Site Name**	**Tank Attributes**	**Project Manager**	**Special Delivery Requirements**	**Estimated Annual ULSD**	**Estimated Annual Off Road**	**Estiamted Annual Gasoline**
8622755	City of Edgewater 409 Mango Tree Dr Edgewater FL 32132	1ea. 16,000 gal 7/9 Vehicular Diesel,Gasoline AST, DW Steel.	Dicy Hall dhall@cityofedgewater.org	Special access requirment but no equipment requirements.	70,000		72,000

Large Loads OPIS Low and Average

			Colonial Oil Industries, Inc.				Gentry Oil, LLC		Global Montello Group Corp.			
Line Item	Fuel Type	Unit of Measure	Markup over OPIS daily low	Adding OPIS Low History Cost	Markup over OPIS daily average	Adding OPIS Average History Cost	Markup over OPIS daily low	Markup over OPIS daily average	Markup over OPIS daily low	OPIS Low History	Markup over OPIS daily average	Adding OPIS Average History Cost
1	Ultra Low Sulfur Diesel +/= 7500	GAL	0.0884	2.8078	0.0584	2.8702	No Bid	No Bid	0.1775	2.8969	0.0952	2.9070
3	E-10 Fuel +/= to 8000 gallons	GAL	0.0988	2.3499	0.0688	2.4028	No Bid	No Bid	0.1873	2.4384	0.1046	2.4386
5	Gross No.2 Red-Dyed Fuel (Off Road) +/= 7500 gallons	GAL	0.0934	2.8180	0.0634	2.8779	No Bid	No Bid	0.1758	2.9004	0.0968	2.9113
	History Total			7.9758		8.1509				8.2358		8.2569
	Split Load			50.0000		50.0000				50.0000		50.0000
	Devide by 8000 Gallons			0.0063		0.0063				0.0063		0.0063
	History Total			7.9820		8.1572				8.2421		8.2632
	Above Ground			70.0000		70.0000				0.0000		0.0000
	Devide by 8000 Gallons			0.0088		0.0088				0.0000		0.0000
	History Total			7.9845		8.1597				8.2358		8.2569

Opis low	On Road	Unleanded	Off Road
Feb-23	3.1022	2.3437	3.1072
May-23	2.5968	2.3290	2.6025
Jun-23	2.5709	2.3070	2.5763
Jul-23	2.6983	2.4688	2.7033
Dec-23	2.6270	1.9722	2.6322
Jan-24	2.7212	2.0861	2.7262
Average	**2.7194**	**2.2511**	**2.7246**

Opis Average	On Road	Unleanded	Off Road
Feb-23	3.2308	2.4026	3.2306
May-23	2.6669	2.3952	2.6724
Jun-23	2.6835	2.3684	2.6906
Jul-23	2.7753	2.5353	2.7753
Dec-23	2.6967	2.1042	2.6990
Jan-24	2.8177	2.1985	2.8190
Average	**2.8118**	**2.3340**	**2.8145**

Price Ranking	1	2	3

Opened by: **Tabatha Freedman, Senior Procurement Analyst**
Witnessed by: **Lisa Smith, Procurement Analyst** II
Date Posted: **March 26, 2024**
County Council Date: **April 16, 2024**
Recommendation of Award (ROA) for **Large Loads OPIS Low and Average:**
James River Solutions, Palmdale Oil Company, Sunoco
Recommendation of Award (ROA) for **Small Loads OPIS Low and Average:**
Gentry Oil, LLC, Greens Energy, Palmdale Oil Company

Approved by: Pamela Wilsky

Pamela Wilsky, NIGP-CPP, CPPB, CPPO
Director of Purchasing and Contracts

Large Loads OPIS Low and Average

			Greens Energy				James River Solutions				Lynch Oil			
Line Item	Fuel Type	Unit of Measure	Markup over OPIS daily low	OPIS Low History	Markup over OPIS daily average	Adding OPIS Average History Cost	Markup over OPIS daily low	OPIS Low History	Markup over OPIS daily average	Adding OPIS Average History Cost	Markup over OPIS daily low	OPIS Low History	Markup over OPIS daily average	Adding OPIS Average History Cost
1	Ultra Low Sulfur Diesel +/= 7500	GAL	0.1000	2.8194	0.0600	2.8718	0.0650	2.7844	0.0365	2.8483	0.1700	2.8894	0.0800	2.8918
3	E-10 Fuel +/= to 8000 gallons	GAL	0.1000	2.3511	0.0600	2.3940	0.0650	2.3161	0.0225	2.3565	0.1700	2.4211	0.0800	2.4140
5	Gross No.2 Red-Dyed Fuel (Off Road) +/= 7500 gallons	GAL	0.1000	2.8246	0.0600	2.8745	0.0750	2.7996	0.0320	2.8465	0.1700	2.8946	0.0800	2.8945
	History Total			7.9952		8.1403		7.9002		8.0513		8.2052		8.2003
	Split Load			0.0000		0.0000		40.0000		40.0000		0.0100		0.0100
	Devide by 8000 Gallons							0.0050		0.0050				
	History Total			7.9952		8.1403		7.9052		8.0563		8.2052		8.2003
	Above Ground			0.0000		0.0000		50.0000		50.0000		0.0000		0.0000
	Devide by 8000 Gallons			0.0000		0.0000		0.0063		0.0063		0.0000		0.0000
	History Total			7.9952		8.1403		7.9065		8.0576		8.2052		8.2003

Opis low	On Road	Unleanded	Off Road
Feb-23	3.1022	2.3437	3.1072
May-23	2.5968	2.3290	2.6025
Jun-23	2.5709	2.3070	2.5763
Jul-23	2.6983	2.4688	2.7033
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Jan-24	2.7212	2.0861	2.7262
Average	**2.7194**	**2.2511**	**2.7246**

Opis Average	On Road	Unleanded	Off Road
Feb-23	3.2308	2.4026	3.2306
May-23	2.6669	2.3952	2.6724
Jun-23	2.6835	2.3684	2.6906
Jul-23	2.7753	2.5353	2.7753
Dec-23	2.6967	2.1042	2.6990
Jan-24	2.8177	2.1985	2.8190
Average	**2.8118**	**2.3340**	**2.8145**

Price Ranking	1	2	3

Large Loads OPIS Low and Average

			Mansfield Oil Company of Gainesville, Inc				Palmdale Oil Company				Petroleum Traders Corporation			
Line Item	Fuel Type	Unit of Measure	Markup over OPIS daily low	OPIS Low History	Markup over OPIS daily average	Adding OPIS Average History Cost	Markup over OPIS daily low	OPIS Low History	Markup over OPIS daily average	Adding OPIS Average History Cost	Markup over OPIS daily low	OPIS Low History	Markup over OPIS daily average	Adding OPIS Average History Cost
1	Ultra Low Sulfur Diesel +/= 7500	GAL	0.0763	2.7957	0.0083	2.8201	0.0619	2.7813	0.0219	2.8337	0.0715	2.7909	(0.0076)	2.8042
3	E-10 Fuel +/= to 8000 gallons	GAL	0.0769	2.3280	0.0059	2.3399	0.0569	2.3080	0.0169	2.3509	0.0689	2.3200	(0.0027)	2.3313
5	Gross No.2 Red-Dyed Fuel (Off Road) +/= 7500 gallons	GAL	0.0796	2.8042	0.0141	2.8286	0.0619	2.7865	0.0219	2.8364	0.0734	2.7980	(0.0007)	2.8138
	History Total			7.9280		7.9886		7.8759		8.0210		7.9090		7.9493
	Split Load			50.0000		50.0000		0.0000		0.0000		75.0000		75.0000
	Devide by 8000 Gallons			0.0063		0.0063						0.0094		0.0094
	History Total			7.9343		7.9949		7.8759		8.0210		7.9183		7.9587
	Above Ground			70.0000		70.0000		0.0000		0.0000		100.0000		100.0000
	Devide by 8000 Gallons			0.0088		0.0088		0.0000		0.0000		0.0125		0.0125
	History Total			7.9367		7.9974		7.8759		8.0210		7.9215		7.9618

Opis low	On Road	Unleanded	Off Road
Feb-23	3.1022	2.3437	3.1072
May-23	2.5968	2.3290	2.6025
Jun-23	2.5709	2.3070	2.5763
Jul-23	2.6983	2.4688	2.7033
Dec-23	2.6270	1.9722	2.6322
Jan-24	2.7212	2.0861	2.7262
Average	**2.7194**	**2.2511**	**2.7246**

Opis Average	On Road	Unleanded	Off Road
Feb-23	3.2308	2.4026	3.2306
May-23	2.6669	2.3952	2.6724
Jun-23	2.6835	2.3684	2.6906
Jul-23	2.7753	2.5353	2.7753
Dec-23	2.6967	2.1042	2.6990
Jan-24	2.8177	2.1985	2.8190
Average	**2.8118**	**2.3340**	**2.8145**

Price Ranking	1	2	3

Large Loads OPIS Low and Average

			Pinnacle Petroleum, Inc.				Saratoga Rack Marketing LLC				Sunoco, LLC			
Line Item	Fuel Type	Unit of Measure	Markup over OPIS daily low	OPIS Low History	Markup over OPIS daily average	Adding OPIS Average History Cost	Markup over OPIS daily low	OPIS Low History	Markup over OPIS daily average	Adding OPIS Average History Cost	Markup over OPIS daily low	OPIS Low History	Markup over OPIS daily average	Adding OPIS Average History Cost
1	Ultra Low Sulfur Diesel +/= 7500	GAL	0.0677	2.7871	(0.0198)	2.7920	0.1238	2.8432	0.0623	2.8741	0.0579	2.7773	(0.0037)	2.8081
3	E-10 Fuel +/= to 8000 gallons	GAL	0.1219	2.3730	0.0112	2.3452	0.1018	2.3529	0.0423	2.3763	0.0501	2.3012	(0.0032)	2.3308
5	Gross No.2 Red-Dyed Fuel (Off Road) +/= 7500 gallons	GAL	0.0592	2.7838	(0.0250)	2.7895	0.1238	2.8484	0.0623	2.8768	0.0579	2.7825	(0.0037)	2.8108
	History Total			7.9440		7.9267		8.0446		8.1272		7.8611		7.9497
	Split Load			65.0000		65.0000		35.0000		35.0000		50.0000		50.0000
	Devide by 8000 Gallons			0.0081		0.0081		0.0044		0.0044		0.0063		0.0063
	History Total			7.9521		7.9348		8.0489		8.1316		7.8674		7.9560
	Above Ground			75.0000		75.0000		75.0000		75.0000		55.0000		55.0000
	Devide by 8000 Gallons			0.0094		0.0094		0.0094		0.0094		0.0069		0.0069
	History Total			7.9533		7.9361		8.0540		8.1366		7.8679		7.9566

Opis low	On Road	Unleanded	Off Road
Feb-23	3.1022	2.3437	3.1072
May-23	2.5968	2.3290	2.6025
Jun-23	2.5709	2.3070	2.5763
Jul-23	2.6983	2.4688	2.7033
Dec-23	2.6270	1.9722	2.6322
Jan-24	2.7212	2.0861	2.7262
Average	**2.7194**	**2.2511**	**2.7246**

Opis Average	On Road	Unleanded	Off Road
Feb-23	3.2308	2.4026	3.2306
May-23	2.6669	2.3952	2.6724
Jun-23	2.6835	2.3684	2.6906
Jul-23	2.7753	2.5353	2.7753
Dec-23	2.6967	2.1042	2.6990
Jan-24	2.8177	2.1985	2.8190
Average	**2.8118**	**2.3340**	**2.8145**

Price Ranking	1	2	3

Large Loads OPIS Low and Average

			Tropic Oil Company			
Line Item	Fuel Type	Unit of Measure	Markup over OPIS daily low	OPIS Low History	Markup over OPIS daily average	Adding OPIS Average History Cost
1	Ultra Low Sulfur Diesel +/= 7500	GAL	0.1200	2.8394	0.1000	2.9118
3	E-10 Fuel +/= to 8000 gallons	GAL	0.1200	2.3711	0.1000	2.4340
5	Gross No.2 Red-Dyed Fuel (Off Road) +/= 7500 gallons	GAL	0.1200	2.8446	0.1000	2.9145
	History Total			8.0552		8.260343
	Split Load			0.0000		0.0000
	Devide by 8000 Gallons					
	History Total			8.0552		8.2603
	Above Ground			0.0000		0.0000
	Devide by 8000 Gallons			0.0000		0.0000
	History Total			8.0552		8.2603

Opis low	On Road	Unleanded	Off Road
Feb-23	3.1022	2.3437	3.1072
May-23	2.5968	2.3290	2.6025
Jun-23	2.5709	2.3070	2.5763
Jul-23	2.6983	2.4688	2.7033
Dec-23	2.6270	1.9722	2.6322
Jan-24	2.7212	2.0861	2.7262
Average	**2.7194**	**2.2511**	**2.7246**

Opis Average	On Road	Unleanded	Off Road
Feb-23	3.2308	2.4026	3.2306
May-23	2.6669	2.3952	2.6724
Jun-23	2.6835	2.3684	2.6906
Jul-23	2.7753	2.5353	2.7753
Dec-23	2.6967	2.1042	2.6990
Jan-24	2.8177	2.1985	2.8190
Average	**2.8118**	**2.3340**	**2.8145**

Price Ranking	1	2	3

Small Loads OPIS Low and Average

			Colonial Oil Industries, Inc.				Gentry Oil, LLC			
Line Item	Fuel Type	Unit of Measure	Markup over OPIS daily low	Adding Opis Low History Cost	Markup over OPIS daily average	Adding OPIS Average History Cost	Markup over OPIS daily low	Adding Opis Low History Cost	Markup over OPIS daily average	Adding OPIS Average History Cost
1	Ultra Low Sulfur Diesel less than 7500 gallons	GAL	0.3107	3.0301	0.2807	3.0925	0.1800	2.8994	0.1800	2.9918
4	E-10 Fuel less than 8000 gallons	GAL	0.3108	2.5619	0.2808	2.6148	0.1800	2.4311	0.1800	2.5140
6	Gross No.2 Red-Dyed Fuel (Off Road) less than 7500 gallons	GAL	0.4157	3.1403	0.3857	3.2002	0.1800	2.9046	0.1800	2.9945
	History Total			8.7324		8.9075		8.2352		8.5003
	Split Load			50.0000		50.0000		0.0000		0.0000
	Devide by 8000 Gallons			0.0063		0.0063		0.0000		0.0000
	History Total			8.7387		8.9138		8.2352		8.5003
	Above Ground			70.0000		70.0000		0.0000		0.0000
	Devide by 8000 Gallons			0.0088		0.0088		0.0000		0.0000
	History Total			8.7412		8.9163		8.2352		8.5003
			Additional Drop Charge for tank wagon delivery				Will charge additional $100.00 for any load under 100 Gallons			

Opis low	On Road	Unleanded	Off Road
Feb-23	3.1022	2.3437	3.1072
May-23	2.5968	2.3290	2.6025
Jun-23	2.5709	2.3070	2.5763
Jul-23	2.6983	2.4688	2.7033
Dec-23	2.6270	1.9722	2.6322
Jan-24	2.7212	2.0861	2.7262
Average	**2.7194**	**2.2511**	**2.7246**

Opis Average	On Road	Unleanded	Off Road
Feb-23	3.2308	2.4026	3.2306
May-23	2.6669	2.3952	2.6724
Jun-23	2.6835	2.3684	2.6906
Jul-23	2.7753	2.5353	2.7753
Dec-23	2.6967	2.1042	2.6990
Jan-24	2.8177	2.1985	2.8190
Average	**2.8118**	**2.3340**	**2.8145**

Price Ranking	1	2	3

Small Loads OPIS Low and Average

			Global Montello Group Corp.				Greens Energy				James River Solutions			
Line Item	Fuel Type	Unit of Measure	Markup over OPIS daily low	Adding Opis Low History Cost	Markup over OPIS daily average	Adding OPIS Average History Cost	Markup over OPIS daily low	Adding Opis Low History Cost	Markup over OPIS daily average	Adding OPIS Average History Cost	Markup over OPIS daily low	Adding Opis Low History Cost	Markup over OPIS daily average	Adding OPIS Average History Cost
1	Ultra Low Sulfur Diesel less than 7500 gallons	GAL	0.5815	3.3009	0.5815	3.3933	0.1700	2.8894	0.1100	2.9218	0.3200	3.0394	0.3000	3.1118
4	E-10 Fuel less than 8000 gallons	GAL	0.5315	2.7826	0.5315	2.8655	0.1700	2.4211	0.1100	2.4440	0.3300	2.5811	0.3000	2.6340
6	Gross No.2 Red-Dyed Fuel (Off Road) less than 7500 gallons	GAL	0.5720	3.2966	0.5720	3.3865	0.1700	2.8946	0.1100	2.9245	0.5500	3.2746	0.2500	3.0645
	History Total			9.3802		9.6453		8.2052		8.2903		8.8952		8.8103
	Split Load			50.0000		50.0000		0.0000		0.0000		40.0000		40.0000
	Devide by 8000 Gallons			0.0063		0.0063		0.0000		0.0000		0.0050		0.0050
	History Total			9.3865		9.6516		8.2052		8.2903		8.9002		8.8153
	Above Ground			0.0000		0.0000		0.0000		0.0000		50.0000		50.0000
	Devide by 8000 Gallons			0.0000		0.0000		0.0000		0.0000		0.0063		0.0063
	History Total			9.3802		9.6453		8.2052		8.2903		8.9015		8.8166
			Additional Drop Charge for tank wagon delivery				Will charge additional $60.00 for every load and that will change the overall price per gallon depending on quanty. The max small load will be 3000 gallons, which would be $.02 more per gallon							

Opis low	On Road	Unleanded	Off Road
Feb-23	3.1022	2.3437	3.1072
May-23	2.5968	2.3290	2.6025
Jun-23	2.5709	2.3070	2.5763
Jul-23	2.6983	2.4688	2.7033
Dec-23	2.6270	1.9722	2.6322
Jan-24	2.7212	2.0861	2.7262
Average	**2.7194**	**2.2511**	**2.7246**

Opis Average	On Road	Unleanded	Off Road
Feb-23	3.2308	2.4026	3.2306
May-23	2.6669	2.3952	2.6724
Jun-23	2.6835	2.3684	2.6906
Jul-23	2.7753	2.5353	2.7753
Dec-23	2.6967	2.1042	2.6990
Jan-24	2.8177	2.1985	2.8190
Average	**2.8118**	**2.3340**	**2.8145**

Price Ranking	1	2	3

Small Loads OPIS Low and Average

			Lynch Oil				Mansfield Oil Company of Gainesville, Inc.				Palmdale Oil Company			
Line Item	Fuel Type	Unit of Measure	Markup over OPIS daily low	Adding Opis Low History Cost	Markup over OPIS daily average	Adding OPIS Average History Cost	Markup over OPIS daily low	Adding Opis Low History Cost	Markup over OPIS daily average	Adding OPIS Average History Cost	Markup over OPIS daily low	Adding Opis Low History Cost	Markup over OPIS daily average	Adding OPIS Average History Cost
1	Ultra Low Sulfur Diesel less than 7500 gallons	GAL	0.3700	3.0894	0.3000	3.1118	0.2914	3.0108	0.2074	3.0192	0.2290	2.9484	0.1890	3.0008
4	E-10 Fuel less than 8000 gallons	GAL	0.3700	2.6211	0.3000	2.6340	0.2593	2.5104	0.1866	2.5206	0.2290	2.4801	0.1890	2.5230
6	Gross No.2 Red-Dyed Fuel (Off Road) less than 7500 gallons	GAL	0.3700	3.0946	0.3000	3.1145	0.2442	2.9688	0.1625	2.9770	No Bid	No Bid	No Bid	No bid
	History Total			8.8052		8.8603		8.4901		8.5168				5.5238
	Split Load			0.0100		0.0100		50.0000		50.0000		0.0000		0.0000
	Devide by 8000 Gallons			0.0000		0.0000		0.0063		0.0063		0.0000		0.0000
	History Total			8.4352		8.8603		8.4964		8.5231		0.0000		5.5238
	Above Ground			0.0000		0.0000		70.0000		70.0000		0.0000		0.0000
	Devide by 8000 Gallons			0.0000		0.0000		0.0088		0.0088		0.0000		0.0000
	History Total			8.8052		8.8603		8.4989		8.5256		0.0000		5.5238

Opis low	On Road	Unleanded	Off Road
Feb-23	3.1022	2.3437	3.1072
May-23	2.5968	2.3290	2.6025
Jun-23	2.5709	2.3070	2.5763
Jul-23	2.6983	2.4688	2.7033
Dec-23	2.6270	1.9722	2.6322
Jan-24	2.7212	2.0861	2.7262
Average	**2.7194**	**2.2511**	**2.7246**

Opis Average	On Road	Unleanded	Off Road
Feb-23	3.2308	2.4026	3.2306
May-23	2.6669	2.3952	2.6724
Jun-23	2.6835	2.3684	2.6906
Jul-23	2.7753	2.5353	2.7753
Dec-23	2.6967	2.1042	2.6990
Jan-24	2.8177	2.1985	2.8190
Average	**2.8118**	**2.3340**	**2.8145**

Price Ranking	1	2	3

Small Loads OPIS Low and Average

			Petroleum Traders Corporation				Pinnacle Petroleum, Inc.				Saratoga Rack Marketing LLC			
Line Item	Fuel Type	Unit of Measure	Markup over OPIS daily low	Adding Opis Low History Cost	Markup over OPIS daily average	Adding OPIS Average History Cost	Markup over OPIS daily low	Adding Opis Low History Cost	Markup over OPIS daily average	Adding OPIS Average History Cost	Markup over OPIS daily low	Adding Opis Low History Cost	Markup over OPIS daily average	Adding OPIS Average History Cost
1	Ultra Low Sulfur Diesel less than 7500 gallons	GAL	0.5900	3.3094	0.5000	3.3118	0.3721	3.0915	0.2846	3.0964	0.4043	3.1237	0.3543	3.1661
4	E-10 Fuel less than 8000 gallons	GAL	0.5900	2.8411	0.5000	2.8340	0.3402	2.5913	0.2295	2.5635	0.3810	2.6321	0.3310	2.6650
6	Gross No.2 Red-Dyed Fuel (Off Road) less than 7500 gallons	GAL	0.5900	3.3146	0.5000	3.3145	0.3745	3.0991	0.2904	3.1049	0.4043	3.1289	0.3543	3.1688
	History Total			9.4652		9.4603		8.7820		8.7648		8.8848		8.9999
	Split Load			75.0000		75.0000		65.0000		65.0000		35.0000		35.0000
	Devide by 8000 Gallons			0.0094		0.0094		0.0081		0.0081		0.0044		0.0044
	History Total			9.4746		9.4697		8.7901		8.7729		8.8892		9.0043
	Above Ground			100.0000		100.0000		75.0000		75.0000		75.0000		75.0000
	Devide by 8000 Gallons			0.0125		0.0125		0.0094		0.0094		0.0094		0.0094
	History Total			9.4777		9.4728		8.7914		8.7742		8.8942		9.0093

Opis low	**On Road**	**Unleanded**	**Off Road**
Feb-23	3.1022	2.3437	3.1072
May-23	2.5968	2.3290	2.6025
Jun-23	2.5709	2.3070	2.5763
Jul-23	2.6983	2.4688	2.7033
Dec-23	2.6270	1.9722	2.6322
Jan-24	2.7212	2.0861	2.7262
Average	**2.7194**	**2.2511**	**2.7246**

Opis Average	**On Road**	**Unleanded**	**Off Road**
Feb-23	3.2308	2.4026	3.2306
May-23	2.6669	2.3952	2.6724
Jun-23	2.6835	2.3684	2.6906
Jul-23	2.7753	2.5353	2.7753
Dec-23	2.6967	2.1042	2.6990
Jan-24	2.8177	2.1985	2.8190
Average	**2.8118**	**2.3340**	**2.8145**

Price Ranking	1	2	3

Small Loads OPIS Low and Average

			Sunoco, LLC				Tropic Oil Company			
Line Item	Fuel Type	Unit of Measure	Markup over OPIS daily low	Adding Opis Low History Cost	Markup over OPIS daily average	Adding OPIS Average History Cost	Markup over OPIS daily low	Adding Opis Low History Cost	Markup over OPIS daily average	Adding OPIS Average History Cost
1	Ultra Low Sulfur Diesel less than 7500 gallons	GAL	0.5000	3.2194	0.5000	3.3118	0.3000	3.0194	0.2500	3.0618
4	E-10 Fuel less than 8000 gallons	GAL	0.5000	2.7511	0.5000	2.8340	0.3000	2.5511	0.2500	2.5840
6	Gross No.2 Red-Dyed Fuel (Off Road) less than 7500 gallons	GAL	0.5000	3.2246	0.5000	3.3145	0.3000	3.0246	0.2500	3.0645
	History Total			9.1952		9.4603		8.5952		8.7103
	Split Load			50.0000		50.0000		0.0000		0.0000
	Devide by 8000 Gallons			0.0063		0.0063		0.0000		0.0000
	History Total			9.2015		9.4666		8.5952		8.7103
	Above Ground			55.0000		55.0000		0.0000		0.0000
	Devide by 8000 Gallons			0.0069		0.0069		0.0000		0.0000
	History Total			9.2021		9.4672		8.5952		8.7103

Opis low	On Road	Unleanded	Off Road
Feb-23	3.1022	2.3437	3.1072
May-23	2.5968	2.3290	2.6025
Jun-23	2.5709	2.3070	2.5763
Jul-23	2.6983	2.4688	2.7033
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Average	**2.7194**	**2.2511**	**2.7246**

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Jul-23	2.7753	2.5353	2.7753
Dec-23	2.6967	2.1042	2.6990
Jan-24	2.8177	2.1985	2.8190
Average	**2.8118**	**2.3340**	**2.8145**

Price Ranking	1	2	3

Date: 04/16/2024	**AGENDA ITEM**		**Item:** 10
[] Ordinance	[] Resolution	[] Budget Resolution	[X] Other

County Goals

[]	More Efficient Regulatory Framework	[]	Increase Efficiency and Effectiveness of Government Operations	[]	Implement a Plan for Expanded Recreation
[]	Enhance Fiscal Stewardship	[]	Support a Solution-Oriented Culture	[X]	NA

Department: Business Services
Division: Administration

Subject: Award of bid for bulk fuel to multiple vendors, 24-B-61LS.

Jeaniene Jennings Director Business Services Approved By: Jeaniene Jennings Department Approval	Pamela Wilsky Approved By: Pamela Wilsky Approved in Accordance with Purchasing Policies and Procedures	Legal Thomas Russell Brown Senior Assistant County Attorney Approved By: Thomas Russell Brown Approved as to Form and Legality	County Manager's Office Ryan Ossowski Chief Financial Officer Approved By: Ryan Ossowski
Approved By: Division Approval	Aaron Van Kleeck Approved By: Aaron Van Kleeck Approved as to Budget Requirements		

Council Action:

Modification:

Fund Number(s):	**Description:**	**Amount:**
513 Equipment Maintenance	513-860-6300-5220 (Expenditure: Fuel)	$6,125,000.00
456 Volusia Transportation Authori	456-670-0X00-5220 (Expenditure: Fuel)	$3,500,000.00

Total Item Budget: $9,625,000.00

Staff Contact(s):	**Phone:**	**Ext.**
Jeaniene Jennings	386 822 5789	15789
Brian Jones	386 254 7594	11832

Summary/Highlights:
On March 19, 2024 the county received thirteen (13) responses, as shown on the attached tabulation sheet, to provide bulk fuel to a consortium consisting of the County, Transit Services, Volusia County School Board, City of Daytona Beach, City of Port Orange, City of South Daytona, City of New Smyrna Beach, City of DeLand, City of Edgewater, City of

Ormond Beach, and Flagler County. Each agency will be responsible for their fuel purchases from this contract.

All pricing submitted was compared to six months of historical Oil Price Information Service (OPIS) data pricing index that is a widely accepted fuel pricing benchmark for supply contracts and used by the county for the past 20 years. The attached pricing consists of the cost markup per gallon.

Staff recommends selection and award of contracts to the following vendors for large loads: Sunoco, LLC, Palmdale Oil Company, and James River Solutions. Staff recommends selection and award of contracts to the following vendors for small loads: Greens Energy, Gentry Oil, LLC and Palmdale Oil Company. The contracts' term is for an initial period of three (3) years with two (2) subsequent one-year renewals.

The estimated annual expenditure for these services is approximately $9,625,000.00.

Recommended Motion: Approval.

CERTIFICATE OF LIABILITY INSURANCE

9/15/2024

DATE (MM/DD/YYYY) 4/24/2024

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	LOCKTON COMPANIES 3657 BRIARPARK DRIVE, SUITE 700 HOUSTON TX 77042 866-260-3538	**CONTACT NAME:**	
		PHONE (A/C, No, Ext):	**FAX (A/C, No):**
		E-MAIL ADDRESS:	
		INSURER(S) AFFORDING COVERAGE	**NAIC #**
		INSURER A : Old Republic Insurance Company	24147
INSURED 1379929	Sunoco LLC 1300 Main Street Houston TX 77002	**INSURER B :** ACE American Insurance Company	22667
		INSURER C :	
		INSURER D :	
		INSURER E :	
		INSURER F :	

COVERAGES **CERTIFICATE NUMBER:** 20524494 **REVISION NUMBER:** XXXXXXX

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	X **COMMERCIAL GENERAL LIABILITY** CLAIMS-MADE [X] OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: [X] POLICY [ ] PRO-JECT [ ] LOC [ ] OTHER:	Y	Y	MWZY 59829-23	9/15/2023	9/15/2024	EACH OCCURRENCE	$ 10,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 10,000,000
							MED EXP (Any one person)	$ XXXXXXX
							PERSONAL & ADV INJURY	$ 10,000,000
							GENERAL AGGREGATE	$ 10,000,000
							PRODUCTS - COMP/OP AGG	$ See Below
								$
A A	**AUTOMOBILE LIABILITY** X ANY AUTO OWNED AUTOS ONLY [ ] SCHEDULED AUTOS HIRED AUTOS ONLY [ ] NON-OWNED AUTOS ONLY X MCS-90	Y	Y	MWTB 21711-23 MWZX 315003-23	9/15/2023 9/15/2023	9/15/2024 9/15/2024	COMBINED SINGLE LIMIT (Ea accident)	$ 10,000,000
							BODILY INJURY (Per person)	$ XXXXXXX
							BODILY INJURY (Per accident)	$ XXXXXXX
							PROPERTY DAMAGE (Per accident)	$ XXXXXXX
								$ XXXXXXX
	[ ] **UMBRELLA LIAB** [ ] OCCUR [ ] **EXCESS LIAB** [ ] CLAIMS-MADE [ ] DED [ ] RETENTION $			NOT APPLICABLE			EACH OCCURRENCE	$ XXXXXXX
							AGGREGATE	$ XXXXXXX
								$
B B B	**WORKERS COMPENSATION AND EMPLOYERS' LIABILITY** Y / N ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? N **(Mandatory in NH)** If yes, describe under DESCRIPTION OF OPERATIONS below	N / A	Y	WLR C50726435 SCF C50726514 (MO, NC, OK. PA, WI)	9/15/2023 9/15/2023	9/15/2024 9/15/2024	X PER STATUTE [ ] OTH-ER	
							E.L. EACH ACCIDENT	$ 10,000,000
							E.L. DISEASE - EA EMPLOYEE	$ 10,000,000
							E.L. DISEASE - POLICY LIMIT	$ 10,000,000
B	*Excess Workers Compensation	N	Y	WCU C50726678	9/15/2023	9/15/2024	EL Each Acc $10MM EL Disease-Policy Lim $10MM EL Disease-Each Empl $10MM SIR $5MM	

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

EXCESS WORKERS COMPENSATION - * POLICY APPLIES TO OHIO. Products/Completed Operations Aggregate Limit Subject to the General Aggregate Limit. Additional insured in favor of Volusia County School Board, VOTRAN, City of Daytona Beach, City of Port Orange, City of South Daytona, City of New Smyrna Beach, City DeLand, City of Edgewater, City of Ormond Beach, and Flagler County on all policies (except Workers' Compensation/EL) where and to the extent required by written contract. Waiver of subrogation in favor of Volusia County School Board, VOTRAN, City of Daytona Beach, City of Port Orange, City of South Daytona, City of New Smyrna Beach, City DeLand, City of Edgewater, City of Ormond Beach, and Flagler County on all policies where and to the extent required by written contract where permissible by law.

CERTIFICATE HOLDER

20524494

County of Volusia
Purchasing & Contracts Division
123 W. Indiana Avenue, Room 302
DeLand FL 32720

CANCELLATION See Attachments

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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All policies (except Workers' Compensation/EL) include a blanket automatic additional insured endorsement [provision] that confers additional insured status to the certificate holder only if there is a written contract between the named insured and the certificate holder that requires the named insured to name the certificate holder as an additional insured. In the absence of such a contractual obligation on the part of the named insured, the certificate holder is not an additional insured under the policy.

All policies include a blanket automatic waiver of subrogation endorsement [provision] that provides this feature only when there is a written contract between the named insured and the certificate holder that requires it. In the absence of such a contractual obligation on the part of the named insured, the waiver of subrogation feature does not apply.

Pollution Legal Liability

Policy No: MWZZ 301298-23
Insurer: Old Republic Insurance Company
Policy Term: 9/15/2023 - 9/15/2024
Limits: $10,000,000 Each Pollution Incident
$10,000,000 General Aggregate

Client#: 80025 PALSO

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 5/10/2024

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 any rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME: Michelle Kalicharan	
Acrisure LLC 4100 Goodlette Rd N Naples, FL 34103 239 261-3646	PHONE (A/C, No, Ext): 239 435-7143	FAX (A/C, No): 239 213-2803
	E-MAIL ADDRESS: mkalicharan@acrisure.com	

INSURED	INSURER(S) AFFORDING COVERAGE	NAIC #
Palmdale Oil Company, LLC 911 North 2nd Street Fort Pierce, FL 34950	INSURER A : Houston Specialty Insurance Company	12936
	INSURER B : Great American Insurance Company	26832
	INSURER C : Lloyds - AIIN #: AA1122000	
	INSURER D : Imperium Insurance Company	35408
	INSURER E :	
	INSURER F :	

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

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INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY	X	X	ECAP1HSGL00000405	09/30/2023	09/30/2024	EACH OCCURRENCE	$1,000,000
	CLAIMS-MADE X OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	$100,000
							MED EXP (Any one person)	$5,000
							PERSONAL & ADV INJURY	$1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$2,000,000
	POLICY PRO-JECT X LOC						PRODUCTS - COMP/OP AGG	$2,000,000
	OTHER:							$
D	AUTOMOBILE LIABILITY	X	X	ECAP1IICCA00000405	09/30/2023	09/30/2024	COMBINED SINGLE LIMIT (Ea accident)	$1,000,000
	X ANY AUTO						BODILY INJURY (Per person)	$
	OWNED AUTOS ONLY / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	X HIRED AUTOS ONLY / X NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	$
	X MCS-90 X Pollution Lia							$
A	UMBRELLA LIAB X OCCUR			ECAP1HSCX00000405	09/30/2023	09/30/2024	EACH OCCURRENCE	$4,000,000
	X EXCESS LIAB / CLAIMS-MADE						AGGREGATE	$4,000,000
	DED X RETENTION $0							$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY		X	WCE98918501	05/04/2024	05/04/2025	X PER STATUTE / OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y / N: N	N / A					E.L. EACH ACCIDENT	$1,000,000
	(Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$1,000,000
							E.L. DISEASE - POLICY LIMIT	$1,000,000
C	Excess Liability			23UKPCB23000259050	09/30/2023	09/30/2024	$5,000,000	

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

Certificate Holder is included as Additional Insured in regard to General Liability only as required by written contract for Ongoing Operations per form CG2010 1219, Completed Operations per form CG2037 0413, Primary and Non Contributory status per form CG2001 1219 and Waiver of Subrogation in favor of the Additional Insured per form CG2404 0509. General Liability includes misdelivery of liquid products. Additional Insured in regard to Auto Liability as required by written contract per form IICCA3301 0413, (See Attached Descriptions)

CERTIFICATE HOLDER

County of Volusia
123 West Indiana Ave, Room 203
De Land, FL 32720

CANCELLATION

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

AUTHORIZED REPRESENTATIVE

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DESCRIPTIONS (Continued from Page 1)

Primary and Non-Contributory per form CA0449 1116 and Waiver of Subrogation in favor of the Additional Insured per form CA0444 1013. Auto Liability includes MCS-90 and Broadened Pollution Liability per form CA9948 1013. Waiver of Subrogation in regard to Workers Compensation per form WC000313 0484 when required by written contract. Excess Liability follows form on the General Liability, Auto Liability and Employers Liability.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

POLLUTION LIABILITY – BROADENED COVERAGE FOR COVERED AUTOS – BUSINESS AUTO AND MOTOR CARRIER COVERAGE FORMS

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

A. Covered Autos Liability Coverage is changed as follows:

1. Paragraph **a.** of the **Pollution** Exclusion applies only to liability assumed under a contract or agreement.

2. With respect to the coverage afforded by Paragraph **A.1.** above, Exclusion **B.6. Care, Custody Or Control** does not apply.

B. Changes In Definitions

For the purposes of this endorsement, Paragraph **D.** of the **Definitions** Section is replaced by the following:

D. "Covered pollution cost or expense" means any cost or expense arising out of:

1. Any request, demand, order or statutory or regulatory requirement that any "insured" or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants"; or

2. Any claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to or assessing the effects of "pollutants".

"Covered pollution cost or expense" does not include any cost or expense arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

a. Before the "pollutants" or any property in which the "pollutants" are contained are moved from the place where they are accepted by the "insured" for movement into or onto the covered "auto"; or

b. After the "pollutants" or any property in which the "pollutants" are contained are moved from the covered "auto" to the place where they are finally delivered, disposed of or abandoned by the "insured".

Paragraphs **a.** and **b.** above do not apply to "accidents" that occur away from premises owned by or rented to an "insured" with respect to "pollutants" not in or upon a covered "auto" if:

(1) The "pollutants" or any property in which the "pollutants" are contained are upset, overturned or damaged as a result of the maintenance or use of a covered "auto"; and

(2) The discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused directly by such upset, overturn or damage.

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FUEL DEALERS, DISTRIBUTORS AND TRANSPORTERS ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

I. SECTION V – DEFINITIONS, 13. "Occurrence" is replaced with the following:

13. "Occurrence" means:

a. an accident including continuous or repeated exposure to substantially the same general harmful conditions; or

b. a failure to fulfill an agreement to keep a customer supplied with fuel which results in a breach of that agreement.

However, an "occurrence" does not include:

(1) Your inability to furnish fuel in quantities sufficient to satisfy demand or need due to the curtailment of usable supplies of such products available to you;

(2) Your failure or omission to furnish any quantity of fuel if such failure or omission results from your own programs to reduce or redistribute supplies of fuel; or

(3) Any dishonest, fraudulent, criminal, or malicious failure or omission or any willful violation of any law committed by or with the knowledge and/or consent of any insured.

II. Exclusion **f. Pollution (1) (d)** under Paragraph **2. Exclusions** of **SECTION I – COVERAGES, COVERAGE A - BODILY INJURY AND PROPERTY DAMAGE LIABILITY** is amended to add the following exceptions:

(iv) "Bodily injury" or "property damage" caused by construction, installation, maintenance, service or repair of stationary liquid fuel and lubricant storage tanks and associated piping, pumps, dispensers and appurtenances connected thereto; heating, ventilation, air conditioning systems; vehicle lubricants and service liquids dispensing equipment; cutting fluids dispensing systems; or commercial automatic lubricating systems where the discharge, dispersal, seepage, migration, release or escape of "pollutant" is caused by "your work" or out of "completed operations". This exception does not apply to "property damage" arising out of any tank, piping, pumps or dispensers, heating, ventilation, air conditioning systems, vehicle lubricants and service liquids dispensing equipment, cutting fluids dispensing systems, and/or commercial automatic lubricating systems which are or were at any time owned by, leased or rented to you;

(v) "Bodily injury" or "property damage" caused by your misdelivery of liquid fuel or lubricant products if the "bodily injury" or "property damage" occurs after the delivery is complete. Delivery is considered completed even if further service or maintenance work, or correction, repair or replacement is required because of wrong delivery;

(vi) "Bodily injury" or "property damage" caused by discharge, dispersal, seepage, migration, release or escape of liquid fuels or lubricants from containers delivered to your customer's site if the "bodily injury" or "property damage" is caused by "your work" or "your product" and occurs after the delivery is complete. Delivery is considered completed even if further service or maintenance work, or correction, repair or replacement is required because of the wrong delivery;

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MISDELIVERY OF LIQUID PRODUCTS COVERAGE

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART.

Exclusion g. of COVERAGE A (Section I) does not apply to "bodily injury" or "property damage" arising out of:

1. The delivery of any liquid product into a wrong receptacle or to a wrong address; or
2. The erroneous delivery of one liquid product for another by an "auto;"

if the "bodily injury" or "property damage" occurs after such operations have been completed or abandoned at the site of such delivery.

Operations which may require further service, maintenance, correction, repair or replacement of performance at the wrong address or because of any error, defect or deficiency, but which are otherwise completed, will be deemed completed.

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CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 7/23/2024

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 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
Bowen, Miclette & Britt of Florida, LLC
850 Concourse Parkway S
Suite #105
Maitland FL 32751

CONTACT NAME: Michelle Rushing
PHONE (A/C, No, Ext): 407-647-1616 **FAX (A/C, No):** 407-628-1635
E-MAIL ADDRESS: mrushing@bmbinc.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : New York Marine and General Ins Co	16608
INSURER B : Westchester Surplus Lines Insurance	10172
INSURER C : Silver Oak Casualty, Inc.	26869
INSURER D :	
INSURER E :	
INSURER F :	

INSURED GREENSENER
Greens Energy Services, Inc.
186 N. Goldenrod Road
Orlando FL 32807

COVERAGES **CERTIFICATE NUMBER:** 375927310 **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	X **COMMERCIAL GENERAL LIABILITY** [ ] CLAIMS-MADE [X] OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: X POLICY [ ] PRO-JECT [ ] LOC [ ] OTHER:	Y	Y	GL202400016337	6/30/2024	6/30/2025	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG 	$ 1,000,000 $ 100,000 $ 5,000 $ 1,000,000 $ 2,000,000 $ 2,000,000 $
A	**AUTOMOBILE LIABILITY** X ANY AUTO [ ] ALL OWNED AUTOS [ ] SCHEDULED AUTOS X HIRED AUTOS X NON-OWNED AUTOS X CA9948 X MCS-90	Y	Y	AU202400019360	6/30/2024	6/30/2025	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident) PIP Per Person	$ 1,000,000 $ $ $ $ 10,000
A	[ ] **UMBRELLA LIAB** X OCCUR X **EXCESS LIAB** [ ] CLAIMS-MADE [ ] DED [ ] RETENTION $	Y	Y	EX202400003654	6/30/2024	6/30/2025	EACH OCCURRENCE AGGREGATE 	$ 5,000,000 $ 5,000,000 $
C	**WORKERS COMPENSATION AND EMPLOYERS' LIABILITY** Y / N ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? N **(Mandatory in NH)** If yes, describe under DESCRIPTION OF OPERATIONS below	N / A	Y	SVWCFL3285122024	6/30/2024	6/30/2025	X PER STATUTE [ ] OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	 $ 1,000,000 $ 1,000,000 $ 1,000,000
B	Pollution Liability	Y	Y	G70965112006	6/30/2024	6/30/2025	Each Poll Condition Aggregate	3,000,000 3,000,000

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

The following policy provisions and/or endorsements form part of the policies of insurance represented by this certificate of insurance. The terms contained in the policies and/or endorsements supersede the representations made herein. Electronic copies of the policy provisions and/or endorsements listed below are available by emailing contact name shown above.

When required by written contract, those parties listed in said contract, including the Certificate Holder, are added as an additional insured with respect to the General Liability including ongoing and completed operations, Auto Liability, Pollution Liability and Excess Liability as afforded by the policy and/or endorsements.

See Attached...

CERTIFICATE HOLDER

City of Port Orange
Public Works
407 Virginia Ave.
Port Orange FL 32127

CANCELLATION

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

AUTHORIZED REPRESENTATIVE

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AGENCY CUSTOMER ID: GREENSENER

LOC #:

ADDITIONAL REMARKS SCHEDULE

AGENCY Bowen, Miclette & Britt of Florida, LLC	NAMED INSURED Greens Energy Services, Inc. 186 N. Goldenrod Road Orlando FL 32807
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

When required by written contract, waiver of subrogation is granted with respect to the General Liability, Auto Liability, Workers Compensation, Pollution Liability and Excess Liability to those parties listed in said contract, including the Certificate Holder.

The General Liability, Auto Liability and Pollution Liability certified herein are primary and non-contributory to other insurance available, but only to the extent required by written contract.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PROPANE AND FUEL DEALERS LIABILITY EXTENSION ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

Coverage extensions under this endorsement only apply in the event that no other specific coverage for these extensions is provided under this policy. If such specific coverage applies, the terms, conditions and limits of that coverage are the sole and exclusive coverage applicable under this policy, unless otherwise noted in this endorsement.

SCHEDULE – EXTENSIONS OF COVERAGE

	Coverages		
1.	Additional Insured	**10.**	Liberalization
2.	Automatic Fill / Failure to Supply	**11.**	Limited Coverage for Damage To Personal Property In Your Care Custody Or Control
3.	Blanket Waiver Of Subrogation	**12.**	Misdelivery Of Liquid Products
4.	Broadened Bodily Injury	**13.**	Non Employment Discrimination
5.	Broadened Named Insured	**14.**	Non-Owned Watercraft Coverage
6.	Duties In The Event Of An Occurrence, Offense, Claim Or Suit	**15.**	Personal And Advertising Injury
7.	Expected Or Intended Injury	**16.**	Supplementary Payments – Increased Limits
8.	Fire, Explosion, Sprinkler Leakage Or Lightning Legal Liability Coverage	**17.**	Unintentional Failure To Disclose Hazards
9.	Incidental Medical Services Coverage		

1. Additional Insured

Paragraph **2.** of **Section II – Who Is An Insured** is amended by the addition of the following:

e. Any person or organization is included as an additional insured, but only to the extent such person or organization is held liable for "bodily injury", "property damage" or "personal and advertising injury" caused by your acts or omissions. With respect to the insurance afforded to such insured, all of the following additional provisions apply:

(1) You and such person or organization have agreed in a written "insured contract" that such person or organization be added as an additional insured under this policy;

(2) The "bodily injury", "property damage" or "personal and advertising injury" for which said person or organization is held liable occurs subsequent to the execution of such "insured contract";

(3) The most we will pay is the lesser of either the Limits of Insurance shown in the Declarations or the Limits of Insurance required by the "insured contract";

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(4) Such person or organization is an insured only with respect to:

(a) Their ownership, maintenance, or use of that part of the premises or land, owned by, rented to, or leased to you, except such person or organization is not an insured with respect to structural alterations, new construction or demolition operations performed by or on behalf of such person or organization;

(b) Your ongoing operations performed for that insured;

(c) Their financial control of you, except such person or organization is not an insured with respect to structural alterations, new construction or demolition operations performed by or on behalf of such person or organization;

(d) The maintenance, operation or use by you of equipment leased to you by such person or organization;

(e) Operations performed by you or on your behalf and for which a state or political subdivision has issued a permit, provided such operations are not performed for such state or political subdivision, and are not included within the "products-completed operations hazard";

(5) This insurance does not apply to "bodily injury", "property damage", "personal and advertising injury", "occurrence" or offense:

(a) Which takes place at a particular premise after you cease to be a tenant of that premises;

(b) Which takes place after all work, including materials, parts or equipment furnished in connection with such work to be performed by or on behalf of the additional insured at the site of the covered operations, has been completed;

(c) Which takes place after that portion of "your work" out of which the injury or damage arises has been put to its intended use by any other person or organization other than another contractor or subcontractor engaged in performing operations for a principal as part of the same project;

(d) Which takes place after the expiration of any equipment lease to which **(4)(d)** above applies;

(6) With respect to architects, engineers or surveyors, coverage does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering or failure to render any professional services by or for you, including:

(a) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, or drawings and specifications;

(b) Supervisory, inspection, architectural or engineering services.

However, if an Additional Insured endorsement is attached to this policy that specifically names a person or organization as an insured, then this subsection **2.e.** does not apply to such person or organization.

2. Automatic Fill / Failure to Supply

This insurance applies to "bodily injury" or "property damage" arising out of your failure or omission to keep a customer of yours supplied with fuel oil or liquefied petroleum gas in accordance with your agreement to do so, subject to the following provisions:

This insurance does not apply to "bodily injury" or "property damage" resulting from:

a. Your inability to supply fuel oil or liquefied petroleum gas in sufficient quantity to satisfy the demand or need due to curtailment of supplies of such products available to you;

b. Your intentional failure to supply any quantity of fuel oil or liquefied petroleum gas if this failure results from a program you instituted for the reduction or redistribution of supplies of such products;

c. Your inability to deliver fuel oil or liquefied petroleum gas due to the impassability of public or private roads or thoroughfares that are necessary to gain access to a customer's premises; or

d. Nonpayment, late payment, or any credit delinquency of your customer.

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3. Blanket Waiver Of Subrogation

Paragraph **8. Transfer Of Rights Of Recovery Against Others To Us** of **Section IV – Commercial General Liability Conditions** and **Section IV – Products/Completed Operations Liability Conditions** is replaced by the following:

Transfer Of Rights Of Recovery Against Others To Us And Blanket Waiver Of Subrogation

a. If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after the loss to impair those rights. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

b. If required by a written "insured contract" executed prior to the "occurrence" or offense, we waive any right of recovery we may have against any person or organization named in such "insured contract", because of payments we make for injury or damage arising out of your operations or "your work" for that person or organization.

4. Broadened Bodily Injury

Paragraph **3.** of **Section V – Definitions** is replaced by the following:

"Bodily injury" means bodily injury, disability, sickness or disease sustained by a person, including death resulting from any of these at any time. "Bodily injury" includes mental anguish or other mental injury resulting from "bodily injury".

5. Broadened Named Insured

Paragraph **3.** of **Section II – Who Is An Insured** is replaced by the following:

Any organization that you own at the inception of this policy, or newly acquire or form during the policy period, and over which you maintain during the policy period majority ownership or majority interest, will qualify as a Named Insured if:

a. There is no other similar insurance available to that organization;

b. The first Named Insured shown in the Declarations has the responsibility of placing insurance for that organization; and

c. That organization is incorporated or organized under the laws of the United States of America.

However:

a. Coverage under this provision is afforded only until the next occurring annual anniversary of the beginning of the policy period shown in the Declarations, or the end of the policy period, whichever is earlier;

b. Coverage **A** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and

c. Coverage **B** does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

The final paragraph of **Section II – Who Is An Insured** is replaced by the following:

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture, or limited liability company that is not shown as a Named Insured in the Declarations. However, this does not apply to a limited liability company that meets all of the conditions of **Section II – Who Is An Insured**, above.

6. Duties In The Event Of An Occurrence, Offense, Claim Or Suit

Paragraph **2.a.** of **Section IV – Commercial General Liability Conditions** is replaced by the following:

a. You must see to it that we or any licensed agent of ours are notified of a general liability "occurrence" or offense which may result in a claim as soon as practicable after it becomes known to:

(1) You, if you are an individual;

(2) Your partner or member, if you are a partnership or joint venture;

(3) Your member, if you are a limited liability company;

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(4) Your executive officer if you are an organization other than a partnership, joint venture or limited liability company; or

(5) Your authorized representative or insurance manager.

Knowledge of an "occurrence" or offense by persons other than those listed above does not imply that those listed above also have such knowledge.

b. To the extent possible, notice should include:

(1) How, when and where the "occurrence" or offense took place;

(2) The names and addresses of any injured persons and witnesses; and

(3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

7. Expected Or Intended Injury

Paragraph **2.a. Expected Or Intended Injury** of the **Exclusions** provision of **Section I – Coverages, Coverage A – Bodily Injury And Property Damage Liability** is replaced by the following:

Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured.

This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

8. Fire, Explosion, Sprinkler Leakage Or Lightning Legal Liability Coverage

The final paragraph of the **Exclusions** provision of **Section I – Coverages, Coverage A – Bodily Injury And Property Damage Liability** is replaced by the following:

Exclusions **c.** through **n.** do not apply to damage by fire, explosion, sprinkler leakage or lightning to premises while:

(1) Rented to you;

(2) Temporarily occupied by you with the permission of the owner; or

(3) Managed by you under a written agreement with the owner.

A separate limit of insurance applies to this coverage as described in **Section III – Limits Of Insurance**.

Paragraph **6. of Section III – Limits Of Insurance** is replaced by the following:

Subject to paragraph **5.** above, the Damage to Premises Rented To You Limit shown in the Declarations, for "property damage" to any one premises while rented to you, or in the case of damage by fire, explosion, sprinkler leakage, or lightning while rented to you, temporarily occupied by you with the permission of the owner, or managed by you under a written agreement with the owner, is the greater of:

a. $300,000 Any One Premises; or

b. The Damage To Premises Rented To You Limit shown in the Declarations.

Subsections **4.b.(1)(a)(ii)** and **4.b.(1)(a)(iii)** of paragraph **4.b. Excess Insurance** of the **Other Insurance** condition of **Section IV – Commercial General Liability Conditions** is replaced by the following:

(ii) That is Fire, Explosion, Sprinkler Leakage, or Lightning insurance for premises while rented to you, temporarily occupied by you with permission of the owner, or managed by you under a written agreement with the owner;

(iii) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you, temporarily occupied by you with the permission of the owner, or managed by you under a written agreement with the owner;

Paragraph **9.a.** of **Section V – Definitions** is replaced by the following:

a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, explosion, sprinkler leakage, or lightning to premises while rented to you, temporarily occupied by you with permission of the owner, or managed by you under a written agreement with the owner, is not an "insured contract";

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9. Incidental Medical Services Coverage

1. SECTION I – COVERAGES is amended to include the following additional coverage:

We will pay for "bodily injury" arising out of the rendering of or failure to render the following treatment or services by an "employee" or "volunteer worker" for an accident occurring during the policy period:

a. First aid treatment including cardiopulmonary resuscitation (CPR); and

b. Medical, surgical, dental, x-ray, or nursing service or treatment, or the furnishing of food or beverages in connection therewith; and the furnishing or dispensing of drugs, or medical, dental, or surgical supplies or appliances.

However, this coverage does not apply to any insured or to any entity engaged in the business or occupation of providing the services or treatments described in **a.** and **b.** above.

2. SECTION I – COVERAGES, **COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, **2. Exclusions**, **e. Employer's Liability** does not apply to psychological injury arising out of the services described in **1.a.** and **1.b.**

10. Liberalization

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS is amended to include:

10. Liberalization

If we revise this endorsement to provide more coverage without additional premium charge, we will automatically provide the additional coverage to all endorsement holders as of the day the revision is effective in your state.

11. Limited Coverage For Damage To Personal Property In Your Care Custody Or Control

Paragraph **(4)** of Exclusion **j.** of **SECTION I – COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY** is deleted and is replaced by the following:

(4) Personal property in the care, custody or control of the insured.

However, with respect to "property damage" to personal property of others which occurs away from premises you own, rent or control, this exclusion will apply only when:

(a) The "property damage" is to property which you have contracted to install;

(b) The "property damage" is the direct result of the property being raised, lowered or otherwise moved by a crane;

(c) The "property damage" is to "mobile equipment" or an "auto";

(d) The "property damage" is to that particular part of property which you are attempting to service or repair; or

(e) You have other insurance which will pay for the "property damage".

12. Misdelivery Of Liquid Products

Exclusion **g.** of **COVERAGE A** (Section I) does not apply to "bodily injury" or "property damage" arising out of:

(1) The delivery of any liquid product into a wrong receptacle or to a wrong address; or

(2) The erroneous delivery of one liquid product for another by an "auto";

If the "bodily injury" or "property damage" occurs after such operations have been completed or abandoned at the site of such delivery.

Operations which may require further service, maintenance, correction, repair or replacement of performance at the wrong address or because of any error, defect, or deficiency, but which are otherwise completed, will be deemed completed.

13. Non Employment Discrimination Liability

Unless "personal and advertising injury" is excluded from this policy, the following applies:

Paragraph **14.** of **Section V – Definitions** is amended by the addition of the following:

"Personal and advertising injury" also means injury, including consequential "bodily injury", arising out of "discrimination".

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Section V – Definitions is amended by the addition of the following:

"Discrimination" means the unlawful treatment of a person or class of persons because of their specific race, color, religion, gender, age or national origin in comparison to one or more persons who are not members of the specified class.

Paragraph **2. Exclusions** of **Section I – Coverages, Coverage B – Personal And Advertising Injury Liability** is amended by the addition of the following exclusions:

This insurance does not apply to:

"Discrimination" directly or indirectly related to the past employment, employment or prospective employment of any person or class of persons by any insured;

"Discrimination" directly or indirectly related to the sale, rental, lease or sublease or prospective sale, rental, lease or sublease of any dwelling or permanent lodging by or at the direction of any insured;

"Discrimination", if insurance thereof is prohibited by law; or

Fines, penalties, specific performance, or injunctions levied or imposed by a governmental entity, governmental code, law, or statute because of "discrimination".

14. Non-Owned Watercraft Coverage Extension

Paragraph **2.g.(2)** of the **Aircraft, Auto Or Watercraft** exclusion of **Section I – Coverages, Coverage A – Bodily Injury And Property Damage Liability** is replaced by the following:

This exclusion does not apply to:

(1) A watercraft you do not own that is:

(a) Less than 50 feet long; and

(b) Not being used to carry persons or property for a charge;

15. Personal And Advertising Injury Liability

Unless "personal and advertising injury" is excluded from this policy, the following applies:

Paragraph **e. Contract Liability** of the **Exclusions** provision of **Section I – Coverages, Coverage B – Personal And Advertising Injury Liability** is deleted.

16. Supplementary Payments – Increased Limits

Paragraphs **1.b.**, **1.d.**, and **1.e.** of **Supplementary Payments – Coverages A and B** of **Section I – Coverages** are replaced by the following:

b. Up to $2,500 for the cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including substantiated loss of earnings up to $500 a day because of time off from work.

e. All court costs taxed against the insured in the "suit".

17. Unintentional Failure To Disclose Hazards

Paragraph **6. Representations** of **Section IV – Commercial General Liability Conditions** is amended by the addition of the following:

d. If you unintentionally fail to disclose any hazards existing at the inception date of this policy, we will not deny coverage under this Coverage Form because of such failure.

However, this provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.

All other terms, definitions, conditions and exclusions of this policy remain unchanged.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location And Description Of Completed Operations
blanket as required by written contract	as per written contract
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. **Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the Schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

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CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 8/21/2024

SUBJECT: (C7h) Approval to Award ITB #24-09 to Rush Marine, LLC for Memorial Park Pier Renovations

DEPARTMENT: Parks & Recreation

GOAL: 3 - Quality of Life

RECOMMENDED MOTION: Move to approve the award of ITB #24-09 to Rush Marine, LLC, authorize contingency for an amount not to exceed 8% ($63,271.52) of the total bid award; authorize city manager and city attorney to finalize terms and conditions of the contract prior to execution; and authorize the Mayor and City Clerk to execute the final contract documents.

SUMMARY: The Parks & Recreation Department is requesting Council approval to award ITB #24-09 Memorial Park Pier Renovations to Rush Marine, LLC for Bid Alternate Two in the amount of $790,849.00. In addition, staff is requesting approval of contingency for unforeseen conditions ("Contingency") in an amount not to exceed 8% ($63,271.52) of the total bid award.

The decking and rail systems of the piers were significantly damaged during Hurricane Ian and the piers have remained closed since. The improvements were designed with three different options for contractors to bid on.

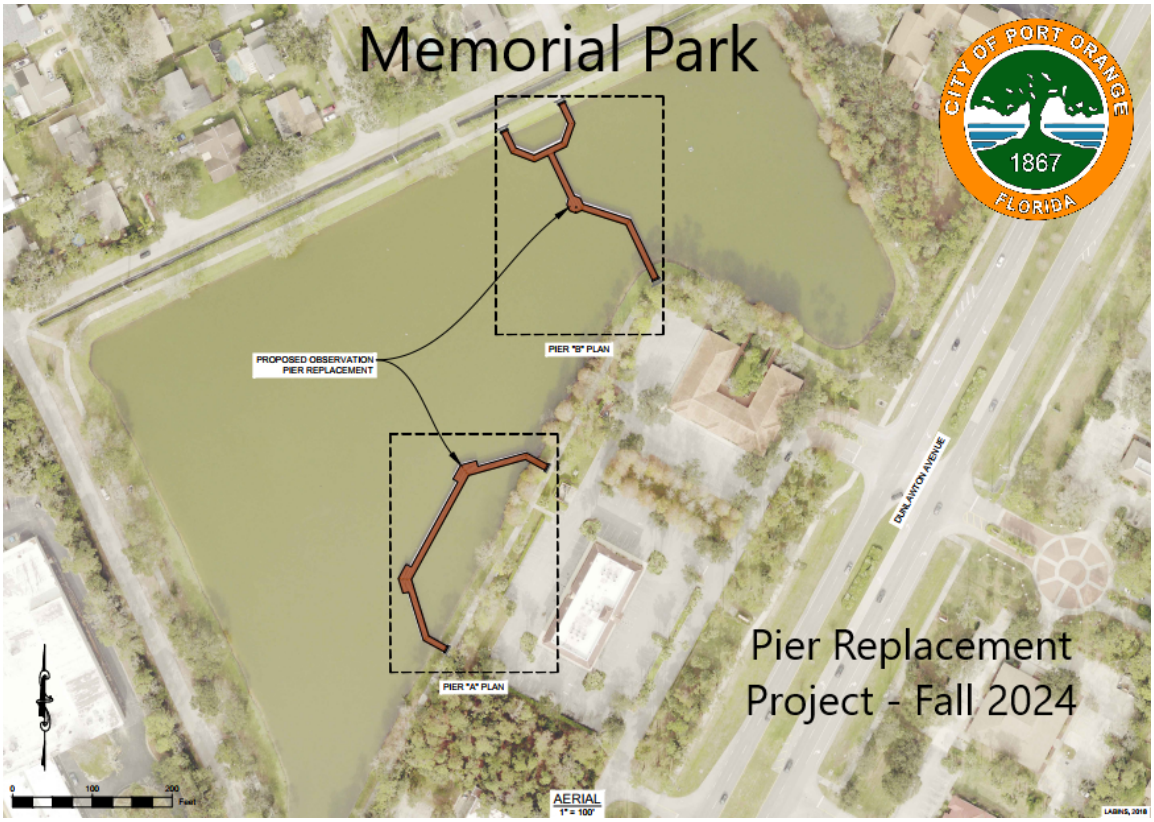
Base Bid – Replacement of decking and rails with pressure-treated timber and a composite horizontal top rail for both piers
Bid Alternate One – Replacement of decking and rails with pressure-treated timber and a composite horizontal top rail on one of the piers and demolish the second.
Bid Alternate Two – Replacement of decking and handrail systems with composite materials on both piers.

The city has been working with FEMA to determine how much of the improvements are eligible for reimbursement due to the damage caused by Hurricane Ian. FEMA will only reimburse if we replace “like for like”, meaning replacing what existed on the piers when they were damaged. Currently, both piers contain composite decking and handrail systems. Therefore, staff is recommending the award of Bid Alternate Two so that a percentage of the project will be reimbursable through FEMA. FEMA has yet to determine what the reimbursement percentage will be for this project, but it could be as high as 75%.

On June 24, the Purchasing Division received six (6) sealed bid responses. Staff has

reviewed the bids and determined that Rush Marine, LLC is the lowest responsive and responsible bidder. The full bid tabulation for all six bidders with all the Bid Alternates is attached to this agenda item.

The current budgeted amount is $676,920.00. The shortfall will be covered by the fund balance with an anticipated reimbursement of $593,171 from FEMA. That will be a total cost to the city of $197,723 plus contingencies and design.



PRESENTER: Susan Lovallo

ATTACHMENTS:

1.	Rush Marine, LLC EJCDC Agreement Complete Package	Rush Marine EJCDC Agreement Complete Package.pdf
2.	ITB 24-09 Notice of Intent to Award DRAFT 2 (7.31.24)	ITB 24-09 Notice of Intent to Award DRAFT 2 (7.31.24).docx
3.	ITB 24-09 Bid Tabulation Final 7.31	ITB 24-09 Bid Tabulation Final 7.31.pdf
4.	24-09 Solicitation Request	24-09 Solicitation Request.pdf
5.	RUSH Marine LLC ALL4.01.25	RUSH Marine LLC ALL4.01.25.pdf
6.	ITB 24-09 Memorial Park Piers -Final 6.21	ITB 24-09 Memorial Park Piers -Final 6.21.pdf
7.	RUSH Marine Bid Submittal-Memorial Park Piers Rehabilitation - ITB #24-09	RUSH Marine Bid Submittal-Memorial Park Piers Rehabilitation - ITB #24-09

	(1)	(1).pdf
8.	ITB-24-09-Addendum-1-FINAL71724	ITB-24-09-Addendum-1-FINAL71724.pdf
9.	Rush Marine Sunbiz	Rush Marine Sunbiz.pdf
10.	Attachment 2 Memorial Park Observation Pier Plans_05.30.24	Attachment 2 Memorial Park Observation Pier Plans_05.30.24.pdf
11.	Attachment 3 Memorial Park Technical Specifications 5.28.2024	Attachment 3 Memorial Park Technical Specifications 5.28.2024.pdf
12.	ITB 24-09 leased employee affidavit_RM	ITB 24-09 leased employee affidavit_RM.pdf
13.	Davis Bacon Rates	Davis Bacon Rates.pdf

Susan Lovallo	Created/Initiated - 7/31/2024
Susan Lovallo	Approved - 7/31/2024
Junos Reed	Approved - 8/1/2024
John McKinney	Approved - 8/1/2024
Matthew Jones	Approved - 8/15/2024
Wayne Clark	Approved - 8/15/2024
Tracee Cody	Final Approval - 8/15/2024

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 **_Rush Marine, LLC, 6285 Riverfront Center Boulevard, Titusville, Florida 32780_** ("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:

The complete rehabilitation and repair of both Memorial Park Piers A and B, using all composite piers and handrails as further specified in ITB 24-09 Technical Specifications.

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 24-09 Memorial Park Piers Rehabilitation.

ARTICLE 3—ENGINEER

3.01 The part of the project that pertains to the Work has been designed by the Project Engineer, **Curtis N. Todd, P.E.** ("Engineer") **of Dredging & Marine Consultants, L.L.C. ("DMC"), 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 **210** days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions, and

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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.

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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 30, inclusive).

2. Bonds:

a. Combination Payment and Performance bond, together with power of attorney, (pages 1 to 4, inclusive).

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3. General Conditions (pages 1 to 74, inclusive).
4. Deleted in its entirety.
5. Technical Specifications Attachment 3, on file with City Engineer, Junos Reed (pages 1 to 22, inclusive).
6. Construction Drawings/Attachment 2 Memorial Park Plans, on file with City Engineer, Junos Reed (pages 1 to 16, inclusive).
7. Addendum No. 1 (page 1 to 3, inclusive).
8. Exhibits to this Agreement (enumerated as follows):
    a. Exhibit No. 1 Contractor's Bid Schedule (page 1, inclusive).
    b. Exhibit No. 2 Contractor's Proposal (pages 1 to 83 inclusive).
    c. Exhibit No. 3 Composite Exhibit No. 3 City's Invitation to Bid Request No. 24-09 ("ITB 24-09") (pages 1 to 188, not attached, on file with office of the City Clerk).
    d. Exhibit No. 4 David Bacon Wage Rates – General Decision Number: FL20240137 5/10/2024 (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.

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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;

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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

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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 Majure*

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

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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.

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(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) Termination for Non-Appropriation of Funds.

(i) 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.

(ii) 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.

(d) 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.

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(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

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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.

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(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

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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–

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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)

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(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.

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(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

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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.

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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

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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.

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(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.

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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 Federal Awarding Agency.

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 as required to assure notification to the Federal Awarding Agency, 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 Federal Awarding Agency.

(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

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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

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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.

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(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

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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), the Federal Awarding Agency 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 Federal Awarding Agency Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

(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) Federal Awarding Agency Seal, LOGO, and Flags. The Contractor shall not use the Federal Awarding Agency seal(s), logos, crests, or reproductions of flags or likenesses of said agency officials without specific agency pre-approval. The Contractor shall include in this provision in any subcontracts.

(q) Compliance with Federal Laws, Regulations and Executive Orders and Acknowledgement of Federal Funding. This is an acknowledgment that Federal Award 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, Federal Awarding Agency 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.

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(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 pursuant to 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.

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 Federal Awarding Agency.

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

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forwarded to the grant recipient who in turn will forward the disclosures to Federal Awarding Agency, the federal awarding agency; subrecipients will forward disclosures to the pass-through entity, who will in turn forward the disclosures to Federal Awarding Agency.

Required Certification: If applicable to this Contract, for Federal financial assistance programs 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).

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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:

Rush Marine, LLC

(typed or printed name of organization)

By: _____

(individual's signature)

Date: _____

(date signed)

Name: Anthony Landry

(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:

6285 Riverfront Center Boulevard

Titusville, Florida 32780

Phone: (321) 267-8100

Email: tlandry@rushinc.com

License No.: CGC1535761

State: Florida

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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® C-520, Agreement between Owner and Contractor for Construction Contract (Stipulated Price).
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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 **Rush Marine, LLC, 6285 Riverfront Center Boulevard, Titusville, Florida 32780** ("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:

The complete rehabilitation and repair of both Memorial Park Piers A and B, using all composite piers and handrails as further specified in ITB 24-09 Technical Specifications.

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 24-09 Memorial Park Piers Rehabilitation.

ARTICLE 3—ENGINEER

3.01 The part of the project that pertains to the Work has been designed by the Project Engineer, **Curtis N. Todd, P.E.** ("Engineer") **of Dredging & Marine Consultants, L.L.C. ("DMC"), 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.~~The Work will be substantially complete on or before **[date]**, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before **[date]**.~~

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4.03 *Contract Times: Days*

A. The Work will be substantially complete within **210** 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 ~~within **[number]** days after the date when the Contract Times commence to run~~.

4.04 *Milestones* – Deleted in its entirety.

~~A. Parts of the Work must be substantially completed on or before the following Milestone(s):~~

~~1. Milestone 1~~

~~2. Milestone 2~~

~~3. Milestone 3~~

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.~~*Milestones:* Contractor shall pay Owner $for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for achievement of Milestone 1, until Milestone 1 is achieved, or until the time specified for Substantial Completion is reached, at which time the rate indicated in Paragraph 4.05.A.1 will apply, rather than the Milestone rate.~~

~~4. Liquidated damages for failing to timely attain Milestones, Substantial Completion, and final completion are not additive, and will not be imposed concurrently.~~

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.~~*Bonus:* Contractor and Owner further recognize the Owner will realize financial and other benefits if the Work is completed prior to the time specified for Substantial Completion. Accordingly, Owner and Contractor agree that as a bonus for early completion, Owner shall pay Contractor $for each day prior to the time specified above for Substantial~~

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Completion (as duly adjusted pursuant to the Contract) that the Work is substantially complete. The maximum value of the bonus will be limited to $

4.06 *Special Damages* - Deleted in its entirety.

A. Deleted in its entirety.Contractor shall reimburse Owner (1) for any fines or penalties imposed on Owner as a direct result of the Contractor's failure to attain Substantial Completion according to the Contract Times, and (2) for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete.

B. Deleted in its entirety.After Contractor achieves Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, Contractor shall reimburse Owner for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Work to be completed and ready for final payment (as duly adjusted pursuant to the Contract), until the Work is completed and ready for final payment.

C. Deleted in its entirety.The special damages imposed in this paragraph are supplemental to any liquidated damages for delayed completion established in this Agreement.

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.For all Work other than Unit Price Work, a lump sum of $1,058,211.24.

All specific cash allowances are included in the above price in accordance with Paragraph 13.02 of the General Conditions.

B. Deleted in its entirety.For all Unit Price Work, an amount equal to the sum of the extended prices (established for each separately identified item of Unit Price Work by multiplying the unit price times the actual quantity of that item).

Unit Price Work					
Item No.	Description	Unit	Estimated Quantity	Unit Price	Extended Price
Total of all Extended Prices for Unit Price Work (subject to final adjustment based on actual quantities)					$0.00

The extended prices for Unit Price Work set forth as of the Effective Date of the Contract are based on estimated quantities. As provided in Paragraph 13.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer.

C. Deleted in its entirety.Total of Lump Sum Amount and Unit Price Work (subject to final Unit Price adjustment) $

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

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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.~~If 50 percent or more of the Work has been completed, as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage; and~~

b. Deleted in its entirety.~~percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).~~

B. Owner shall withhold Five percent (5%) of each progress payment as retainage.~~Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.~~

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.

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6.05 *Interest* Deleted in its entirety.

A. Deleted in its entirety.~~All amounts not paid when due will bear interest at the rate of percent per annum.~~

ARTICLE 7—CONTRACT DOCUMENTS

7.01 *Contents*

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

1. This Agreement (pages 1 to 30, 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.~~Supplementary Conditions.~~
5. Technical Specifications Attachment 3, on file with City Engineer, Junos Reed (pages 1 to 22, inclusive).
6. ~~Bid Set~~Construction Drawings/Attachment 2 Memorial Park Plans, on file with City Engineer, Junos Reed (pages 1 to 16, inclusive).
7. Addendum No. 1 (page 1 to 3, inclusive).
8. ~~.~~ Exhibits to this Agreement (enumerated as follows):
   a. Exhibit No. 1 Contractor's Bid Schedule (page 1, inclusive).
   b. Exhibit No. 2 Contractor's Proposal (pages 1 to 83~~,~~ inclusive).
   c. Exhibit No. 3 Composite Exhibit No. 3 City's Invitation to Bid Request No. 24-09 ("ITB 24-09") (pages 1 to 188, not attached, on file with office of the City Clerk).
   d. Exhibit No. 4 David Bacon Wage Rates – General Decision Number: FL20240137 5/10/2024 (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.

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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.

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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

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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.

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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 Majure*

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

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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) Termination for Non-Appropriation of Funds.

(i) 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.

(ii) 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.

(d) 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.

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(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.

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(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.

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(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

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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

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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

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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

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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

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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

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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.

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(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,

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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

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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 Federal Awarding Agency.

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 as required to assure notification to the Federal Awarding Agency, 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 Federal Awarding Agency.

(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

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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.

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(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.

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(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

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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), the Federal Awarding Agency 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 Federal Awarding Agency Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

(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) Federal Awarding Agency Seal, LOGO, and Flags. The Contractor shall not use the Federal Awarding Agency seal(s), logos, crests, or reproductions of flags or likenesses of said agency officials without specific agency pre-approval. The Contractor shall include in this provision in any subcontracts.

(q) Compliance with Federal Laws, Regulations and Executive Orders and Acknowledgement of Federal Funding. This is an acknowledgment that Federal Award financial assistance will be used to

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fund all or a portion of the Contract. The Contractor will comply with all applicable federal law, regulations, and Executive Orders, Federal Awarding Agency 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 pursuant to 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.

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

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

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

Required Certification: If applicable to this Contract, for Federal financial assistance programs 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).

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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:

Rush Marine, LLC
(typed or printed name of organization)

By: _____
(individual's signature)

Date: _____
(date signed)

Name: Anthony Landry
(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:

6285 Riverfront Center Boulevard
Titusville, Florida 32780

Phone: (321) 267-8100
Email: tlandry@rushinc.com
License No.: CGC1535761

State: Florida

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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

~~Designated Representative:~~

~~Name:~~ _____

~~*(typed or printed)*~~

~~Title:~~ _____

~~*(typed or printed)*~~

~~Address:~~

~~1000 City Center Circle~~

~~Port Orange, Florida 32129~~

~~Phone:~~ ~~(___) ___~~

~~Email:~~

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Payment and Performance Bond

Consisting of 4 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:	Rush Marine, LLC
Principal Business Address:	6285 Riverfront Center Boulevard Titusville, Florida 32780
Contact Person:	Anthony Landry, President
Phone Number:	(321) 267-8100

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: $790,849.00 **City Case/Project No.** **ITB 24-09 Memorial Park Pier Rehabilitation**

Description of Work: ITB 24-09 Memorial Park Pier Rehabilitation
Project Location: 3801 Jackson Street, Port Orange, Volusia County, Florida

Legal Description: Portions of: 3801 Jackson Street, Port Orange, Volusia County, Florida
See Exhibit "A"

Front Page

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

[MTR/sal 2015-02-10]
[CA8510]

City of Port Orange Memorial Park
3801 Jackson Street, Port Orange, FL 32127

Short Parcel ID:
6309-00-02-0010

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

EXHIBIT "A"

Rush Marine, LLC

ITB 24-09 Memorial Park Pier Rehabilitation

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, **RUSH MARINE, LLC** 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 **SEVEN HUNDRED NINETY THOUSAND EIGHT HUNDRED FORTY-NINE AND 00/100 DOLLARS** (**$790,849.00**), for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

THE CONDITION OF THIS BOND is that if Principal:

1. Performs the terms of that certain EJCDC Agreement having an effective date of _____, entered into by and between the Principal and the City, for Memorial Park Pier Rehabilitation, 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 shall be deemed an original, this _____, day of _____, 2024.

Attest:

RUSH MARINE, LLC
(Name of Principal)

_____
(As to Corporate Principal) Secretary

By:_____
Anthony Landry, 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 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

EJCDC®
ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

ACEC
AMERICAN COUNCIL OF ENGINEERING COMPANIES

ASCE
AMERICAN SOCIETY OF CIVIL ENGINEERS

NSPE®
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

Endorsed By

CSI®
Building Knowledge
Improving Project Delivery

NUCA
We Dig America

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4885-5313-8281, v. 424

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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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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.

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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.

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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.

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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.

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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.

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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.

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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

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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

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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 Wok 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.

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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

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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. *ResolvingDiscrepancies*

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.

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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.

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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.

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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

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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.

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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.

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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

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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.

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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.

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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

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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.

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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.

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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.

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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 Contactor 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;

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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).

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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.

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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

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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

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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

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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.

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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.

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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

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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

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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

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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.

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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

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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.

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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;

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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

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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.

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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

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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.

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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.

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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

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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.

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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.

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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

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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

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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.

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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

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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.

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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.

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4. Deleted in its entirety.

B. Deleted in its entirety.

C. Deleted in its entirety.

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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,

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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,

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purchasing and contracting agents, expediters, 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,

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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.

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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;

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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.

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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

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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

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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

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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;

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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

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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 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.

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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.

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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

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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.

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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.

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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

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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.

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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*

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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

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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.

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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

EJCDC®
ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

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4885-5313-8281, v. 424

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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

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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

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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.

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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.

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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.

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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.

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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*

    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.

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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.

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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

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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~~ date~~s~~;

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.

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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 ~~dlay~~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 Wok 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 ~~tht~~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.

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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

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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,

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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 ~~C~~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

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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

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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~~ ~~floors~~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.

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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;

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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,

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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

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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

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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

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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)

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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.~~

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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, ~~I~~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.

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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~~ry~~ 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 Contactor~~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.

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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

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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

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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.

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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, ~~exclsuing~~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 ~~o~~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 ~~constitue~~constitute a material breach of the Contract. If O~~o~~wner 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

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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 ~~canying~~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 ~~sanitaiy~~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

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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.

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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;

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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.

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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.

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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

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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

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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

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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.

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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

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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.

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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;

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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

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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;

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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

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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

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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.

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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.~~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.

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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.

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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.

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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.

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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.

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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,

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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

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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;~~

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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~~

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~~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

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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.

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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, expediters, 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.

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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.

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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.

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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

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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

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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.

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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.

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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.

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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

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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 Ppunch 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 ~~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 ppunch 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 Ppunch 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 ppunch 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.

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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 Ppunch Llist of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed ppPunch llList 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 Ppunch llist.

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.

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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) ~~insruance~~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

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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.

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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.

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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~~.~~:

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

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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

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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-

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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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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 S~~s~~tate 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.

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EJCDC Technical Specifications Attachment 3 - ITB 24-09

Not attached, on file with Junos Reed, P.E., City Engineering and Construction Manager

Consisting of 22 Pages

EJCDC

Construction Drawings/Attachment 2 Memorial Park Plans - ITB 24-09

Not attached, on file with Junos Reed, P.E., City Engineering and Construction Manager

Consisting of 16 Pages

EJCDC

Addendum No. 1 for ITB 24-09

Consisting of 3 Pages

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PURCHASING DIVISION
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purchdiv@port-orange.org

ADDENDUM #1
July 17, 2024

ITB #24-09 MEMORIAL PARK PIERS REHABILITATION

To All Bidders:
The following changes, clarifications and additions are hereby made part of the bidding and specifications for the above referenced project dated June 21, 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.

A. REVISIONS:
None

B. CHANGES TO THE ITB:
None

C. CLARIFICATIONS:
None

D. QUESTIONS AND ANSWERS:

Question #1: Plan Sheet C-04 Pier "A" Site Plan shows turbidity barrier along the shoreline and outer area of the boardwalk. In an effort for cost savings, we feel the interior barrier running parallel with shoreline can be omitted. Is this a requirement to have or an option for double barrier with no turbidity being created? We feel the single outer barrier will keep all items within the working area for Pier A.
Answer: Turbidity barriers as shown on the Plans will be required.

Question #2: If the pile caps are degraded and incapable of being reused, is there a repair detail for the piles and pile caps to maintain the proper boardwalk elevation?
Answer: Upon removal of the existing decking, the Contractor shall notify the Engineer within 48 hours of removal to allow observation of the existing piles. If degradation of the cap is identified, the Engineer will issue a repair detail of the pile cap accordingly.

Question #3: 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 a Base Bid for the complete rehabilitation and repair of both Memorial Park Piers A & B, using wood piers and handrails with composite horizontal top handrail as detailed in Attachment 2 Technical Specifications. For the base bid will the piers be reframed on the existing pilings?
Answer: Yes, the base bid is that the existing piles are to remain. Please refer to the leader on sheet C-03, titled "Demolition Plan", that states "…existing piles & cross-bracing to remain.".

Question #4: Bid Alternate 1 for the complete rehabilitation and repair of Memorial Park Pier B using wood piers and handrails with composite horizontal top handrail and the complete demolition, removal, hauling and disposal of existing Pier A as detailed in Attachment 2 Technical Specifications. Will alternate 1 include installation of new 10 butt wood pilings on pier B only?
Answer: No. The construction plans do not indicate any installation of piles.

Question #5: Bid Alternate 2 for the complete rehabilitation and repair of both Memorial Park Piers A & B, using all composite piers and handrails as detailed in Attachment 2 Technical Specifications. Will Alternate 2 include installation of new 10" composite pilings on both piers A&B?
Answer: No. The construction plans do not indicate any installation of piles.

Question #6: Can you provide a copy of the Wage Determination or Decision Number to use for Davis-Bacon Act?
Answer: A copy of the Davis Bacon Act Wage Determination, General Decision Number FL20240137 dated 5.10.2024 is attached.

Question #7: If Bid Alternate #1 is selected, can water-jetting be used to remove the existing posts/piles?
Answer: Water jetting can be used to remove the existing piles.

Question #8: Can gas-powered motorized boats be utilized?
Answer: Motorized boats are permitted; contractor shall ensure boats are in idle speed and the wake does not impact/erode the banks. The contractor shall be liable for any damages and will be required to correct any damages prior to demobilization.

Question #9: What should be the course of action if encountering piles that are intended to stay in place but are in need of replacing?
Answer: Upon removal of the existing decking, the Contractor shall notify the Engineer, within 48 hours of removal, to allow observation of the existing piles. If degradation of the cap is identified, the Engineer will issue a repair detail of the pile cap accordingly.

Question #10: If Bid Alternate 1 is selected, can the piles at pier “A” be cut off or should they be pulled?
Answer: Piles at pier "A" shall be completely removed.

Question #11: Which brand and product line of composite materials should be used?
Answer: No brand is preferred; the awarded contractor shall submit shop drawings of the proposed product or an approved equivalent product to the engineer of record for approval prior to ordering and installing. Per the project construction plans, the awarded contractor shall provide the engineer of record a minimum of 72 hours to respond to any and all submittals unless otherwise specified in the plans.

Question #12: Can the parking lot at the southern point of the project be used as a lay down/storage area?
Answer: The City approves this location for a lay down/storage area (see attached).

Question #13: Can the signage located in the parking lot at the southern point of the project be removed, preserved, and reinstalled for the purpose of access to water?
Answer: Yes, the signage can be removed, preserved, and reinstalled after construction.

Question #14: Is there a specific hurricane strap that should be used?
Answer: No brand is preferred; the awarded contractor shall submit shop drawings of the proposed product or an approved equivalent product to the engineer of record for approval prior to ordering and installing. Per the project construction plans, the awarded contractor shall provide the engineer of record a minimum of 72 hours to respond to any and all submittals unless otherwise specified in the plans.

In all other respects, except as specifically stated herein, the subject ITB #24-09 MEMORIAL PARK PIERS REHABILITATION remains the same.

END OF ADDENDUM #1

Chip Kent
Purchasing Agent
ckent@port-orange.org

EXHIBIT "1"

ITB 24-09 Contractor's BID Schedule of Unit Prices

Consisting of 1 Page

(ATTACHMENT 1) - SCHEDULE OF UNIT PRICING

ITB #24-09 Memorial Park Piers Rehabilitation

Completed (Attachment 1) Schedule of Unit Pricing MUST be included with Bid Submission

BIDDERS MUST COMPLETE ALL FIELDS SHOWN IN GREEN

LEGEND:
LS - Lump Sum
SF - Square Feet
LF - Linear Feet
SY - Square Yards

Name of Business:	RUSH Marine, LLC
Contact Person:	Anthony Landry
Email Address:	tlandry@rushinc.com
Authorized Signature:	Anthony Landry

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

BASE BID

BASE BID - Complete rehabilitation and repair of both Memorial Park Piers A & B, using wood piers and handrails with composite horizontal top handrail, as detailed in Attachment 2 Technical Specifications.

ITEM NO.	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	EXTENDED PRICE
1	Mobilization and Demobilization	1	LS	48,310.00	48,310.00
2	Construction Survey and As-Built Survey	1	LS	5,537.00	5,537.00
3	Environmental Compliance	1	LS	41,819.00	41,819.00
4	Temporary Traffic Control	1	LS	2,399.00	2,399.00
5	Demolition, Hauling and Disposal	1	LS	82,467.00	82,467.00
6	Wood Handrails (Horizontal Top Handrail - Composite)	5,250	SF	28.00	147,000.00
7	Wood Piers	6,000	SF	28.00	168,000.00
8	Mesh Railing and Staples (2in.x 4in. Squares, 36in. Height, 100ft rolls)	1,525	LF	14.00	21,350.00
9	Concrete Sidewalk	21	SY	891.00	18,711.00
10	Concrete Grade Beam	60	LF	637.00	38,220.00
				BASE BID TOTAL PRICE:	573,813.00

BID ALTERNATES

BID ALTERNATE #1 is for the complete rehabilitation and repair of Memorial Park Pier B using wood piers and handrails with composite horizontal top handrail and the complete demolition, removal, hauling and disposal of existing Pier A as detailed in Attachment 2 Technical Specifications.

ITEM NO.	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	EXTENDED PRICE
11	Mobilization and Demobilization	1	LS	60,089.00	60,089.00
12	Construction Survey and As-Built Survey	1	LS	6,135.00	6,135.00
13	Environmental Compliance	1	LS	51,372.00	51,372.00
14	Temporary Traffic Control	1	LS	3,263.00	3,263.00
15	Demolition, Hauling and Disposal	1	LS	74,714.00	74,714.00
16	Wood Handrails (Horizontal Top Handrail - Composite)	2,260	SF	36.00	81,360.00
17	Wood Piers	3,040	SF	32.00	97,280.00
18	Mesh Railing and Staples (2in.x 4in. Squares, 36in. Height, 100ft rolls)	750	LF	18.00	13,500.00
19	Concrete Sidewalk	15	SY	1,185.00	17,775.00
20	Concrete Grade Beam	36	LF	854.00	30,744.00
21	Demolition, Hauling and Disposal of Existing Pier "A"	1	LS	116,264.00	116,264.00
				BID ALTERNATE #1 TOTAL PRICE:	552,496.00

BID ALTERNATE #2 is for the complete rehabilitation and repair of both Memorial Park Piers A & B, using all composite piers and handrails as detailed In Attachment 2 Technical Specifications.

ITEM NO.	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	EXTENDED PRICE
22	Mobilization and Demobilization	1	LS	53,186.00	53,186.00
23	Construction Survey and As-Built Survey	1	LS	5,881.00	5,881.00
24	Environmental Compliance	1	LS	48,168.00	48,168.00
25	Temporary Traffic Control	1	LS	2,858.00	2,858.00
26	Demolition, Hauling and Disposal	1	LS	91,021.00	91,021.00
27	Composite Handrails	5,250	SF	45.00	236,250.00
28	Composite Piers	6,000	SF	44.00	264,000.00
29	Mesh Railing and Staples (2in.x 4in. Squares, 36in. Height, 100ft rolls)	1,525	LF	16.00	24,400.00
30	Concrete Sidewalk	21	SY	1,030.00	21,630.00
31	Concrete Grade Beam	60	LF	725.00	43,500.00
				BID ALTERNATE #2 TOTAL PRICE:	790,894.00

EJCDC

EXHIBIT "2"

Contractor's Submittal
(not attached on file with City Clerk)

Consisting of 83 Pages

EJCDC

EXHIBIT "3"

ITB 24-09

(Not attached, on file with City Clerk)

Consisting of 188 Pages

EJCDC

EXHIBIT "4"

Davis Bacon Wage Rates

General Decision Number:
FL20240137

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

LABO0517-002 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

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* 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"

NOTICE OF INTENT TO AWARD

August 5, 2024

ITB #24-09

MEMORIAL PARK PIERS REHABILITATION

On July 24, 2024 the City of Port Orange received six (6) responsive submittals for ITB #24-09 Memorial Park Piers Rehabilitation.

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

RUSH Marine, LLC.

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.

Chip Kent
Purchasing Agent

"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 August 8,2024 at 10:00AM EST

BID TABULATION
ITB #24-09
MEMORIAL PARK PIERS REHABILITATION
Bids Received on 7/24/2024

	RUSH MARINE, LLC	SHORE BUILDERS, INC	CONSTRUCT CO., INC	PAUL CULVER CONSTRUCTION, INC	ZION MARINE, INC	UNDERWATER ENGINEERING SERVICES, INC
BASE BID						
Description	**Base Bid Total Price**	**Base Bid Total Price**	**Base Bid Total Price**	**Base Bid Total Price**	**Base Bid Total Price**	**Base Bid Total Price**
BASE BID - Complete rehabilitation and repair of both Memorial Park Piers A & B, using wood piers and handrails with composite horizontal top handrail, as detailed in Attachment 2 Technical Specifications.	**$573,813.00**	**$776,950.00**	**$692,487.06**	**$786,321.25**	**$941,350.00**	**$1,363,552.00**
BID ALTERNATES						
Description	**Bid Alternate 1 Total Price**	**Bid Alternate 1 Total Price**	**Bid Alternate 1 Total Price**	**Bid Alternate 1 Total Price**	**Bid Alternate 1 Total Price**	**Bid Alternate 1 Total Price**
BID ALTERNATE 1 is for the complete rehabilitation and repair of Memorial Park Pier B using wood piers and handrails with composite horizontal top handrail and the complete demolition, removal, hauling and disposal of existing Pier A as detailed in Attachment 2 Technical Specifications.	**$552,496.00**	**$598,550.00**	**$497,677.34**	**$726,453.50**	**$734,220.00**	**$1,048,693.00**
Description	**Bid Alternate 2 Total Price**	**Bid Alternate 2 Total Price**	**Bid Alternate 2 Total Price**	**Bid Alternate 2 Total Price**	**Bid Alternate 2 Total Price**	**Bid Alternate 2 Total Price**
BID ALTERNATE 2 is for the complete rehabilitation and repair of both Memorial Park Piers A & B, using all composite piers and handrails as detailed in Attachment 2 Technical Specifications.	**$790,894.00**	**$1,152,250.00**	**$888,564.76**	**$845,023.25**	**$1,199,600.00**	**$1,710,112.00**

Buyer

Witness

SOLICITATION REQUEST FORM
(ITB, RFP, RFSQ, ITN)

24-09

(# will be assigned by Purchasing Division)

Assigned Purchasing Lead: Chip Kent

Section 1: Solicitation Name, Scope, Type	
Project name:	Repairs to Memorial Park Piers
General scope of project:	Boardwalk repair to two structures to inlcude all cross beams, decking and hand rail
Type of project:	☑ *ITB* ☐ *RFP* ☐ *RFSQ Design/Professional Services (engineering, architect, surveying, landscape)* ☐ *ITN*
	☑ *Capital* ☐ *Non-Capital*

Section 2: Solicitation Information	
Requested by:	Susan Lovallo
Department:	Parks & recreation
Special Legal Ad:	☑ Y or ☐ N *Per 180.24FS, see below *Section 9: Solicitation FAQ*
Estimated amount:	$1,028,150.00
Bid Bond:	☑ Y or ☐ N
Grant funded:	☐ Y or ☑ N *(If yes, list date & requirements)* Deadline Date:
	Type / Special Requirements:
Fund Account:	317
Project#:	QIO 204
City Project Manager:	Susan Lovallo
Contract Administrator:	Susan Lovallo
Project Inspector:	DMC engineering
Blueprint provided by:	DMC engineering
Engineer of Record:	Shailesh Patel

Section 3: List of Evaluation Committee Members (RFP/RFSQ/ITN) (Minimum 3)	
Committee Member 1:	
Committee Member 2:	
Committee Member 3:	
Committee Member 4:	
Committee Member 5:	

Section 4: Suggested Solicitation Dates

All dates are subject to scheduling and availability

Release date urgency:	☑ High ☐ Medium ☐ Low Suggested Date:
Pre-Solicitation Conference Requested:	☑ Y or ☐ N
Pre-Solicitation Conference date:	Site Visit: ☑ Y or ☐ N Mandatory: ☑ Y or ☐ N
Due date/opening:	
Delivery/Completion:	
Award to Council:	*Note: funding source must be listed on the agenda summary*

Section 5: Creating Details/Specifications/Scope of Work

☐ *Project Manager* ☑ *Project Engineer/Architect* ☐ *Other* _____ ☐ *Assistance from Purchasing**

The department provides the specifications/scope of work to Purchasing in **Word format. Purchasing reviews the specifications/scope of work, incorporates them into the draft of the solicitation and distributes and advertises it. If the Project Manager, Engineer or Architect prepares the specifications/scope of work, the department must review and approve them and ensure Purchasing receives a **Word** copy for incorporation into the solicitation draft.*

Section 6: Contract Type, Term, Completion Time

**** Discuss with Legal Dept. prior to releasing the solicitation to ensure the appropriate contract is placed in the solicitation document *****

Contract Type: ☐ *Standard services (Supplies/Services)* ☑ *EJCDC (Engineers Joint Contract Document Committee) (Site/Structures & Design Build)* ☐ *AIA (American Institute of Architects) (Building construction)*

Contract Term:	1 year		
Renewal Options:			
(Days) Substantial Completion:	180 Days	(Days) Final Completion:	30 Days

P&P Bond: ☑ Y or ☐ N *Payment and Performance Bonds are required for construction projects on public property

** If the project engineer is responsible for contract administration and project inspection services, ascertain that the contract with the engineer provides for that service. If not, the Engineer's Contract needs to be approved by the City Manager.*

Section 7: Suggested Bidder's List (include email address of potential bidder)

Bidder:	AHI Marine LLC, 386-872-7352, floridadockbuilder@gmail.com
Bidder:	Fender Marine Construction, 407-481-2750, rick@rickfender.com
Bidder:	East Coast Marine Construction & Design, 386-366-0164, eastcoastmarineconstruction@gmail.com
Bidder:	Ovation Construction Company, LLC, 407-722-4161, bert@ovationinc.net
Bidder:	Hall Construction Co., 386-252-2526, office@hallconstruction.com
Bidder:	Paul Culver Construction, 386-763-6200, paul@paulculverconstruction.com
Bidder:	A.G. Pifer Construction Co, Inc., 386-257-4448, AGPiferInc@gmail.com

Section 8: Director's Approval

☑ Approved ☐ Rejected Date: 03/11/20 Susan Lovallo

Director's Name

X Susan L. Lovallo

Director's Signature

Section 9: Solicitation FAQ

Who fills out the Solicitation Request Form?
Sections 1-7 are to be completed by the Project Manager/Director.

When do I use this form?
When purchases exceed $25,000 and do not fall under the exclusions listed in City Ordinance Code Sec 2-267. Ex: (Sole source, piggyback, utilities, travel, postage, registration fees, etc.)

How do I submit this form?
After Director/Department Head signs approval of Solicitation Request Form, the department sends an email to purchdiv@port-orange.org to request a Bid Kick-Off Meeting. The draft Solicitation Request Form must be attached to this email. Purchasing will contact the department within 10 days of receipt of the email to setup the Bid Kick-Off Meeting. The Solicitation Request Form will be reviewed in detail during the Bid Kick-Off Meeting. If edits to the form are needed, the department makes the edits and submits the completed form to CivicClerk in the Bid Requests section of Contract Management. The department will also include with the request the Scope of Work/Specifications for the solicitation.

How early should I plan for an ITB/RFP/RFSQ/ITN?
Departments should allow for at least 90 days from *receipt of bid specifications* to *opening* (120 days for council award date). An additional 30-60 days should be allowed for RFPs, RFSQs, and ITNs.

Advertising:
Florida Statutes mandate that Capital Projects with a projected cost of under $200,000 shall be publicly advertised for a minimum of ten (10) days; over $200,000 Twenty-one (21) days and over $500,000 a minimum of thirty (30) days prior to bids being opened.

Per 180.24FS, public utility projects require additional advertising: two (2) consecutive ads *or* postings in three (3) conspicuous places around city hall, one (1) of which shall be the door of city hall. 180.07FS Examples: solicitations for jails, airports, hospitals, golf courses, reservoirs, pump stations, pipelines, & water/reclaim/sewage systems.

Distribution/Release:
The City is currently using Demand Star www.demandstar.com for releasing solicitation documents/addenda on the internet and the Daytona Beach News Journal to release the legal advertisement. Solicitation documents are also posted on the Purchasing Division's web page.

Specifications:
Document specifications should be sent to the assigned Purchasing Representative in WORD file format.

One envelope solicitation process:
One envelope shall be submitted. The envelope contains required forms, technical and price information. The envelopes from all timely bidders will be opened and read aloud at the time of the solicitation opening.

CCNA:
The City of Port Orange is also governed by Florida Statutes 287.055 the Consultants Competitive Negotiations Act, as the method of selecting architects, engineers, land surveyors and landscape architects.

Design-Build:
The City has written and enacted a set of Design-Build Policies and Procedures which sets forth very specific requirements the City must use for a design-build type of bid or contract. This was done to comply with Florida Statutes, Chapter 287.055 as amended; Consultants Competitive Negotiation Act. Public announcement/advertisement shall be made:

- If planning or study activity for professional services exceeds $35K
- If basic construction costs estimated by the agency exceeds $325K

Grants:
Grant Money Bids and Projects also have their own set of governing laws and regulations which require the City's compliance. The compliance with these laws is strictly the Project Manager's responsibility. The Project Manager must familiarize himself/herself with each and every grant to ensure that the City not only complies with those rules but fulfills every requirement that those grants contain so as not to forfeit the money that they bring.

Bonds:
When bid bond/deposits are required they are advertised in the public notices inviting bids. Normally, if a bid bond/deposit is required, it is in the amount of five (5%) percent of the bid amount. Payment and Performance Bonds are required for construction projects on public property in the amount equal to one hundred percent (100%) of the total contract amount.

Payment and Performance Bonds must also be recorded in the Office of the Clerk of the Circuit Court, Volusia County, Florida. Required bonds are included in the Invitation to Bid notice which will appear in a locally distributed newspaper.

Public Entity Crimes Form:
Every acquisition with Federal funds equal to or greater than $10,000.00 and all formal solicitations must have a signed, notarized Public Entity Crimes Form.

Drug Free Tie Bid Form:
The Drug Free Tie Bid Preference Form is in accordance with Section 287.087, Florida Statutes and became law in January 1991. It takes precedence in determining tiebreaker in the event of tie bids.

Client#: 2176754 131RUSHMAR

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 7/18/2024

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 any rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME:	
McGriff Insurance Services PO Box 4927 Orlando, FL 32802-4927 407 691-9600	PHONE (A/C, No, Ext): 407 691-9600	FAX (A/C, No): 888-635-4183
	E-MAIL ADDRESS:	

INSURED	INSURER(S) AFFORDING COVERAGE	NAIC #
RUSH Marine, LLC 6285 Riverfront Center Blvd Titusville, FL 32780	INSURER A : New York Marine & General Insurance Co	
	INSURER B : Navigators Insurance Company	
	INSURER C : Manufacturers Alliance Insurance Co	
	INSURER D : American Longshore Mutual Association	
	INSURER E : Safe Harbor Pollution Insurance	
	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 INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE [X] OCCUR X Ded-$5,000 GEN'L AGGREGATE LIMIT APPLIES PER: POLICY [X] PRO-JECT [ ] LOC OTHER:	X	X	ML202400002185	04/01/2024	04/01/2025	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG Claim Exp	$1,000,000 $100,000 $5,000 $1,000,000 $2,000,000 $2,000,000 $1,000,000
A	AUTOMOBILE LIABILITY X ANY AUTO OWNED AUTOS ONLY HIRED AUTOS ONLY SCHEDULED AUTOS NON-OWNED AUTOS ONLY	X	X	AU202400019735	04/01/2024	04/01/2025	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$1,000,000 $ $ $
A	UMBRELLA LIAB [X] OCCUR X EXCESS LIAB [ ] CLAIMS-MADE	X	X	ML202400002184	04/01/2024	04/01/2025	EACH OCCURRENCE AGGREGATE	$10,000,000 $
B	DED X RETENTION $25,000			NY24LIAZ0DQJC01	04/01/2024	04/01/2025	Each Occ/Agg	$9,000,000
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y/N: N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N/A	X	1155720Y	04/01/2024	04/01/2025	X PER STATUTE [ ] OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	 $1,000,000 $1,000,000 $1,000,000
A	P & I			ML202400002185	04/01/2024	04/01/2025	1,000,000; ded-$5,000	
A	Marine Empl Liab			ML202400002185	04/01/2024	04/01/2025	Included; ded-$5,000	
D	WC-USL&H			ALMA0242004	04/01/2024	04/01/2025	1,000,000-Each Acc/Agg	

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

Insurer E: Vessel Pollution Liability-Policy #V1583724 -Limit-$5,000,000

Insurer B: Site Pollution Liability-Policy NY24ECPX01414NC -Limit-$1,000,000 per occr / 2,000,000 Ann Agg/ $10,000 deductible.

RE: ITB# 24-09 - Memorial Park Piers Rehabilitation
(See Attached Descriptions)

CERTIFICATE HOLDER

City of Port Orange, Florida
1000 City Center Circle
Port Orange, FL 32129

CANCELLATION

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

AUTHORIZED REPRESENTATIVE

Charles Rush

DESCRIPTIONS (Continued from Page 1)

CERTHOLDER and PROJECT OWNER IF APPLICABLE or OWNER is/are included as Additional insured(s) with respect to General Liability and Auto liability when required by written contract and per policy terms and conditions. Additional insured and waiver of subrogation has been endorsed onto the Excess. The Excess is over the General Liability, Auto Liability and State Act Workers' Compensation. A Waiver of Subrogation applies to the General Liability, Auto Liability and Workers Compensation when required by written contract. The attached pages noting additional terms, conditions, coverage and/or comments applies. All supporting endorsements(s) and policy forms(s) attached, if any, comprise the Certificate of Liability Insurance in its entirety. Please review these endorsement(s) and policy form(s) as certain coverage provided by them may only apply when a written contract or agreement between the parties requires such coverage be provided.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COMMERCIAL AUTO COVERAGE EXTENSION - FLORIDA

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

SCHEDULE

A.	Airbag Coverage	**K.**	Extra Expense – Stolen Autos
B.	Audio, Visual And Data Electronic Equipment Coverage	**L.**	Hybrid Payment Coverage
C.	Blanket Additional Insured Required By Contract	**M.**	New Vehicle Replacement Cost
D.	Blanket Waiver Of Subrogation	**N.**	Personal Effects And Property Of Others
E.	Duties In The Event Of Accident, Claim, Suit Or Loss	**O.**	Rental Reimbursement Coverage
F.	Employees As Insureds	**P.**	Sign Coverage
G.	Employee Hired Autos Liability Coverage	**Q.**	Supplementary Payments – Bail Bonds
H.	Expanded Towing Coverage	**R.**	Supplementary Payments – Loss Of Earnings
I.	Expanded Transportation Expenses	**S.**	Temporary Substitute Autos – Physical Damage Coverage
J.	Extended Glass Coverage	**T.**	Unintentional Failure To Disclose Information

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BUSINESS AUTO COVERAGE FORM is amended to include the following additions and extensions of coverage:

Coverage extensions under this endorsement only apply in the event that no other specific coverage for these extensions is provided under this policy. If such specific coverage applies, the terms, conditions and limits of that coverage are the sole and exclusive coverage applicable under this policy, unless otherwise noted in this endorsement.

A. AIRBAG COVERAGE

Paragraph **B.2** of the **Exclusions** provisions of **SECTION III – PHYSICAL DAMAGE COVERAGE** is amended by the addition of the following:

The exclusion for mechanical or electrical breakdown does not apply to the accidental discharge of an airbag when "you" carry Comprehensive or Collision Coverage. This coverage is excess over any other collectible insurance or warranty. No deductible applies to this coverage.

B. AUDIO, VISUAL AND DATA ELECTRONIC EQUIPMENT COVERAGE

Paragraph **A.4. Coverage Extensions** of **SECTION III – PHYSICAL DAMAGE COVERAGE** is amended by the addition of the following:

1. We will pay for "loss" to any electronic equipment that receives or transmits audio, visual or data signals and that is not designed solely for the reproduction of sound. This coverage applies only if the equipment is permanently installed in the covered "auto" at the time of the" loss" or the equipment is removable from a housing unit which is permanently installed in the covered "auto" at the time of "loss" and such equipment is designed to be solely operated by use of the power from the covered "auto's" electrical system, in or upon the covered "auto", including its accessories. However, this does not include tapes, records or discs.

   The Exclusions listed under Paragraph **B.** of **SECTION III – PHYSICAL DAMAGE COVERAGE**, except for the exclusion relating to Audio, Visual and Data Electronic Equipment, also apply to coverage provided herein. In addition, the following exclusion applies:

   We will not pay, under this coverage, for either any electronic equipment or accessories used with such electronic equipment that is:

   (a) Necessary for the normal operations of the covered "auto" or the monitoring of the covered "autos" operating system; or

   (b) Both:

   (i) An integral part of the same unit housing any sound reproducing equipment designed solely for the reproduction of sound if the sound reproducing equipment is permanently installed in the covered "auto"; and

   (ii) Permanently installed in the opening of the dash or console normally used by the manufacturer for the installation of a radio.

Paragraph **C.1.a.** of the **Limits of Insurance** provision of **SECTION III – PHYSICAL DAMAGE COVERAGE** is deleted and replaced by the following:

2. The most we will pay for all loss or damage to audio, visual or data electronic equipment and any accessories used with this equipment as a result of any one "loss" is the lesser of:

   a. The actual cash value of the damaged or stolen property as of the time of the "loss"; or

   b. The cost of repairing or replacing the damaged or stolen property with other property of like kind and quality; or

   c. $500

   An adjustment for depreciation and physical condition will be made in determining actual cash value at the time of "loss".

Paragraph **D. Deductible** of **SECTION III – PHYSICAL DAMAGE COVERAGE** is deleted and replaced by the following:

3. Deductibles applicable to **SECTION III – PHYSICAL DAMAGE COVERAGE** do not apply to this Audio, Visual and Data Electronic Equipment Coverage.

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If there is other coverage provided by this policy for audio, visual and data electronic equipment, the coverage provided here is excess. However, you may elect to apply the limit, or any portion thereof, of coverage provided in this policy to pay any deductibles that is applicable under the provisions of the other coverage.

C. BLANKET ADDITIONAL INSURED COVERAGE – REQUIRED BY CONTRACT

Paragraph **A.1. Who Is An Insured** of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**, is amended by the addition of the following:

1. Any person or organization with respect to the operation, maintenance, or use, of a covered auto, provided that you and such person or organization have agreed under an expressed provision in a written contract or written agreement or a written permit issued to you by a governmental or public authority, to add such person, organization, or governmental or public authority to this policy as an insured.
   However, such person or organization is an insured:
   a. Only with respect to the operation, maintenance, or use, of a covered auto; and
   b. Caused in whole or part by your acts or omissions or the acts or omissions of those acting on your behalf.
   c. Only for, bodily injury or property damage caused by an accident which takes place after:
      (1) You executed the "insured contract" or written agreement; or
      (2) The permit has been issued to you.

D. BLANKET WAIVER OF SUBROGATION

Paragraph **A.5. Transfer Of Rights Of Recovery Against Others To Us** of **SECTION IV – BUSINESS AUTO CONDITIONS** is amended by the addition of the following:

We waive any right of recovery we may have against any person or organization to the extent required of you by a written contract executed prior to any "accident" because of payments we make for damages under this coverage from.

E. DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS

Paragraph **A.2.a.** of the **Loss Conditions** provision of **SECTION IV – BUSINESS AUTO CONDITIONS** is deleted and replaced by the following:

1. In the event of "accident", claim, "suit" or "loss":
   a. You must give us or our authorized representative prompt notice of the "accident" or "loss" after it becomes known to:
      (1) You, if you are an individual;
      (2) Your partner or member, if you are a partnership or joint venture;
      (3) Your member, if you are a limited liability company; or
      (4) Your executive officer if you are an organization other than a partnership, joint venture or limited liability company.
      (5) Your authorized representative or insurance manager.

      Knowledge of an "accident" by persons other than those listed above does not imply that those listed above also have such knowledge.
   b. To the extent possible, notice should include:
      (1) How, when and where the "accident" or "loss" took place;
      (2) The names and addresses of any injured persons and witnesses; and
      (3) The nature and location of any injury or damage arising out of the "accident".

F. EMPLOYEES AS INSUREDS

Paragraph **A.1. Who Is An Insured** of **SECTION II – COVERED AUTOS LIABILITY COVERAGE** is amended by the addition of the following:

Any "employee" of yours is an "insured" while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

G. EMPLOYEE HIRED AUTOS LIABILITY COVERAGE

Paragraph **A.1. Who Is An Insured** of **SECTION II – COVERED AUTOS LIABILITY COVERAGE** is amended to add the following:

An "employee" of yours is an "insured" while operating an "auto" hired or rented under a written contract or written agreement in that "employee's" name, with your permission, while performing duties related to the conduct of your business.

H. EXPANDED TOWING COVERAGE

Paragraph **A.2. Towing** of **SECTION III – PHYSICAL DAMAGE COVERAGE** is deleted and replaced by the following:

We will pay up to:

1. $250 for a covered "auto" you own of the private passenger type; or
2. $750 for a covered "auto" you own that is not of the private passenger type;

For towing and labor costs incurred each time the covered "auto" is disabled. However, the labor must be performed at the place of disablement. A $250 deductible will be applied to covered "autos" that are not of the private passenger type.

This coverage applies only for an "auto" covered on this policy for Comprehensive or Specified Causes of Loss Coverage and Collision Coverage.

I. EXPANDED TRANSPORTATION EXPENSE

Paragraph **A.4.a. Transportation Expenses** of **SECTION III – PHYSICAL DAMAGE COVERAGE** is deleted and replaced by the following:

We will pay up to $50 per day to a maximum of $1,000 for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type. We will only pay for those covered "autos" for which you carry Comprehensive or Specified Causes of Loss Coverage. We will pay for temporary transportation expenses incurred during the period beginning 48 hours after the theft and ending, regardless of the policy's expiration, when the covered "auto" is returned to use or we pay for its "loss".

J. EXTENDED GLASS COVERAGE

Paragraph **A.3.a**. of the **Glass Breakage – Hitting A Bird Or Animal – Falling Objects Or Missiles** provision of **SECTION III – PHYSICAL DAMAGE COVERAGE** is deleted and replaced by the following:

Glass breakage – if glass other than a windshield, or a windshield, must be replaced and there is no other damage associated with the "loss", the deductible applicable to glass other than a windshield will be $250, and no deductible will apply to the windshield. If glass can be repaired and is actually repaired rather than replaced, the deductible applicable to glass other than a windshield will be $100, and no deductible will apply to the windshield. You have the option of having the glass repaired rather than replaced.

K. EXTRA EXPENSE – STOLEN AUTOS

Paragraph **A.4. Coverage Extensions** of **SECTION III – PHYSICAL DAMAGE COVERAGE** is amended by the addition of the following:

We will pay up to $5,000 for the expense of returning a stolen covered "auto" to you. We will pay only for those covered "autos" for which you carry Comprehensive or Specified Causes of Loss Coverage.

L. HYBRID PAYMENT COVERAGE

Paragraph **A.4. Coverage Extensions** of **SECTION III – PHYSICAL DAMAGE COVERAGE** is amended by the addition of the following:

1. In the event of a total loss to a "non-hybrid" auto for which Comprehensive, Specified Causes of Loss, or Collision coverages are provided under this Coverage Form, then such Physical Damage Coverages are amended as follows:
   a. If the auto is replaced with a "hybrid" auto or an auto powered solely by electricity or natural gas, we will pay an additional 10%, to a maximum of $2,500, of the "non-hybrid" auto's actual cash value or replacement cost, whichever is less;

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b. The auto must be replaced and a copy of the bill of sale or new lease agreement is received by us within 60 days of the date of "loss";
c. Regardless of the number of autos deemed a total loss, the most we will pay under this Hybrid Payment Coverage provision for any one "loss" is $10,000.

For the purposes of this coverage provision;

a. "Non-hybrid" auto means an auto that uses only an internal combustion engine to move the auto but does not include autos powered solely by electricity or natural gas.
b. "Hybrid" auto means an auto with an internal combustion engine and one or more electric motors; and that uses the internal combustion engine and one or more electric motors to move the auto; or the internal combustion engine to charge one or more electric motors, which move the auto.

M. NEW VEHICLE REPLACEMENT COST

Paragraph **C. Limit of Insurance** of **SECTION III – PHYSICAL DAMAGE COVERAGE** is amended by the addition of the following:

The provisions of paragraph **1.** and **2.** do not apply to a covered "auto" of the private passenger type or a vehicle with a gross vehicle weight of 10,000 pounds or less which is a "new vehicle".

In the event of total "loss" to your "new vehicle" to which this coverage applies, we will pay at your option:

a. The verifiable "new vehicle" purchase price you paid for your damaged vehicle, not including any insurance or warranties purchased; or
b. If it is available, the purchase price, as negotiated by us, of a "new vehicle" of the same make, model and equipment or the most similar model available, not including any furnishings, parts or equipment not installed by the manufacturer or manufacturer's dealership; or
c. The market value of your damaged vehicle, not including any furnishings, parts or equipment not installed by the manufacturer or manufacturer's dealership.

We will not pay for initiation or set up costs associated with loans or leases.

For the purposes of this coverage provision, "new vehicle" means an "auto" of which you are the original owner that has not been previously titled and which you purchased less than 365 days before the date of the "loss".

N. PERSONAL EFFECTS AND PROPERTY OF OTHERS

1. Paragraph **B.6. Care, Custody Or Control** under the **Exclusions** provision of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**, does not apply to "property damage" to property, other than your property, up to an amount not exceeding $250 in any one "accident". Coverage is excess over any other valid and collectible insurance.
2. Paragraph **A.4. Coverage Extensions** under the **Coverage** provision of **SECTION III – PHYSICAL DAMAGE COVERAGE,** is amended by the addition of the following:

   We will pay up to $5,000 for your personal property that is lost or damaged as a result of a covered "loss", without applying a deductible. Coverage is excess over any other valid and collectible insurance.

O. RENTAL REIMBURSEMENT COVERAGE

Paragraph **A.4. Coverage Extensions of SECTION III – PHYSICAL DAMAGE COVERAGE** is amended by the addition of the following:

1. This coverage applies only to a covered "auto" for which Physical Damage Coverage is provided on this policy.
2. We will pay for rental reimbursement expenses incurred by you for the rental of an "auto" because of "loss" to a covered "auto". Payment applies in addition to the otherwise applicable amount of each coverage you have on a covered "auto". No deductibles apply to this coverage.
3. We will pay only for those expenses incurred during the policy period beginning 24 hours after the "loss" and ending, regardless of the policy's expiration, with the lesser of the following number of days:
   a. The number of days reasonably required to repair or replace the covered "auto". If "loss" is caused by theft, this number of days is added to the number of days it takes to locate the covered "auto" and return it to you.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

4. Our payment is limited to the lesser of the following amounts:
   a. Necessary and actual expenses incurred.
   b. $100 for any one day and to a maximum of $3,000.
5. This coverage does not apply while there are spare or reserve "autos" available to you for your operations.

P. SIGN COVERAGE

Paragraph **A.4. Coverage Extensions** of **SECTION III – PHYSICAL DAMAGE COVERAGE** is amended by the addition of the following:

We will pay for "loss" to signs, murals, paintings or graphics, as part of the equipment, which are displayed on a covered "auto".

The most we will pay for "loss" in any one "accident" is the lesser of:

(1) The actual cash value of the property as of the time of the "loss"; or

(2) The cost of repairing or replacing the damaged or stolen property with other property of like kind and quality; or

(3) $2,000.

Q. SUPPLEMENTARY PAYMENTS – BAIL BONDS

Paragraph **A.2.a. (2)** of the **Coverage Extensions** provision of **SECTION II – COVERED AUTOS LIABILITY COVERAGE** is deleted and replaced by the following:

Up to $2,500 for cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.

R. SUPPLEMTARY PAYMENTS – LOSS OF EARNINGS

Paragraph **A.2.a. (4)** of the **Coverage Extensions** provision of **SECTION II – COVERED AUTOS LIABILITY COVERAGE** is deleted and replaced by the following:

All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to $500 a day because of time off from work.

S. TEMPORARY SUBSTITUE AUTOS – PHYSICAL DAMAGE COVERAGE

Paragraph **C. Certain Trailers, Mobile Equipment and Temporary Substitute Autos** of **SECTION I – COVERED AUTOS** is amended by the addition of the following:

If Physical Damage Coverage is provided under this Coverage Form, the following types of vehicles are also covered "autos" for Physical Damage Coverage:

Any "auto" you do not own while used with the permission of its owner as a temporary substitute for a covered "auto" you own that is out of service because of its:

a. Breakdown;
b. Repair;
c. Servicing;
d. "Loss"; or
e. Destruction.

T. UNINTENTIONAL FAILURE TO DISCLOSE INFORMATION

Paragraph **B.2. Concealment, Misrepresentation Or Fraud** of **SECTION IV – BUSINESS AUTO CONDITIONS** is amended by the addition of the following:

If you unintentionally fail to disclose any hazards existing at the inception date of this policy, we will not deny coverage under this Coverage Form because of such failure.

However, this provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.

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ENDORSEMENT #2

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

MARINE GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Blanket when required by written contract.

A. "Who Is An Insured" under the Marine General Liability section of the Longshore+ Marine Package Policy is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the Schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

However:
1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to **Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:
1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations whichever is less. This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations

ALL OTHER TERMS AND CONDITIONS REMAINING UNCHANGED

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ENDORSEMENT #1

ADDITIONAL INSURED – STATE OR GOVERNMENTAL AGENCY OR SUBDIVISION OR POLITICAL SUBDIVISION – PERMITS OR AUTHORIZATIONS

This endorsement modifies insurance provided under the following

MARINE GENERAL LIABILTY COVERAGES
PROTECTION AND INDEMNITY INCLUDING MARINE EMPLOYMENT LIABILITY:

Name of State Or Governmental Agency Or Subdivision Or Political Subdivision:

Blanket when required by written contract.

"Who Is An Insured" under the Marine General Liability Section of the Longshore+ Marine Package Policy is amended to include as an insured any state or governmental agency or subdivision or political subdivision shown in the Schedule, subject to the following provisions:

1. This insurance applies only with respect to operations performed by you or on your behalf for which the state or governmental agency or subdivision or political subdivision has issued a permit or authorization.

2. This insurance does not apply to: **a.** "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the federal government, state or municipality; or **b.** "Bodily injury" or "property damage" included within the "products-completed operations hazard".

ALL OTHER TERMS AND CONDITIONS REMAINING UNCHANGED

ENDORSEMENT #1

ADDITIONAL INSURED – STATE OR GOVERNMENTAL AGENCY OR SUBDIVISION OR POLITICAL SUBDIVISION – PERMITS OR AUTHORIZATIONS

This endorsement modifies insurance provided under the following

MARINE GENERAL LIABILTY COVERAGES
PROTECTION AND INDEMNITY INCLUDING MARINE EMPLOYMENT LIABILITY:

Name of State Or Governmental Agency Or Subdivision Or Political Subdivision:

Blanket when required by written contract.

"Who Is An Insured" under the Marine General Liability Section of the Longshore+ Marine Package Policy is amended to include as an insured any state or governmental agency or subdivision or political subdivision shown in the Schedule, subject to the following provisions:

1. This insurance applies only with respect to operations performed by you or on your behalf for which the state or governmental agency or subdivision or political subdivision has issued a permit or authorization.

2. This insurance does not apply to: **a.** "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the federal government, state or municipality; or **b.** "Bodily injury" or "property damage" included within the "products-completed operations hazard".

ALL OTHER TERMS AND CONDITIONS REMAINING UNCHANGED

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

5. The Policy shall include as additional insureds:

   a. Additional Insureds any person or organization to whom the Named Insured has agreed by written contract to provide coverage, but only with respect to operations performed by or on behalf of the Named Insured and only with respect to occurrences subsequent to the making of such written contract.

   b. Any entity required by written contract (hereinafter called additional Insured) to be named as an insured is an insured but only with respect to liability arising out of your premises, "your work" for the additional Insured, or acts or omissions of the additional Insured, in connection with their general supervision of "your work" to the extent set forth below:

      1. The Limits of Insurance provided on behalf of the additional Insured(s) will not be greater than The Limits of Insurance provided in this policy.

      2. Except as provided herein all insuring agreements, exclusions and conditions of this policy apply to such Additional Insured(s).

      3. The Insurance provided by us to the additional Insured will not be greater than that required by contract and to the extent that such insurance is more restrictive the terms of the insuring agreements, exclusions and conditions of this policy shall be deemed to be amended accordingly.

   c. In no event shall Coverages or Limits of Insurance in this policy be increased by such contract.

6. This insurance does not apply to:

   a. "Bodily Injury" or "Property Damage" occurring after:

      1. All work on the project (other than service maintenance or repairs) to be performed by or on behalf of the Additional Insured(s) at the site of the covered operations has been completed; or

      2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

   b. "Bodily Injury" or "Property Damage" arising out of any act, omission or negligence of the additional Insured(s) or any of their employees, other than the general supervision of work performed for the additional Insured(s) by you.

   c. "Property Damage" to:

      1. Property owned, used or occupied by or rented to the additional Insured(s);

      2. Property in care, custody or control of the additional Insured(s) or over which the additional Insured(s) are for any purpose exercising physical control; or

      3. "Your Work" for the additional Insured(s).

   d. With respect to Additional Insured(s), who are architects, engineers or surveyors, this insurance does not apply to "Bodily Injury," "Property Damage," or "personal and advertising injury" arising out of the rendering of or the failure to render any professional service by or for you, including:

      1. The preparing, approving or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications; and

      2. Supervisory, inspection or engineering services.

G. LIMITS OF INSURANCE

The limits below apply only to **Section I, MARINE GENERAL LIABILITY**

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

a. Insureds;

b. Claims made or "suits" brought; or

c. Persons or organizations making claims or bringing "suits".

2. The Claims Expenses Limit of Liability is the most we will pay for "claims expenses" under Coverages **A** and **B**.

3. The General Aggregate Limit is the most we will pay for the sum of:

   a. Medical expenses under Coverage **C**;

   b. Damages under Coverage **A**, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and

   c. Damages under Coverage **B**; and

4. The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage **A** for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".

5. Subject to **3.** above, the Personal and Advertising Injury Limit is the most we will pay under Coverage **B** for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization.

6. Subject to **3.** or **4.** above, whichever applies, the Each Occurrence Limit it is the most we will pay for the sum of:

   a. Damages under Coverage **A**; and

   b. Medical expenses under Coverage **C** because of all "bodily injury" and "property damage" arising out of any one "occurrence";

7. Subject to **5.** above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage **A** for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, while rented to you or temporarily occupied by you with permission of the owner.

8. Subject to **6.** above, the Medical Expense Limit is the most we will pay under Coverage **C** for all medical expenses because of "bodily injury" sustained by any one person.

9. If a Per Project Aggregate Limit is shown in the Declarations, such limit (and not the General Aggregate Limit), shall apply separately to each of your projects away from premises owned by or rented to you. If no Per Project Aggregate Limit is shown in the Declarations, the General Aggregate shall apply to all of your projects away from premises owned by or rented to you.

10. The Claims Expenses Limit on the Declarations apply separately to Each Occurrence. The Limits of Insurance of this coverage apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

H. MARINE GENERAL LIABILITY CLAUSES

1. Cancellation

In the event of cancellation, the insured agrees to furnish the company with an accurate statement of gross receipts for the period from the attachment date of this policy up to and including the date of cancellation, such statement to be the basis for premium adjustment as provided herein. If the policy is subject to a 25% minimum premium, revised Minimum and Deposit Premiums will be calculated as set forth below, and the Earned Premium for the amended Policy Period will be applied against these revised Minimum and Deposit Premiums.

In the event of cancellation by the company, the revised Deposit Premium will be calculated by subtracting the pro rata return premium due from the Deposit Premium set forth in the Declarations. The revised Minimum Premium will be determined by dividing the Minimum Premium set forth in the Declarations by the Deposit Premium forth in Declarations and multiplying the resultant fraction unless prohibited by state insurance laws.

In the event of cancellation by the insured, the revised Deposit Premium will be calculated by subtracting the "short-rate return premium" due from the Deposit Premium. In such event, unless modified by specific endorsement, the revised Minimum Premium will be the same as the revised Deposit Premium.

2. **Blanket Waiver Of Subrogation**

   It is agreed that the company waives any rights of subrogation to which it may be entitled if prior to loss the Insured has agreed to such waiver in writing, but only to the extent required by said written agreement.

3. **Primary and Non-Contributory By Written Contract**

   Where required by written contract, it is agreed that this policy shall be primary to any insurance carried by an additional insured, and any insurance carried by such additional insured shall not be called upon to contribute to any claim covered under this policy, provided that the claim arises directly from work performed by the Named Insured or others working directly on behalf of the Named Insured and provided further that the "occurrence" that gives rise to such claim happened subsequent to the execution of the written contract.

4. **Premium Adjustment and Reporting**

   The premium charged for this policy has been calculated at the rate of per policy Declarations, per $100.00 of gross receipts during the Policy Period. On or before the 30th day following the expiration of this policy, the insured agrees to submit a report to us containing gross receipts during the Policy Period.

   Earned Premium will be calculated at the above rate, and any premium in excess of the Deposit Premium shall be immediately due and payable upon furnishing the aforesaid report. In the event that the Earned Premium is less than the Deposit Premium but more than the Minimum Premium, the company will return the difference between the Deposit Premium and the Earned Premium. In the event that the Earned Premium is less than the Minimum Premium, the Minimum Premium will apply and the company will return the difference (if any) between the Deposit Premium and the Minimum Premium.

5. **Sub-Contractor Condition**

   In consideration of the premium charged, it is hereby a condition of this policy and the Named Insured agrees that in the event that the Named Insured hires any subcontractors that the Named Insured will obtain a Certificate of Insurance from each subcontractor evidencing valid and collectible Comprehensive General Liability Insurance in an amount of not less than $1,000,000 any one occurrence subject to aggregate limits only where customary.

ENDORSEMENT #4

BLANKET WAIVER OF SUBROGATION

It is agreed that the Company waives any rights of subrogation to which it may be entitled if prior to loss the Insured has agreed to such waiver in writing, but only to the extent required by said written agreement.

It is further agreed that there shall be no coverage for any liability arising under this endorsement unless such liability is covered by valid and collectible underlying insurance as listed in the Schedule of Underlying Insurance, for the full limit shown therein, and then only for such hazards for which coverage is afforded under said underlying insurance.

ALL OTHER TERMS AND CONDITIONS REMAINING UNCHANGED.

SECTION II. WATERCRAFT COVERAGE

A. HULL AND MACHINERY

If an "**X**" is marked on the Declarations by **Hull And Machinery** then the following **Hull And Machinery** coverages apply:

1. INSURED

If claim is made under this Section of the Policy by anyone other than the Owner of the Vessel, such person shall not be entitled to recover to a greater extent than would the Owner, had claim been made by the Owner as an Insured named in this Policy.

The company waives any right of subrogation against affiliated, subsidiary or interrelated companies of the Insured, provided that such waiver shall not apply in the event of a collision between the Vessel and any vessel owned, demise chartered or otherwise controlled by any of the aforesaid companies, or with respect to any loss, damage or expense against which such companies are insured.

2. BLANKET LOSS PAYEE

We will adjust "loss" to Covered Property with you, if caused by or resulting from a Covered Cause of Loss. We will pay any claims for "loss" jointly to you and any or Loss Payee as their interests may appear where required by agreement. This applies to all Covered Property for which a Loss Payee is on file with us or your insurance broker or agent.

3. VESSEL

The Subject Matter of this insurance is the Vessel as shown on the Schedule or by whatsoever name or names the said Vessel is or shall be called, which for purposes of this insurance shall consist of and be limited to her hull, launches, lifeboats, rafts, furniture, bunkers, stores, supplies, tackle, fittings, equipment, apparatus, machinery, boilers, refrigerating machinery, insulation, motor generators and other electrical machinery.

In the event any equipment or apparatus not owned by the Insured is installed for use on board the Vessel and the Insured has assumed responsibility therefor, it shall also be considered part of the Subject Matter and the aggregate value thereof shall be included in the Agreed Value. Notwithstanding the foregoing, cargo containers, and lighters shall not be considered a part of the Subject Matter of this insurance as per Declaration Page.

Should the Vessel at the expiration of this Policy be at sea, or in distress, or at a port of refuge or of call, she shall, provided previous notice be given to the company, be held covered at a pro rata monthly premium to her port of destination.

In the event of payment by the company for Total Loss of the Vessel this Policy shall thereupon automatically terminate.

4. AGREED VALUE

The Vessel, for so much as concerns the Insured, by agreement between the Insured and the company in this Policy, is and shall be valued as shown on the Schedule.

5. DEDUCTIBLE

Notwithstanding anything in this Policy to the contrary, there shall be deducted from the aggregate of all claims (including claims under the Sue and Labor Clause and claims under the Collision Liability clause) arising out of each separate accident, the sum shown on the Schedule unless the accident results in a Total Loss of the Vessel in which case this clause shall not apply. A recovery from other interests, however, shall not operate to exclude claims under this Policy provided the aggregate of such claims arising out of one separate accident if unreduced by such recovery exceeds that sum. For the purpose of this clause each accident shall be treated separately, but it is agreed that (a) a sequence of damages arising from the same accident shall be treated as due to that accident and (b) all heavy weather damage, or damage caused by contact with floating ice, which occurs during a single sea passage between two successive ports shall be treated as though due to one accident.

ENDORSEMENT #9

BLANKET ADDITIONAL INSURED (FOLLOW-FORM LIMITATION)

It is agreed that this Policy shall include as Additional Insureds any person or organization to whom the Named Insured has agreed by written contract to provide coverage, but only with respect to operations performed by or on behalf of the Named Insured and only with respect to occurrences subsequent to the making of such written contract.

It is further agreed that there shall be no coverage for any liability arising under this endorsement unless such liability is covered by valid and collectible underlying insurance as listed in the Schedule of Underlying Insurance, for the full limit shown therein, and then only for such hazards for which coverage is afforded under said underlying insurance.

ALL OTHER TERMS AND CONDITIONS REMAINING UNCHANGED.

ENDORSEMENT #10

BLANKET WAIVER OF SUBROGATION
(FOLLOW-FORM LIMITATION)

It is agreed that the Company waives any rights of subrogation to which it may be entitled if prior to loss the Insured has agreed to such waiver in writing, but only to the extent required by said written agreement.

It is further agreed that there shall be no coverage for any liability arising under this endorsement unless such liability is covered by valid and collectible underlying insurance as listed in the Schedule of Underlying Insurance, for the full limit shown therein, and then only for such hazards for which coverage is afforded under said underlying insurance.

ALL OTHER TERMS AND CONDITIONS REMAINING UNCHANGED.

POLICY NUMBER: 202401-11-55-72-0Y

ALTERNATE EMPLOYER ENDORSEMENT

This endorsement applies only with respect to bodily injury to your employees while in the course of special or temporary employment by the alternate employer in the state named in Item 2 of the Schedule. Part One (Workers Compensation Insurance) and Part Two (Employers Liability Insurance) will apply as though the alternate employer is insured. If an entry is shown in Item 3 of the Schedule the insurance afforded by this endorsement applies only to work you perform under the contract or at the project named in the Schedule.

Under Part One (Workers Compensation Insurance) we will reimburse the alternate employer for the benefits required by the workers compensation law if we are not permitted to pay the benefits directly to the persons entitled to them.

The insurance afforded by this endorsement is not intended to satisfy the alternate employer's duty to secure its obligations under the workers compensation law. We will not file evidence of this insurance on behalf of the alternate employer with any government agency.

We will not ask any other insurer of the alternate employer to share with us a loss covered by this endorsement.

Premium will be charged for your employees while in the course of special or temporary employment by the alternate employer.

The policy may be canceled according to its terms without sending notice to the alternate employer.

Part Four (Your Duties If Injury Occurs) applies to you and the alternate employer. The alternate employer will recognize our right to defend under Parts One and Two and our right to inspect under Part Six.

Schedule

1.	**Alternate Employer**	**Address**
	AS INDICATED BY WRITTEN CONTRACT	WHERE REQUIRED BY WRITTEN CONTRACT

2. **State of Special or Temporary Employment**
   FL

3. **Contract or Project**
   WRITTEN CONTRACT BETWEEN NAMED INSURED AND SUCH ALTERNATE EMPLOYER ON FILE

DATE OF ISSUE: 03-29-24

POLICY NUMBER: 202401-11-55-72-0Y

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Schedule

ANY PERSONS OR ORGANIZATIONS WITH WHOM THE NAMED INSURED HAS AGREED BY WRITTEN CONTRACT TO FURNISH THIS WAIVER.

DATE OF ISSUE: 03-29-24

CITY OF PORT ORANGE, FLORIDA

INVITATION TO BID
ITB #24-09
MEMORIAL PARK PIERS REHABILITATION

City of Port Orange Purchasing Division
Prepared by: Chip Kent
Release Date: June 21, 2024

Bid Due Date & Time: July 24, 2024 @ 2:30 PM

City of Port Orange, Florida
1000 City Center Circle, Port Orange, FL 32129
(386) 506-5740
purchdiv@port-orange.org; www.port-orange.org

Legal Notice to Proposers
ITB #24-09
Memorial Park Piers Rehabilitation

Notice is hereby given that the City of Port Orange is soliciting bids for ITB #24-09 Memorial Park Piers Rehabilitation. 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 July 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 mandatory Pre-Bid Conference and site visit for the project at **10:00 AM EST** on **June 28, 2024** at City Hall, Council Chambers (1st floor), 1000 City Center Circle, Port Orange, FL 32129. All prospective Bidders must attend the meeting and site visit. **Only Bidders attending the mandatory Pre-Bid Conference and Site Visit will be eligible to submit a Bid.** All attendees to the Pre-Bid Conference and site visit 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.

DESCRIPTION: The Base Bid is for the complete rehabilitation and repair of both Memorial Park Piers A & B, using wood piers and handrails with composite horizontal top handrail as detailed in Attachment 2 Technical Specifications.

Bid Alternate 1 is for the complete rehabilitation and repair of Memorial Park Pier B using wood piers and handrails with composite horizontal top handrail and the complete demolition, removal, hauling and disposal of existing Pier A as detailed in Attachment 2 Technical Specifications.

Bid Alternate 2 is for the complete rehabilitation and repair of both Memorial Park Piers A & B, using all composite piers and handrails as detailed in Attachment 2 Technical Specifications.

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.

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.

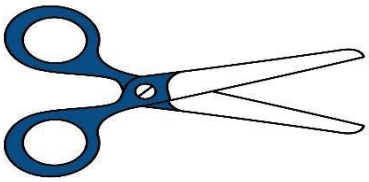
All bids are solicited and shall be made pursuant to the Code of Ordinances, City of Port Orange, Chapter 2, Article VI, Division 2, Section 2-263, and all bids will be evaluated in accordance with the provisions thereof. Code of Ordinances, City of Port Orange is on file in the Office of the City Clerk, 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 Purchasing Agent, Chip Kent at ckent@port-orange.org and purchdiv@port-orange.org and reference "Questions on ITB #24-09 Memorial Park Piers Rehabilitation" in the subject line. Last day for questions will be July 10, 2024, by 5:00 PM.

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 #24-09**

BID TITLE: **MEMORIAL PARK PIERS REHABILITATION**

DUE DATE/TIME: **July 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: CHIP KENT, PURCHASING AGENT
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 a Base Bid for the complete rehabilitation and repair of both Memorial Park Piers A & B, using wood piers and handrails with composite horizontal top handrail as detailed in Attachment 2 Technical Specifications.

Bid Alternate 1 for the complete rehabilitation and repair of Memorial Park Pier B using wood piers and handrails with composite horizontal top handrail and the complete demolition, removal, hauling and disposal of existing Pier A as detailed in Attachment 2 Technical Specifications.

Bid Alternate 2 for the complete rehabilitation and repair of both Memorial Park Piers A & B, using all composite piers and handrails as detailed in Attachment 2 Technical Specifications.

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.

[Remainder of this page left intentionally blank]

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	June 21, 2024
Mandatory Pre-Bid Conference and Site Visit	June 28, 2024, at 10:00 AM
Deadline for Questions	July 10, 2024 by 5:00PM
Addendum Posting (If needed)	July 17, 2024
Bids Due	July 24, 2024, at 2:30 PM
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: CHIP KENT, PURCHASING AGENT
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:

a. Invitation to Bid (ITB) Number and Title
b. Date of Opening
c. Name of Bidder
d. 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 mandatory Pre-Bid Conference and site visit on the date and time referenced in the Timeline above at City Hall, Council Chambers (1st Floor), 1000 City Center Circle, Port Orange, Florida 32129. All prospective Bidders must attend the meeting and site visit. **Only Bidders attending the mandatory Pre-Bid Conference and site visit will be eligible to submit a Bid.** All attendees to the Mandatory Pre-Bid Conference and site visit MUST sign in. The representative of each bidder shall be an authorized employee of the bidder and must sign in accordingly. The site visit will immediately follow the meeting in Council Chambers.

QUESTIONS REGARDING THIS ITB

All questions shall reference "ITB #24-09 Memorial Park Piers Rehabilitation" 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:

Chip Kent, Purchasing Agent
1000 City Center Circle
Port Orange, FL 32129
ckent@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

All Bidders must be certified and licensed Division 1 Building Contractors, General Contractors, or Certified Florida Marine Contractors. Bidders shall be licensed to do business in the State of Florida and must submit a 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.

SECTION 3 – SCOPE OF WORK

SCOPE OF WORK:

Per Attachment 2 Memorial Park Plans and Attachment 3 Memorial Park Technical Specifications, posted as separate documents on the City of Port Orange website https://www.port-orange.org/bids.aspx and DemandStar https://network.demandstar.com/.

The Base Bid is for the complete rehabilitation and repair of both Memorial Park Piers A & B, using wood piers and handrails with composite horizontal top handrail as detailed in Attachment 2 Technical Specifications.

Bid Alternate 1 is for the complete rehabilitation and repair of Memorial Park Pier B using wood piers and handrails with composite horizontal top handrail and the complete demolition, removal, hauling and disposal of existing Pier A as detailed in Attachment 2 Technical Specifications.

Bid Alternate 2 is for the complete rehabilitation and repair of both Memorial Park Piers A & B, using all composite piers and handrails as detailed in Attachment 2 Technical Specifications.

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 fora 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 employ mentor 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.

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 s1324a(e). Such employment deprives legal workers of job opportunities. Violation of section 274A(e) shall be grounds for unilateral cancellation of the contract, proposal or quote for purchase of services and goods by the City of Port Orange.

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 protester.

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. Proposers shall complete Form 7.12 E-Verify Affidavit and include it in the returned bid package. Failure to include the affidavit may result in rejection of the bid.

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:

- The bidder that has a Business Tax Receipt (BTR) within Port Orange City limits (confirmed through Sunbiz).

- The commodity was manufactured in the State of Florida.
- Florida business as confirmed thru SunBiz.org.
- 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.

[Remainder of this page left intentionally blank]

Standard Insurance Requirements			
Required	**Insurance**	**Standards**	**Additional Requirements**
☒	Workers' Compensation 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.	Contract Amount — Limits Up to $10 million — Statutory/$500,000 $10 - $20 million — Statutory/$1,000,000 Contracts over $20 million to be determined by the City	• If contract requires work on or about navigable waters, Longshoreman's and Harbor Workers' coverage required. • If vessels involved, Jones Act coverage with limits of $500,000 required
☒	Comprehensive General Liability (including completed operations and contractual liability)	Limits: 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	Limits: Auto Liability Bodily Injury and Property Damage: $1,000,000 each occurrence $1,000,000 aggregate	
Additional Insurance Requirements			
☐	Property Insurance Builders Risk Additional Coverage:	Limits: 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)	Limits: Coverage – To Be Determined	
☐	Contractor Pollution Liability	Limits: Coverage - $1,000,000	
☐	Professional Liability/Errors and Omissions	Limits: Coverage - $1,000,000	
☐	Umbrella Policy	Limits: Coverage – To Be Determined	
☐	Payment and Performance Bond required	Limits: Coverage – equal to amount of contract	
	City Manager waives Payment and Performance Bond for work under $200,000 unless otherwise required by Department Director.		
	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 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. **OTHER AGENCIES**

(a) All bidders awarded contracts from this bid may, upon mutual agreement, permit any municipality or other governmental agency to participate in the contract under the same prices, terms, and conditions, if agreed to by both parties.

(b) It is understood that at no time will any city, municipality, or other agency be obligated for placing an order for any other city, municipality, or agency; nor will any city, municipality, or agency be obligated for any bills incurred by any other city, municipality, or agency. Further, it is understood that each agency will issue its own purchase order to the awarded bidder(s).

67. **PATENTS/COPYRIGHTS**

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

68. **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.

69. **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.

70. **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.

71. **PRICING**

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.

72. **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.

73. **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.

74. **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.

75. **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.

76. **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 OFFICE OF THE CITY CLERK 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.

77. **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.

78. **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.

79. **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.

80. **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.

81. **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.

82. **RECYCLED MATERIALS**

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

83. **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.)

84. **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.

85. **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.

86. **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.

87. **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.

88. **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.

89. **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.

90. **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 9.10 Scrutinized Company Certification, certifying the Contractor's compliance with this section, prior to the execution of this Agreement.

91. **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.

92. **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.

93. **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.

94. **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.

95. **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.

96. **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.

97. **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 PM (Eastern Standard Time) 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.

98. **STATE LICENSING REQUIREMENTS**

All entities defined under Chapters 607, 608, 617 or 620, Florida Statutes, seeking to do business with the City shall be on file and in good standing with the State of Florida's Department of State. Prior to making an offer, the 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.

99. **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.

100. **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.

101. **TAXES**

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

102. **TERM CONTRACTS**

Acceptance by the City of Port Orange of 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.

103. **TERMINATION**

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.

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 is 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 Contractor as stipulated in City Code 2-276 Suspension and Disbarment.

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.

104. **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.

105. **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.

106. **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.

107. **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.

108. **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)

109. **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.

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.

MINIMUM QUALIFICATIONS

All Bidders must be certified and licensed Division 1 Building Contractors, General Contractors, or Certified Florida Marine Contractors. Bidders shall be licensed to do business in the State of Florida and must submit a Sunbiz report showing your company registered as "Active".

AWARD RECOMMENDATION:

It is the intent of the City to award a contract to the lowest responsive and responsible bidder for the Base Bid only.

After the responsive and responsible low bidder for the Base Bid is determined, based on funding availability, the City will choose which option in the Scope of Work the contract will include: The Base Bid; Bid Alternate 1; or Bid Alternate 2.

CONTRACT TERM:

Two hundred-ten (210) days from issuance of Notice to Proceed from the City for substantial completion 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. Bidders must 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
If awarded, 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 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 bid bond with their submittal may be deemed non-responsive.

ADDITIONAL INSURANCE REQUIREMENTS:
In addition to the insurance requirements outlined on page 22 of this ITB, the awarded Contractor is required to provide Property Insurance Builder's Risk and Contractor Pollution Liability insurance. The Limits for Property Insurance Builder's Risk and Contractor Pollution Liability are outlined on page 22.

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.

SAFETY:
Contractor will comply with all applicable OSHA, State of Florida Safety Regulations and comply with all construction safety requirements of local authorities having jurisdiction. Contractor shall exercise all due caution to exclude the public from the work area and especially from contact with any hazardous materials.

REPAIR OF DAMAGES:
It is the responsibility of the contractor to repair any damages incurred in the area that are directly related to the project. When damages occur, the City of Port Orange Representative is to be notified and shall inspect the repairs upon completion.

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 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. **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 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.

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

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 F.S. 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

_____ Current Bonding Capacity Letter (as outlined in Section 6)

_____ Copy of all currently held Licenses (Contractor, Sunbiz, etc.)

_____ Original Bid Bond

_____ 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:

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

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

This document must be completed and returned with your Submittal

FORM 7.5 – SWORN STATEMENT 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

_____
Authorized Signature

STATE OF:_____

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

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

IT IS AGREED BY THE UNDERSIGNED 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: _____

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 appropriate 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 your major equipment currently owned or leased: **USE SEPARATE SHEET & ATTACH TO SUBMITTAL**

K. Background and experience of the principal members of your organization, including the officers: USE **SEPARATE SHEET & ATTACH TO SUBMITTAL**

L. Credit currently available: $_____

M. Give bank name, contact name and phone number: _____

N. 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 compromising the Statement of Bidder's Qualifications.

_____
Name of Business

_____
Authorized Signature

STATE OF:_____

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

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 must 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

_____
Authorized Signature

STATE OF:_____

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 bee 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:

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

ITB #24-09 Memorial Park Piers Rehabilitation

Completed (Attachment 1) Schedule of Unit Pricing MUST be included with Bid Submission

BIDDERS MUST COMPLETE ALL FIELDS SHOWN IN GREEN

Name of Business:	
Contact Person:	
Email Address:	
Authorized Signature:	

LEGEND:
LS - Lump Sum
SF - Square Feet
LF - Linear Feet
SY - Square Yards

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

BASE BID

BASE BID - Complete rehabilitation and repair of both Memorial Park Piers A & B, using wood piers and handrails with composite horizontal top handrail, as detailed in Attachment 2 Technical Specifications.

ITEM NO.	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	EXTENDED PRICE
1	Mobilization and Demobilization	1	LS		
2	Construction Survey and As-Built Survey	1	LS		
3	Environmental Compliance	1	LS		
4	Temporary Traffic Control	1	LS		
5	Demolition, Hauling and Disposal	1	LS		
6	Wood Handrails (Horizontal Top Handrail - Composite)	5,250	SF		
7	Wood Piers	6,000	SF		
8	Mesh Railing and Staples (2in.x 4in. Squares, 36in. Height, 100ft rolls)	1,525	LF		
9	Concrete Sidewalk	21	SY		
10	Concrete Grade Beam	60	LF		
				BASE BID TOTAL PRICE:	

BID ALTERNATES

BID ALTERNATE #1 is for the complete rehabilitation and repair of Memorial Park Pier B using wood piers and handrails with composite horizontal top handrail and the complete demolition, removal, hauling and disposal of existing Pier A as detailed in Attachment 2 Technical Specifications.

ITEM NO.	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	EXTENDED PRICE
11	Mobilization and Demobilization	1	LS		
12	Construction Survey and As-Built Survey	1	LS		
13	Environmental Compliance	1	LS		
14	Temporary Traffic Control	1	LS		
15	Demolition, Hauling and Disposal	1	LS		
16	Wood Handrails (Horizontal Top Handrail - Composite)	2,260	SF		
17	Wood Piers	3,040	SF		
18	Mesh Railing and Staples (2in.x 4in. Squares, 36in. Height, 100ft rolls)	750	LF		
19	Concrete Sidewalk	15	SY		
20	Concrete Grade Beam	36	LF		
21	Demolition, Hauling and Disposal of Existing Pier "A"	1	LS		
				BID ALTERNATE #1 TOTAL PRICE:	

BID ALTERNATE #2 is for the complete rehabilitation and repair of both Memorial Park Piers A & B, using all composite piers and handrails as detailed in Attachment 2 Technical Specifications.

ITEM NO.	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	EXTENDED PRICE
22	Mobilization and Demobilization	1	LS		
23	Construction Survey and As-Built Survey	1	LS		
24	Environmental Compliance	1	LS		
25	Temporary Traffic Control	1	LS		
26	Demolition, Hauling and Disposal	1	LS		
27	Composite Handrails	5,250	SF		
28	Composite Piers	6,000	SF		
29	Mesh Railing and Staples (2in.x 4in. Squares, 36in. Height, 100ft rolls)	1,525	LF		
30	Concrete Sidewalk	21	SY		
31	Concrete Grade Beam	60	LF		
				BID ALTERNATE #2 TOTAL PRICE:	

BID BOND

BID BOND

Bond No.:

KNOW ALL MEN BY THESE PRESENTS that _____, as Contractor, duly authorized to conduct business in the State of Florida, whose principal place of business is located at_____ , Tel.:_____, (hereinafter called "PRINCIPAL"), and_____, as SURETY, duly authorized to conduct business in the State of Florida, whose principal place of business is located at _____ _____, Tel:_____(hereinafter called "SURETY"), are held and firmly bound unto the City of Port Orange, Florida, as CITY, a Florida municipal corporation, whose address is City of Port Orange, 1000 City Center Circle, Port Orange, Florida 32129, Tel: (386) 506-5501, (hereinafter called "OBLIGEE" or CITY", in the penal sum of_____dollars and (_____)/100 ($_____), lawful money of the United States, for the payment of which sum shall and truly be made, whereof PRINCIPAL and SURETY bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that, whereas the Principal has submitted the accompanying bid, dated_____, 20_____ , for:

Project Name/Bid No.:

Project Address:

Legal Description:

Description of Work:

NOW, THEREFORE,

A. If the Principal shall not withdraw said bid 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 _____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

ATTEST:

_____
Signature

_____
Corporate Secretary (Affix Corporate Seal)

WITTNESSESS:

_____

_____

ATTEST:

_____
Signature

_____
Corporate Secretary (Affix Corporate Seal)

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

PAYMENT & PERFORMANCE BOND

RETURN RECORDED DOCUMENT TO:
City Clerk
1000 City Center Circle
Port Orange, Florida 32129-4144

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

PAYMENT AND PERFORMANCE BOND

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

BOND NO. _____

PRINCIPAL:
Developer or Contractor: _____
Principal Business Address: _____
_____
Contact Person: _____
Phone Number: _____

SURETY: _____
Address: _____
_____
Contact Person: _____
Phone Number: _____

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

Amount: $_____ **City Case/Project No.** _____

Description of Work: _____

Project Location: _____
Port Orange, Volusia County, Florida

Legal Description: _____

Front Page

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

CERTIFICATE FOR FILING IN PUBLIC RECORDS

PAYMENT AND PERFORMANCE BOND

(Public Works)
In Compliance with Section 255.05(1)(a) Florida Statutes

Bond No. _____

The Principal, _____, a _____corporation, by and through its undersigned representative, does hereby certify that the attached:

Payment and Performance Bond No. _____,

is a true and correct copy of the fully executed financial guarantee delivered to:

CITY OF PORT ORANGE, FLORIDA

pursuant to Section 255.05, Florida Statutes; as Owner/Holder of the subject property in trust for the public, for the public construction project known as:

_____

located in Port Orange, Volusia County, Florida, and identified by the City of Port Orange as Case No. _____.

All claimants are called upon to take notice of the notice requirements and time limitations prescribed by Sections 255.05(2), (8) and (10), Florida Statutes.

Contractor's Name and Address:

By:_____
Printed Name/Title:_____

STATE OF _____
COUNTY OF _____

The foregoing Certificate of Filing was acknowledged before me this _____ day of _____, 20___, by _____, _____ of _____, a _____ corporation, the Principal named in the attached Payment and Performance **Bond No. _____.**

Notary, please check one:
☐ Personally known to me
☐ Produced identification

_____

_____
Notary Public, State of _____
Printed Name, Commission & Term Expiration Date:

RETURN RECORDED DOCUMENT TO:
City Clerk
1000 City Center Circle
Port Orange, Florida 32129-4144

_____
Name of Project

City Project No._____
Bond No._____

_____
Space Reserved for Recording Data

COMBINATION PAYMENT AND PERFORMANCE BOND FOR PUBLIC CONSTRUCTION

per Section 255.05, Florida Statutes

Guaranty for Construction of Public Improvements

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

THE CONDITION OF THIS BOND is that if Principal:

1. Performs the terms of that certain _____ having an effective date of _____, entered into by and between the Principal and the City, for _____, hereinafter referred to as the "Contract," being made a part of this bond by reference, at the times and in the manner prescribed in the Contract; and

2. Promptly makes payments to all claimants, as defined in Section 255.05(1), Florida Statutes, supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the Contract (the "Work"); and

3. Pays Owner all losses, damages, delay damages (including contractually authorized liquidated damages), expenses, costs, and attorney's fees, including appellate proceedings, that Owner sustains because of a breach or material breach by Principal under the Contract documents; and

4. Performs the guarantee of all work and materials furnished under the Contract for the time specified in the Contract, then this bond is void; otherwise it remains in full force.

Notice of Nonpayment and Time Limitations

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

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

IN WITNESS WHEREOF, this performance and payment bond is executed in duplicate originals, each of which shall be deemed an original, this _____, day of _____, 20__.

Attest:

_____
(Name of Principal)

_____
(As to Corporate Principal) Secretary

By:_____
Name/Title:_____

_____
(Witness to Principal)

(Corporate Seal)

_____
(Surety)

_____
(Witness to Surety)

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

(Corporate Seal)

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

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

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:

By:_____

Name:_____

CONTRACTOR:

Company:_____

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.

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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.

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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).

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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 General Decision Number FL_____ Davis-Bacon Wage Determination (pages __ to __, 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.

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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;

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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

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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 Majure*

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.

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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) Termination for Non-Appropriation of Funds.

(i) 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

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termination be accomplished in accordance with this Section, the City shall be liable only for payments due through the date of termination.

(ii) 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.

(d) 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.

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(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

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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

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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

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(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

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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

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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

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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,

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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

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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:

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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.

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(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

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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 Federal Awarding Agency.

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 as required to assure notification to the Federal Awarding Agency, 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 Federal Awarding Agency.

(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

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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.

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(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

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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), the Federal Awarding Agency 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

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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 Federal Awarding Agency Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

(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) Federal Awarding Agency Seal, LOGO, and Flags. The Contractor shall not use the Federal Awarding Agency seal(s), logos, crests, or reproductions of flags or likenesses of said agency officials without specific agency pre-approval. The Contractor shall include in this provision in any subcontracts.

(q) Compliance with Federal Laws, Regulations and Executive Orders and Acknowledgement of Federal Funding. This is an acknowledgment that Federal Award 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, Federal Awarding Agency 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

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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 pursuant to 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.

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 Federal Awarding Agency.

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

Required Certification: If applicable to this Contract, for Federal financial assistance programs 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).

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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: _____

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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

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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

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ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

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STANDARD GENERAL CONDITIONS
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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.

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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.

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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.

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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.

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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*

    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.

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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.

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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

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

C. ~~*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~~s~~;

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.

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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 ~~dlay~~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 Wok 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 ~~thtt~~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.

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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

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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,

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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 ~~C~~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. ~~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. ~~The impact on Contract Price, in accordance with the provisions of Paragraph 11.07.~~

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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. ~~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

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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~~ ~~floors~~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;

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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

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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.

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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.

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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

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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

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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)

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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. ~~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. ~~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. ~~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.~~

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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, ~~I~~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.

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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~~ry~~ 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. ~~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 policies, if any, operate separately and independently from policies required to be provided

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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 Contactor~~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.

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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.

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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.

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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. ~~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. ~~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. ~~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.

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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, ~~exclsuing~~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 ~~o~~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 ~~constitue~~constitute a material breach of the Contract. If O~~o~~wner 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.

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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 ~~canying~~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 ~~sanitaiy~~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.

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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

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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

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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

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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.

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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. ~~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. ~~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.

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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.

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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).

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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

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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

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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.

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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;

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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

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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.

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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.

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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

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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.

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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. ~~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

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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

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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

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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.

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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

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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.

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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

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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**~~

~~12.01 *Claims*~~

~~A. *Claims Process*: The following disputes between Owner and Contractor are subject to the Claims process set forth in this article:~~

~~1. Appeals by Owner or Contractor of Engineer's decisions regarding Change Proposals;~~

~~2. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents;~~

~~3. 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. 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. *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~~

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and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.

C. *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. *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. 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. Owner and Contractor shall each pay one-half of the mediator's fees and costs.

E. *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. *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. *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.

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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.

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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.

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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, expediters, 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.

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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.

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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.

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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.

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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.

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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.

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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

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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

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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~~.

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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.

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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 Ppunch 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 pPunch 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 Ppunch 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 pPunch 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,

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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 Ppunch Llist of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed ppunch llist 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 Ppunch llist.

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.

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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) ~~insruance~~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.

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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

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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

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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~~.~~;

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~~

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~~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,

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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 ~~*Methods and Procedures*~~

~~*A. Disputes Subject to Final Resolution: The following disputed matters are subject to final resolution under the provisions of this article:*~~

~~*1. 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. Disputes between Owner and Contractor concerning the Work, or obligations under the Contract Documents, that arise after final payment has been made.*~~

~~*B. Final Resolution of Disputes: For any dispute subject to resolution under this article, Owner or Contractor may:*~~

~~*1. elect in writing to invoke the dispute resolution process provided for in the Supplementary Conditions;*~~

~~*2. agree with the other party to submit the dispute to another dispute resolution process; or*~~

~~*3. 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*

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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.

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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 Floridain 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.

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End of Solicitation Documents

ELECTRONIC

City of Port Orange, Florida
Memorial Park Piers Rehabilitation

ITB: #24-09
Wednesday, July 24, 2024 at 2:30pm EDT

PRESENTED BY:

RUSH Marine, LLC
6285 Riverfront Center Boulevard
Titusville, Florida 32780
321-267-8100 Phone / 321-267-9944 Fax

Anthony (Tony) Landry, President
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www.rushinc.com

This proposal is the property of RUSH Marine, LLC and includes data that shall not be disclosed outside the Owner's Organization and shall not be duplicated, used or disclosed – in whole or in part – for any purpose other than to evaluate this proposal. This restriction does not limit the owner's right to use information contained in this data if it is obtained from another source without restriction. The data subject to this restriction is identified at the bottom of each page

City of Port Orange, Florida
Memorial Park Piers Rehabilitation
ITB: #24-09

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Bid Submittal Checklist

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- ✓ Form 7.15 – No Submittal Response Form
- ✓ APPENDIX A – 44 C.F.R. PART 18 CERTIFICATION REGARDING LOBBYING
- ✓ (Attachment 1) – Schedule of Unit Pricing
- ✓ Current Bonding Capacity Letter (as outlined in Section 6)
- ✓ Copy of all currently held Licenses (Contractor, Sunbiz, etc.)
- ✓ Original Bid Bond
- ✓ Submission of one (1) original marked "ORIGINAL" and one (1) digital (flash drive) version in PDF format

BY: RUSH Marine, LLC
Name of Business

Anthony Barclay
Authorized Signature

7/24/2024
Date

This document must be completed and returned with your Submittal

Tab 2

Bidder's Acknowledgement Form

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):

_____

_____

RUSH Marine, LLC
Name of Business

Anthony Landry
Authorized Signature

Anthony Landry, President
Printed Name and Title

82-4091915
Federal Identification No.

6285 Riverfront Center Blvd.
Mailing Address

Titusville, FL 32780
City, State & Zip Code

321-267-8100
Telephone Number

tlandry@rushinc.com
E-mail Address

STATE OF: Florida COUNTY OF: Brevard

The foregoing instrument was acknowledged before me by means of ☑physical presence or ☐online notarization, this 24th day of July, 2024, by Anthony Landry and who:

☑is personally known to me; or ☐ has produced _____ as identification.

RONALD DEAN REED JR
Notary Public-State of Florida
Commission # HH 283456
My Commission Expires
August 09, 2026

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

This document must be completed and returned with your Submittal

Tab 3

Addendum Acknowledgement

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# 1 Date: 7/17/2024 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:

RUSH Marine, LLC
Name of Business

Anthony Landry
Authorized Signature

Anthony Landry, President
Printed Name and Title

STATE OF: Florida COUNTY OF: Brevard

The foregoing instrument was acknowledged before me by means of ☑ physical presence or ☐ online notarization, this 24th day of July, 2024, by Anthony Landry 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:

RONALD DEAN REED JR
Notary Public-State of Florida
Commission # HH 283456
My Commission Expires
August 09, 2026

This document must be completed and returned with your Submittal

Tab 4

Drug-Free Preference Statement

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.

RUSH Marine, LLC
Name of Business

Anthony Landry
Authorized Signature

Anthony Landry, President
Printed Name and Title

STATE OF: Florida COUNTY OF: Brevard

The foregoing instrument was acknowledged before me by means of ☑ physical presence or ☐ online notarization, this 24th day of July, 2024, by Anthony Landry 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:

RONALD DEAN REED JR
Notary Public-State of Florida
Commission # HH 283456
My Commission Expires
August 09, 2026

This document must be completed and returned with your Submittal

Tab 5

Public Entity Crimes Statement

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 Anthony Landry, who, being by me first duly sworn, made the following statement:

1. The business address of RUSH Marine, LLC (name of Offeror or business) is 6285 Riverfront Center Blvd., Titusville, FL 32780.
2. My relationship to RUSH Marine, LLC (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:~~ N/A ~~. A copy of the order of the Division Administrative Hearing is attached.~~

(Draw a line through paragraph 7 if paragraph 6 above applies)

RUSH Marine, LLC
Name of Business

Anthony Landry
Authorized Signature

STATE OF: Florida

COUNTY OF: Brevard

Anthony Landry, President
Printed Name and Title

The foregoing instrument was acknowledged before me by means of ☑ physical presence or ☐ online notarization, this 24th day of July, 2024, by Anthony Landry 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:

RONALD DEAN REED JR
Notary Public-State of Florida
Commission # HH 283456
My Commission Expires
August 09, 2026

This document must be completed and returned with your Submittal.

Tab 6

Anti-Collusion Form

FORM 7.6 – ANTI-COLLUSION FORM

ANTI-COLLUSION STATEMENT BID FORM:

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

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

IT IS AGREED BY THE UNDERSIGNED 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: RUSH Marine, LLC

SIGNED BY: Anthony Landry

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

PRINTED SIGNATURE: Anthony Landry

TITLE: President

ADDRESS: 6285 Riverfront Center Blvd.

CITY, STATE AND ZIP CODE: Titusville, FL 32780

TELEPHONE: 321-267-8100

F.E.I.N.: 82-4091915

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

Tab 7

Bidder's Qualifications

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: RUSH Marine, LLC

B. Permanent main office address: 6285 Riverfront Center Blvd, Titusville, FL 32780

C. Date organized: 1/18/2018

D. If a corporation, where incorporated: Titusville, FL

E. How many years have you been engaged in the business under your present firm or trade name? 6.5+ years

F. Contracts on hand: (List these, showing amount of each contract and the appropriate anticipated dates of completion.) **USE SEPARATE SHEET & ATTACH TO SUBMITTAL** EXHIBIT A

G. General character of work performed by your company: Marine construction.

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 your major equipment currently owned or leased: **USE SEPARATE SHEET & ATTACH TO SUBMITTAL** EXHIBIT B

K. Background and experience of the principal members of your organization, including the officers: USE **SEPARATE SHEET & ATTACH TO SUBMITTAL** EXHIBIT C

L. Credit currently available: $ 1.5M

M. Give bank name, contact name and phone number: Truist Financial, Vince Donato, 321-676-1170

N. 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 compromising the Statement of Bidder's Qualifications.

RUSH Marine, LLC
Name of Business

Anthony Landry
Authorized Signature

Anthony Landry, President
Printed Name and Title

STATE OF: Florida

COUNTY OF: Brevard

The foregoing instrument was acknowledged before me by means of ☑physical presence or ☐online notarization, this 24th day of July, 2024, by Anthony Landry 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:

RONALD DEAN REED JR
Notary Public-State of Florida
Commission # HH 283456
My Commission Expires
August 09, 2026

This document must be completed and returned with your Submittal

EXHIBIT A

Contracts on Hand

Form 7.7F Statement of Bidders Qualifications	
Company Name: RUSH Marine, LLC	Date: July 24, 2024

Contracts on Hand

PROJECT	CONTRACT AMOUNT	APPROXIMATE DATE OF COMPLETION
Key West Dry Type Fire Hydrants	$ 382,318	September 2024
Lake County Hickory Point Boat Ramp & Docks	$ 1,993,004	December 2024
Tavares Wooten Park Trail Improvements	$ 802,694	November 2024
Aripeka Pedestrian Bridge & Overlook - DESIGN	$ 43,669	September 2024
NAS JAX Seawall Erosion Rip Rap Repair	$ 8,680,609	July 2025
MCSF Blount Island Shoreline Areas 2 & 3	$ 10,476,082	December 2025
CPA North Cargo Pier 2 Waterline Replacement	$ 398,708	October 2024
CPA Wild Ocean Market Stormwater System Repairs	$ 185,505	August 2024

EXHIBIT B

Major Equipment Currently Owned

Form 7.7I STATEMENT OF BIDDER'S QUALIFICATIONS	
Company Name: RUSH Marine, LLC	Date: July 24, 2024

Major Equipment Currently Owned

QUANTITY	DESCRIPTION	CAPACITY
1	Altec Rig	6,000 LBS
1	Carpenter Barge	12' x 40'
2	Skytrac Lull Forklift	10,000 LBS
6	Jon Boat	75 Horse Power
1	American 5299 Crawler Crane	50 Ton

EXHIBIT C

Corporate Officers' Background and Experience

Anthony Landry

President
RUSH Marine, LLC

December 2017 - Present

Resident of Flagler County, FL

Education / Certification
CPR
OSHA 30 Hour

Years of Experience
38

Anthony (Tony) Landry is the President of RUSH Marine, LLC, launching the company in December 2017. Mr. Landry has over 38 years of construction experience and extensive knowledge learned on-the-job. He has a thorough understanding of the relationship-based environment that exists within marine, concrete construction, both waterside and landside, and heavy civil and transportation industries.

Mr. Landry is responsible for leading the business development and marketing efforts as well as all aspects of project management and field operations for marine, road, and bridge related projects. Monitors progress, schedule, and cost associated with every project. Works closely with owners, architects, engineers, and designers to ensure that safety, environmental mitigation, innovative solutions, efficiency, cost, and constructability are all well thought out during the design and/or the construction phases. Ensures compliance with all local, state, and federal regulations associated with each project.

PROJECT EXPERIENCE WITH RUSH MARINE, LLC

North Cargo Berth 3, Cape Canaveral, FL $48+M
JAXPORT Shoreline Protection, Jacksonville, FL $1.5+M
Cocoa Riverfront Park Promenade Improvements, Cocoa, FL $995+K
Brightline Train Zone 3 East West Rail Infrastructure, Cocoa, FL $990+K
Cruise Terminal 3 Marine Berth, Cape Canaveral, FL $38.6 Million
Shoreline Stabilization MCSF Blount Island-Area 1, Jacksonville, FL $4.4+M
Lori Wilson Pedestrian Crossover, Cocoa Beach, FL $1.3+M
NASA Bridge Repairs, Kennedy Space Center, $1.8+M
Loblolly Marina Replacement, Hobe Sound, FL $5+M
City of Tavares Seaplane & Marina, Tavares, FL $5.9+M
USCG Carrabelle Moorings, Carrabelle, FL $1.9+M
Cruise Terminal 5 Mooring Improvements, Cape Canaveral, FL $2.2+M
Spaceview Park Improvements, Titusville, FL $1.3+M
Lake Ashby Pier Replacement, New Smyrna Beach, FL $549,558
Mock Orbiter/Shuttle Dismantle, Space Florida, $286+K
Canaveral Port Authority Smart Pond Retrofit, Cape Canaveral, FL $452+K
Cruise Terminal 8 & 10 Waterside Modifications, Cape Canaveral, FL $5.2+M

PAST PROJECT EXPERIENCE WITH OTHER FIRMS

Wilmington Port Authority–Replacement of Berth 8 Phase 2 Wilmington NC $29M
Caddell Construction Co. (DE), LLC–Nuclear Power Training Facility, Charleston SC for the Department of Navy, NAVFAC Southeast $12.65M
NAVFAC SE (sub to CMS Corp.) D/B Recapitalize Deep Draft Berthing Wharf Charlie C-2, Jacksonville, FL $15.1M
Canaveral Lock & Barge East-West Guide Wall Replacement, Port Canaveral, FL $6.55M
Canaveral Port Authority-Cruise Terminal 1 Berth, Cape Canaveral, FL $32M
Haskell (Prime)–City of Jacksonville-Marine Demo & Construction of Jacksonville Southbank Riverwalk, Jacksonville, FL $9M
FDOT SR 312 EB at Matanzas River Bridge–Installed Impressed Cathodic Protection System $2.4M
Canaveral Port Authority-Construction & Dredging for the New Cargo Berths NCB 5 & 6, Cape Canaveral, FL $42M
NAVFAC SE–Mayport–Wharf Charlie1 Improvements/Design/Build–Mayport, FL $26M
Canaveral Port Authority, CT6 Reconstruction, Cape Canaveral, FL $18M
FDOT–T2199-SR-200 Bridge over Amelia River Fender System Replacement, Fernandina Beach, FL $1.6M
United Contractors–South Carolina DOT-SC802 Bridge Over the Beaufort River–Beaufort, SC $15.75M
John F. Kennedy Space Center–Install Scour Protection–Various Bridges–Kennedy Space Center, FL $4.18M

EXHIBIT C

Corporate Officers' Background and Experience

William Chivers

Vice President
RUSH Marine, LLC

CEO
RUSH Construction, Inc.

January 1997 - Present

Resident of Titusville, FL

Local Boards

- Executive Board – Titusville YMCA
- Executive Board –Career Source Brevard
- Past Board Chair – Associated Builders & Contractors
- Board of Directors – Space Coast Economic Development Council

Education/Certifications

- State Certified General Contractor
- LEED® Accredited Professional in Building Design & Construction
- AA Degree, Brevard Community College
- Completed Courses in Civil Engineering

Years of Experience
44

William Chivers is the CEO of RUSH Construction Inc and Vice President of RUSH Marine, LLC. Mr. Chivers has over 40 years of construction related experience in all phases of construction, with an emphasis on government and commercial construction. A LEED® Accredited Professional and a licensed General Contractor, Mr. Chivers has been directly involved with all aspects of construction and general contracting including project management, estimating, scheduling and financial controls. As the CEO of RUSH Construction, he is responsible for the company's business development and contract negotiations.

PAST PROJECT EXPERIENCE WITH CURRENT FIRM

Viera Charter School Campus Expansion, Viera, FL $11.431+ Million
Grumman J-Stars Facility, Melbourne Airport, FL $14.5 Million
Apollo/Saturn V Center, Kennedy Space Center, FL $17.5 Million
SOF 501D Parking Garage (Construct 4-story parking structure), MacDill AFB, FL $9.5 Million
Utility Shops Facility (25,000sf Utility Shops Facility), KSC, FL $6.2 Million
Satellite Alert Facility (Construct a 4,000sf facility), CCAFS, FL $4.8 Million
Design/Build Satellite Operations Facility, CCAFS, FL $5.3 Million
Design/Build EOD Facility, (Design/Build a new facility that will house 19 staff members), MacDill AFB, FL $3.2 Million
BRAC AFR ASTS Facility (Construction of an 18,160sf one-story facility), MacDill AFB, FL $4.1 Million
South Orlando YMCA, Center Florida YMCA, (Complete Building Renovation and Addition), Orlando, FL $3.3 Million
Services Complex-USACE, Homestead AFB, FL $2.8 Million
Fire Crash Rescue Station (**Design/Build)**, CCAFS, FL $6.8 Million
American Police Hall of Fame (Design/Build), Titusville, FL $5.9 Million
RLV Phase I Hangar, Kennedy Space Center, FL $4.2 Million

These are a small sample of projects that Mr. Chivers has been involved with over the years.

EXHIBIT C

Corporate Officers' Background and Experience

David Dapore

Secretary
RUSH Marine, LLC

VP of Finance
RUSH Construction, Inc.

January 2011 - Present

Resident of Deltona, FL

Education/Certifications
University of Central Florida
Bachelor of Science in Business Administration - Finance

Years of Experience
25 years in an accounting and finance role within the construction industry.

David Dapore is an officer, shareholder, and Board of Directors member. Mr. Dapore currently serves as Secretary and Vice President of Finance, and manages the day-to-day accounting and financial functions of RUSH Marine, LLC.

PROJECT ROLE
Work with the Project Managers and other team members to ensure a successful project, and more specifically as it relates to the accounting, financial, bonding, and insurance aspects of the project.

PROJECT EXPERIENCE WITH CURRENT FIRM
Marine, government, commercial/industrial, and medical construction project experience.

PAST EXPERIENCE WITH OTHER FIRMS
Controller then officer and CFO at R.W. Paul Construction, Inc., Commercial General Contractor in Maitland, FL
1999-2010

Tab 8

Professional References for Previous Experience

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: Canaveral Port Authority
   Contact Person: Patrick Hammond P.E.
   City, State: Cape Canaveral, FL 32920
   Telephone Number: 321-783-7831
   Email Address: phammond@portcanaveral.com
   Description of goods/services provided: Demolish existing concrete pier and construct 967' long cargo terminal.
   Contract Amount: $48,070,447
   Start/End Date of Contract: September 2021 - May 2023
2. Company Name: City of Titusville
   Contact Person: Ashleigh Smith
   City, State: Titusville, FL 32796
   Telephone Number: 321-567-3869
   Email Address: ashleigh.smith@titusville.com
   Description of goods/services provided: Construction of concrete pedestrian bridge.
   Contract Amount: $998,656
   Start/End Date of Contract: January 2024 - April 2024
3. Company Name: City of Cocoa
   Contact Person: Gary Palmer
   City, State: Cocoa, FL 32922
   Telephone Number: 321-433-8772
   Email Address: gpalmer@cocoafl.org
   Description of goods/services provided: Replaced two timber overlooks with new concrete overlook structures.
   Contract Amount: $995,558
   Start/End Date of Contract: January 2020 - June 2020

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: **Canaveral Port Authority, Patrick Hammond P.E.**
   Phone: **321-783-7831**
   Current Client: ☒ Yes ☐ No
   Number of years of service provided: **20+**
   Description of service: **see attached**

2. Contact Name: **City of Titusville, Ashleigh Smith**
   Phone: **321-567-3869**
   Current Client: ☐ Yes ☒ No
   Number of years of service provided: **6+**
   Description of service: **see attached**

3. Contact Name: **City of Cocoa, Gary Palmer**
   Phone: **321-433-8772**
   Current Client: ☐ Yes ☒ No
   Number of years of service provided: **5+**
   Description of service: **see attached**

This document must be completed and returned with your Submittal.

Project Experience

North Cargo Berth 3 Modernization & Rehabilitation

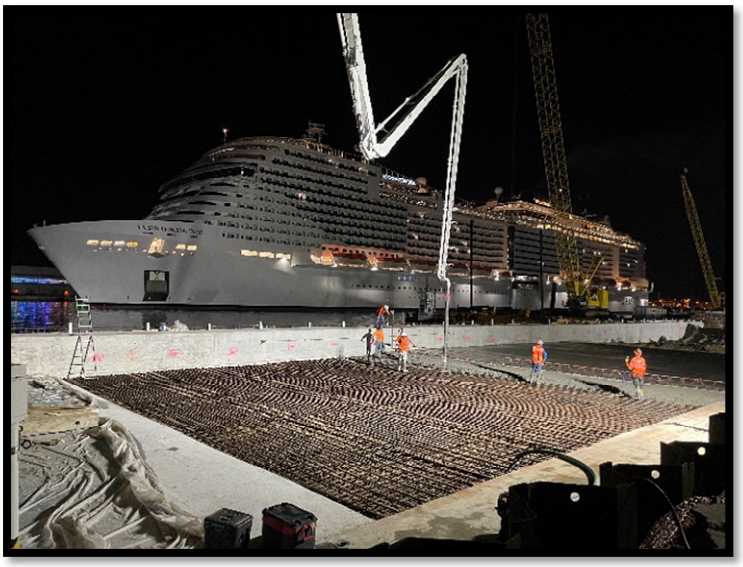
Canaveral Port Authority
445 Challenger Road
Cape Canaveral, FL 32920
321-783-7831

Service Provided:
New Marina Berth construction gross area approximately 140,000 SF, Berth length 967 LF. Demolition of existing open pile pier in its entirety, existing bulkhead, and miscellaneous structures. Furnished and installed a new deep wall structure, A-frame tie system with steel pipe piles and concrete cap, relieving platform piles, and concrete structure, mono-pile dolphins and walkways, tie rods and mooring fixtures, and fenders.

Contract Amount:
$48,070,447

Project Timeframe:
September 2021 - May 2023

Contact Reference:
Patrick Hammond
321-783-7831
phammond@portcanaveral.com



Project Experience

Cruise Terminal 3 Waterside Modifications

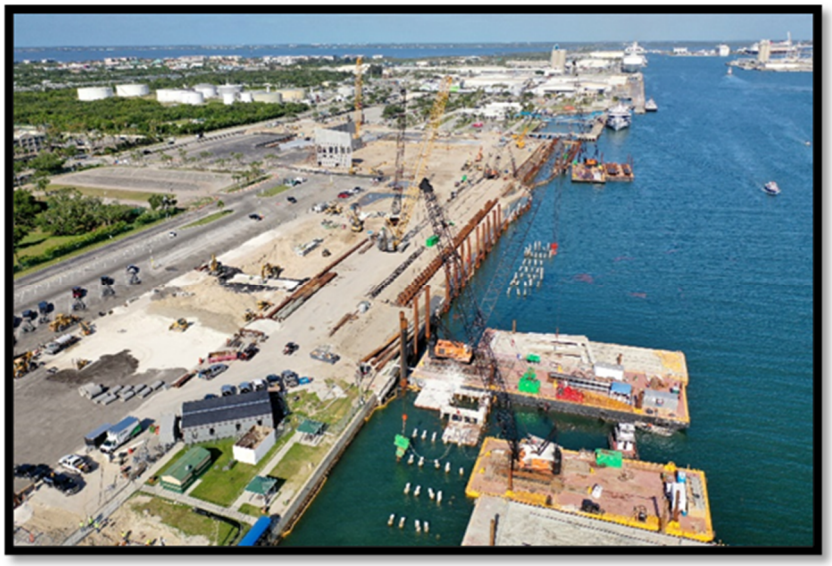
Canaveral Port Authority
445 Challenger Road
Cape Canaveral 32920

Service Provided:
Demolished and disposed of approximately 1,400 LF of existing concrete open pile pier including piles, existing bulkheads, and concrete dolphin structures. Replaced the existing structures with deep wall structures. This scope included furnishing and installation of the steel sheet-pipe combination wall system, steel pipe A-frame tie back system, mono-piles and shore mooring dolphins, sheet pile walls with grouted tie back anchors, below water grouted articulated slope protection mats, fenders, mooring fixtures, dredging, water vaults, and miscellaneous earthwork. Dredged approximately 60,000 CY of materials disposed at an offshore disposal site 5 miles off of the Brevard County coastline.

Contract Amount:
$37,827,298

Project Timeframe:
August 2018 – February 2020

Contact Reference:
Patrick Hammond
321-783-7831
phammond@portcanaveral.com



Project Experience

Cruise Terminal 8 & Cruise Terminal 10 Waterside Modifications

Canaveral Port Authority
445 Challenger Road
Cape Canaveral 32920

Service Provided:
The scope of services for CT8 included the removal of existing double-bit bollards, deck fill-in at two locations, new 125-ton mooring dolphins at the North end, 100-ton monopile mooring dolphins on the South, new 125 MT spring line bollards, and modifications to utilities as necessary for the above renovations.
The scope of services for CT10 included deck fill-in at one location with additional fill-in, monopile mooring dolphin located at the West and East ends of the terminal, wharf power for luggage conveyor connections at three locations, and two future locations along the West end of the wharf. At each location to included two 60-amp receptacles matching the electrical requirements in use along CT-B.

Contract Amount:
$5,269,580

Project Timeframe:
March 2020 – May 2021

Contact Reference:
Patrick Hammond
321-783-7831
phammond@portcanaveral.com

Project Experience

Cruise Terminal 5 Mooring Improvements

Canaveral Port Authority
445 Challenger Road
Cape Canaveral 32920

Service Provided:
The scope of services for the Cruise Terminal 5 Mooring Improvements consisted of the demolition of curb on existing dolphin, and remove, relocate, and install existing foam fender. Constructed a new multi-pile mooring dolphin with six 150-ton bollards, catwalks for the multi-pile mooring dolphin, two mono-pile shore mooring dolphins with 100-ton bollards, as well as lighting for new dolphin, and security cameras.

Contract Amount:
$2,258,744.00

Project Timeframe:
November 2021 - April 2022

Contact Reference:
Patrick Hammond
321-783-7831
phammond@portcanaveral.com

Project Experience

Spaceview Park Improvements

City of Titusville
555 S Washington Avenue
Titusville, Florida 32796

Service Provided:
The scope of services for the Space View Park Improvements project consisted of the removal and replacement of existing timber piers and pavilions, installation of a new steel sheet pile bulkhead with a concrete cap and helical tie backs, miscellaneous site demo, concrete sidewalks, retaining walls, and pavers. The Gemini portion on the Northside of the park included repairs to the shoreline by installing a new rip-rap slope embankment to protect the planters and benches.

Contract Amount:
$1,301,000.00

Project Timeframe:
September 2020 – June 2021

Contact Reference:
Ashleigh Smith
321-567-3869
ashleigh.smith@titusville.com

Project Experience

Spaceview Park Walkway

City of Titusville
555 S Washington Avenue
Titusville, FL 32796

Service Provided:
Construction of 248 LF of concrete walkway, crossing over water connecting the North and South ends of Spaceview Park. Project consisted of concrete piling, precast desk slabs, handrail, and solar lighting.

Contract Amount:
$998,656

Project Timeframe:
January 2024 – April 2024

Contact Reference:
Ashleigh Smith
321-567-3869
ashleigh.smith@titusville.com

Project Experience

Cocoa Riverfront Park Promenade Improvements

City of Cocoa
401 Riveredge Blvd.
Cocoa, FL 32922

Service Provided:
The project consisted of replacing the two timber overlooks with new concrete overlook structures, and the installation of 600 LF concrete footings and seawall, as well as the relocation of waterline and upland utilities.

Contract Amount:
$995,558

Project Timeframe:
January 2020 – June 2020

Contact Reference:
Gary Palmer
321-433-8772
gpalmer@cocoafl.org

Project Experience

Lake Ashby Pier Replacement

County of Volusia, Florida
123 W. Indiana Avenue
DeLand, FL 32720

Service Provided:
Removal and replacement of a 613 LF timber pier located at Lake Ashby within Volusia County. Included: observation decks, as well as cross bracing, cap boards, stringers, deck, handrail, lighting, and water supply.

Contract Amount:
$566,191

Project Timeframe:
February 2023 – August 2023

Contact Reference:
Charles Conway
386-804-7403
cconway@volusia.org

Tab 9

List of Subcontractors

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.

N/A
RUSH Marine shall self perform all work.

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

Tab 10

Scrutinized Companies Certification

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, Anthony Landry, President, on behalf
(Print Name and Title)

of RUSH Marine, LLC ("Company"), certify that RUSH Marine, LLC
(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.

RUSH Marine, LLC
COMPANY NAME

Anthony Landry
SIGNATURE

Anthony Landry
PRINT NAME

President
TITLE

STATE OF FLORIDA

COUNTY OF: Brevard

The foregoing instrument was acknowledged before me by means of ☑ physical presence or ☐ online notarization, this 24th day of July, 2024, by Anthony Landry 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:

RONALD DEAN REED JR.
Notary Public State of Florida
Commission # HH 283456
My Commission Expires
August 09, 2026

This document must be completed and returned with your submittal

Tab 11

Local Business Affidavit

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)*: ITB: #24-09

Business Name: RUSH Marine, LLC Contact Person/Title: Anthony Landry, President

Mailing Address: 6285 Riverfront Center Blvd. City,State,Zip: Titusville, FL 32780

Phone Number: 321-267-8100 Email address: tlandry@rushinc.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): 82-4091915

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.

RUSH Marine, LLC
Name of Business

Anthony Landry
Authorized Signature

Anthony Landry, President
Printed Name and Title

STATE OF: Florida

COUNTY OF: Brevard

The foregoing instrument was acknowledged before me by means of ☑physical presence or ☐online notarization, this 24th day of July, 2024, by Anthony Landry 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:

RONALD DEAN REED JR
Notary Public-State of Florida
Commission # HH 283456
My Commission Expires
August 09, 2026

This document must be completed and returned with your Submittal

Tab 12

E-Verify Affidavit

FORM 7.12 – E-VERIFY AFFIDAVIT

CITY OF PORT ORANGE

CONTRACTOR E-VERIFY AFFIDAVIT
IN ACCORDANCE WITH SECTION 448.095, FLORIDA STATUTES

Project Name: Memorial Park Piers Rehabilitation

Solicitation Number: IBT: #24-09

I, the undersigned hereby certify that RUSH Marine, LLC (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 RUSH Marine, LLC (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.

Anthony Landry, President
Print or Type Name, Title

Anthony Landry
Signature of Affiant

82-4091915
Federal Employer ID Number (FEIN)

1319721
E-Verify Number

STATE OF FLORIDA

COUNTY OF: Brevard

The foregoing instrument was acknowledged before me by means of ☑ physical presence or ☐ online notarization, this 24th day of July, 2024, by Anthony Landry 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:

RONALD DEAN REED JR
Notary Public-State of Florida
Commission # HH 283458
My Commission Expires
August 09, 2026

This document to be completed and returned with your Submittal

My Company Profile

Company Information

Company Name
RUSH Marine, LLC

Doing Business As (DBA) Name

Company ID
1319721

Enrollment Date
Jun 29, 2018

Employer Identification Number (EIN)
824091915

Unique Entity Identifier (UEI)

DUNS Number
116841595

Total Number of Employees
20 to 99

NAICS Code
237

Sector
Construction

Subsector
Heavy and Civil Engineering Construction

Tab 13

Certificate Regarding Debarment, Suspension & Other Responsibility Matters

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 bee 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.

RUSH Marine, LLC
Organization Name

Memorial Park Piers Rehabilitation
Bid Number or Project Name

Anthony Landry, President
Name and Title of Authorized Representative

Anthony Landry 7/24/2024
Signature Date

This document must be completed and returned with your Submittal

Tab 14

Affidavit of Compliance

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 (Title) of RUSH Marine, LLC (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: July 24, 2024 Signed: Anthony Landry

Entity: RUSH Marine, LLC Name: Anthony Landry

Title: President

STATE OF: Florida COUNTY OF: Brevard

The foregoing instrument was acknowledged before me by means of ☐physical presence or ☐online notarization, this 24th day of July, 2024, by Anthony Landry 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:

RONALD DEAN REED JR
Notary Public-State of Florida
Commission # HH 283456
My Commission Expires
August 09, 2026

My commission expires: 8/9/2026

This document must be completed and returned with your Submittal

Tab 15

No Submittal Response Form

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:

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.

Tab 16

Certification Regarding Lobbying

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, RUSH Marine, LLC, 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.

Anthony Landry

Signature of Contractor's Authorized Official

Anthony Landry, President

Name & Title of Contractor's Authorized Official

Date: 7/24/2024

This document must be completed and returned with your Submittal

Tab 17

Schedule of Unit Pricing

(ATTACHMENT 1) - SCHEDULE OF UNIT PRICING

ITB #24-09 Memorial Park Piers Rehabilitation

Completed (Attachment 1) Schedule of Unit Pricing MUST be included with Bid Submission

BIDDERS MUST COMPLETE ALL FIELDS SHOWN IN GREEN

LEGEND:
LS - Lump Sum
SF - Square Feet
LF - Linear Feet
SY - Square Yards

Name of Business:	RUSH Marine, LLC
Contact Person:	Anthony Landry
Email Address:	tlandry@rushinc.com
Authorized Signature:	Anthony Landry

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

BASE BID

BASE BID - Complete rehabilitation and repair of both Memorial Park Piers A & B, using wood piers and handrails with composite horizontal top handrail, as detailed in Attachment 2 Technical Specifications.

ITEM NO.	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	EXTENDED PRICE
1	Mobilization and Demobilization	1	LS	48,310.00	48,310.00
2	Construction Survey and As-Built Survey	1	LS	5,537.00	5,537.00
3	Environmental Compliance	1	LS	41,819.00	41,819.00
4	Temporary Traffic Control	1	LS	2,399.00	2,399.00
5	Demolition, Hauling and Disposal	1	LS	82,467.00	82,467.00
6	Wood Handrails (Horizontal Top Handrail - Composite)	5,250	SF	28.00	147,000.00
7	Wood Piers	6,000	SF	28.00	168,000.00
8	Mesh Railing and Staples (2in.x 4in. Squares, 36in. Height, 100ft rolls)	1,525	LF	14.00	21,350.00
9	Concrete Sidewalk	21	SY	891.00	18,711.00
10	Concrete Grade Beam	60	LF	637.00	38,220.00
				BASE BID TOTAL PRICE:	573,813.00

BID ALTERNATES

BID ALTERNATE #1 is for the complete rehabilitation and repair of Memorial Park Pier B using wood piers and handrails with composite horizontal top handrail and the complete demolition, removal, hauling and disposal of existing Pier A as detailed in Attachment 2 Technical Specifications.

ITEM NO.	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	EXTENDED PRICE
11	Mobilization and Demobilization	1	LS	60,089.00	60,089.00
12	Construction Survey and As-Built Survey	1	LS	6,135.00	6,135.00
13	Environmental Compliance	1	LS	51,372.00	51,372.00
14	Temporary Traffic Control	1	LS	3,263.00	3,263.00
15	Demolition, Hauling and Disposal	1	LS	74,714.00	74,714.00
16	Wood Handrails (Horizontal Top Handrail - Composite)	2,260	SF	36.00	81,360.00
17	Wood Piers	3,040	SF	32.00	97,280.00
18	Mesh Railing and Staples (2in.x 4in. Squares, 36in. Height, 100ft rolls)	750	LF	18.00	13,500.00
19	Concrete Sidewalk	15	SY	1,185.00	17,775.00
20	Concrete Grade Beam	36	LF	854.00	30,744.00
21	Demolition, Hauling and Disposal of Existing Pier "A"	1	LS	116,264.00	116,264.00
				BID ALTERNATE #1 TOTAL PRICE:	552,496.00

BID ALTERNATE #2 is for the complete rehabilitation and repair of both Memorial Park Piers A & B, using all composite piers and handrails as detailed in Attachment 2 Technical Specifications.

ITEM NO.	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	EXTENDED PRICE
22	Mobilization and Demobilization	1	LS	53,186.00	53,186.00
23	Construction Survey and As-Built Survey	1	LS	5,881.00	5,881.00
24	Environmental Compliance	1	LS	48,168.00	48,168.00
25	Temporary Traffic Control	1	LS	2,858.00	2,858.00
26	Demolition, Hauling and Disposal	1	LS	91,021.00	91,021.00
27	Composite Handrails	5,250	SF	45.00	236,250.00
28	Composite Piers	6,000	SF	44.00	264,000.00
29	Mesh Railing and Staples (2in.x 4in. Squares, 36in. Height, 100ft rolls)	1,525	LF	16.00	24,400.00
30	Concrete Sidewalk	21	SY	1,030.00	21,630.00
31	Concrete Grade Beam	60	LF	725.00	43,500.00
				BID ALTERNATE #2 TOTAL PRICE:	790,894.00

Tab 18

Current Bonding Capacity Letter

McGriff

3522 Thomasville Rd., Suite 300
Tallahassee, FL 32309
Main: (850) 386-2143

July 23, 2024

RE: 24/25 Surety Qualification; RUSH Marine, LLC

To Whom It May Concern:

It has been my pleasure to provide surety credit for RUSH Marine, LLC. RUSH Marine, LLC enjoys an excellent relationship with their surety, Berkley Insurance Company. Berkley Insurance Company is rated A+ XV by A.M. Best Rating Service, is listed as acceptable on the Federal Register for single bonds up to $757,021,000 and is licensed in the State of Florida.

RUSH Marine, LLC has established surety credit of $50,000,000 for single projects with an aggregate capacity of $100,000,000.

Berkley Surety Group's decision to issue any bond is conditioned upon acceptable review of contract terms, bond forms and financing for each project as well as other pertinent underwriting information at the time of the request.

If you need any further information or documentation please do not hesitate to contact me.

Sincerely,

Charles Hodges
Attorney-In-Fact for Surety

Tab 19

Licenses

Ron DeSantis, Governor

Melanie S. Griffin, Secretary

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

CONSTRUCTION INDUSTRY LICENSING BOARD

THE GENERAL CONTRACTOR HEREIN IS CERTIFIED UNDER THE
PROVISIONS OF CHAPTER 489, FLORIDA STATUTES

CHIVERS, WILLIAM C JR

RUSH MARINE, LLC
3735 CHIARA DRIVE
TITUSVILLE FL 32796

LICENSE NUMBER: CGC1526374

EXPIRATION DATE: AUGUST 31, 2024

Always verify licenses online at MyFloridaLicense.com

Do not alter this document in any form.

This is your license. It is unlawful for anyone other than the licensee to use this document.

Ron DeSantis, Governor

Melanie S. Griffin, Secretary

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

CONSTRUCTION INDUSTRY LICENSING BOARD

THE GENERAL CONTRACTOR HEREIN IS CERTIFIED UNDER THE
PROVISIONS OF CHAPTER 489, FLORIDA STATUTES

THORNTON, REUBEN THOMAS

RUSH MARINE, LLC
6285 RIVERFRONT CENTER BLVD
TITUSVILLE FL 32780

LICENSE NUMBER: CGC1535761

EXPIRATION DATE: AUGUST 31, 2024

Always verify licenses online at MyFloridaLicense.com

ISSUED: 03/26/2024

Do not alter this document in any form.

This is your license. It is unlawful for anyone other than the licensee to use this document.

Detail by Entity Name

Florida Limited Liability Company
RUSH MARINE, LLC

Filing Information

Document Number	L18000016697
FEI/EIN Number	82-4091915
Date Filed	01/18/2018
Effective Date	01/18/2018
State	FL
Status	ACTIVE
Last Event	LC AMENDMENT
Event Date Filed	01/31/2018
Event Effective Date	NONE

Principal Address

6285 RIVERFRONT CENTER BLVD.
TITUSVILLE, FL 32780

Changed: 02/22/2019

Mailing Address

6285 RIVERFRONT CENTER BLVD.
TITUSVILLE, FL 32780

Changed: 02/22/2019

Registered Agent Name & Address

CHIVERS, WILLIAM
6285 RIVERFRONT CENTER BLVD.
TITUSVILLE, FL 32780

Address Changed: 02/22/2019

Authorized Person(s) Detail

Name & Address

Title MBR

RUSH CONSTRUCTION, INC.
6285 RIVERFRONT CENTER BLVD.
TITUSVILLE, FL 32780

Title P

LANDRY, ANTHONY
6285 RIVERFRONT CENTER BLVD.
TITUSVILLE, FL 32780

Title VP

CHIVERS, WILLIAM
6285 RIVERFRONT CENTER BLVD.
TITUSVILLE, FL 32780

Title S

DAPORE, DAVID
6285 RIVERFRONT CENTER BLVD.
TITUSVILLE, FL 32780

Annual Reports

Report Year	Filed Date
2022	03/16/2022
2023	03/10/2023
2024	02/01/2024

Document Images

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01/31/2018 -- LC Amendment	View image in PDF format
01/18/2018 -- Florida Limited Liability	View image in PDF format

Tab 20

Bid Bond

BID BOND

BID BOND

Bond No.: ITB # 24-09

KNOW ALL MEN BY THESE PRESENTS that RUSH Marine, LLC, as Contractor, duly authorized to conduct business in the State of Florida, whose principal place of business is located at 6285 Riverfront Center Blvd., Titusville, FL 32780, Tel.: 321-267-8100, (hereinafter called "PRINCIPAL"), and Berkley Insurance Company, as SURETY, duly authorized to conduct business in the State of Florida, whose principal place of business is located at 475 Steamboat Road, Greenwich, CT 06830, Tel: 203-542-3800 (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 July 24, 2024, for:

Project Name/Bid No.: ITB #24-09 Memorial Park Piers Rehabilitation

Project Address: Port Orange, Volusia County, Florida

Legal Description: Complete rehabilitation and repair of both Memorial Park Piers A & B, using wood piers and handrails with composite horizontal top handrail as detailed in Attachment 2 Technical Specifications.

Description of Work: Bid Alternate 1 is for the complete rehabilitation and repair of Memorial Park Pier B using wood piers and handrails with composite horizontal top handrail and the complete demolition, removal, hauling and disposal of existing Pier A as detailed in Attachment 2 Technical Specifications. Bid Alternate 2 is for the complete rehabilitation and repair of both Memorial Park Piers A & B, using all composite piers and handrails as detailed in Attachment 2 Technical Specifications.

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 24th day of July, 20 24, 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: RUSH Marine, LLC

Anthony Landry

Signature

Anthony Landry, President

Corporate Officer & Title

ATTEST:

Signature

DAVID DAPORE

Corporate Secretary (Affix Corporate Seal)

WITTNESSESS:

Anna Chase

Kailey Jernigan-Sapp

ATTEST:

Signature

Kristie E. Shaw

Corporate Secretary (Affix Corporate Seal)

SURETY: Berkley Insurance Company

Attorney-in-Fact (signature)

Charles Hodges, Attorney-in-Fact

Name & Title

Charles Hodges, FL Resident Agent License No. W331496

Name of Local Resident Agent

Tallahassee, FL 32309

City, State, Zip

850-386-2143

Telephone:

A.M. Best No.: 058496 NAIC No.: 32603

STATE OF Florida

COUNTY OF Leon

Before me this day personally appeared Charles Hodges (affiant), who, being duly sworn, deposes and says that he/she is the Attorney-in-Fact for the Berkley Insurance Company (corporate surety) and that this person has been authorized by Berkley 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 Charles Hodges

The foregoing instrument was acknowledged before me by means of ☒physical presence or ☐online notarization, this 24th day of July, 2024, by Charles Hodges 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:
Kristie E. Shaw

KRISTIE E. SHAW
MY COMMISSION # HH 151603
EXPIRES: August 2, 2025
Bonded Thru Notary Public Underwriters

END OF BID BOND

This document must be completed and returned with your Submittal

No. BI-10360b-el

POWER OF ATTORNEY
BERKLEY INSURANCE COMPANY
WILMINGTON, DELAWARE

KNOW ALL MEN BY THESE PRESENTS, that BERKLEY INSURANCE COMPANY (the "Company"), a corporation duly organized and existing under the laws of the State of Delaware, having its principal office in Greenwich, CT, has made, constituted and appointed, and does by these presents make, constitute and appoint: ***Daniel Laurie Sherraden; Benjamin R. Campbell, Jr.; or Charles Hodges of McGriff Insurance Services, LLC of Tallahassee, FL*** its true and lawful Attorney-in-Fact, to sign its name as surety only as delineated below and to execute, seal, acknowledge and deliver any and all bonds and undertakings, with the exception of Financial Guaranty Insurance, providing that no single obligation shall exceed **One Hundred Million and 00/100 U.S. Dollars (U.S.$100,000,000.00),** to the same extent as if such bonds had been duly executed and acknowledged by the regularly elected officers of the Company at its principal office in their own proper persons.

This Power of Attorney shall be construed and enforced in accordance with, and governed by, the laws of the State of Delaware, without giving effect to the principles of conflicts of laws thereof. This Power of Attorney is granted pursuant to the following resolutions which were duly and validly adopted at a meeting of the Board of Directors of the Company held on January 25, 2010:

RESOLVED, that, with respect to the Surety business written by Berkley Surety, the Chairman of the Board, Chief Executive Officer, President or any Vice President of the Company, in conjunction with the Secretary or any Assistant Secretary are hereby authorized to execute powers of attorney authorizing and qualifying the attorney-in-fact named therein to execute bonds, undertakings, recognizances, or other suretyship obligations on behalf of the Company, and to affix the corporate seal of the Company to powers of attorney executed pursuant hereto; and said officers may remove any such attorney-in-fact and revoke any power of attorney previously granted; and further

RESOLVED, that such power of attorney limits the acts of those named therein to the bonds, undertakings, recognizances, or other suretyship obligations specifically named therein, and they have no authority to bind the Company except in the manner and to the extent therein stated; and further

RESOLVED, that such power of attorney revokes all previous powers issued on behalf of the attorney-in-fact named; and further

RESOLVED, that the signature of any authorized officer and the seal of the Company may be affixed by facsimile to any power of attorney or certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligation of the Company; and such signature and seal when so used shall have the same force and effect as though manually affixed. The Company may continue to use for the purposes herein stated the facsimile signature of any person or persons who shall have been such officer or officers of the Company, notwithstanding the fact that they may have ceased to be such at the time when such instruments shall be issued.

IN WITNESS WHEREOF, the Company has caused these presents to be signed and attested by its appropriate officers and its corporate seal hereunto affixed this 11th day of April, 2023.

BERKLEY INSURANCE COMPANY CORPORATE SEAL 1975 DELAWARE

Attest:

By _____
Ira S. Lederman
Executive Vice President & Secretary

Berkley Insurance Company

By _____
Jeffrey M. Hafter
Senior Vice President

STATE OF CONNECTICUT)
) ss:
COUNTY OF FAIRFIELD)

Sworn to before me, a Notary Public in the State of Connecticut, this 11th day of April, 2023, by Ira S. Lederman and Jeffrey M. Hafter who are sworn to me to be the Executive Vice President and Secretary, and the Senior Vice President, respectively, of Berkley Insurance Company.

MARIA C RUNDBAKEN
NOTARY PUBLIC
CONNECTICUT
MY COMMISSION EXPIRES
APRIL 30, 2024

_____
Notary Public, State of Connecticut

CERTIFICATE

I, the undersigned, Assistant Secretary of BERKLEY INSURANCE COMPANY, DO HEREBY CERTIFY that the foregoing is a true, correct and complete copy of the original Power of Attorney; that said Power of Attorney has not been revoked or rescinded and that the authority of the Attorney-in-Fact set forth therein, who executed the bond or undertaking to which this Power of Attorney is attached, is in full force and effect as of this date.

BERKLEY INSURANCE COMPANY CORPORATE SEAL 1975 DELAWARE

Given under my hand and seal of the Company, this 24th day of July, 2024.

_____
Vincent P. Forte

BERKLEY INSURANCE COMPANY CORPORATE SEAL DELAWARE

Tab 21

Certificate of Insurance

Client#: 2176754 131RUSHMAR

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 7/18/2024

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 any rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME:	
McGriff Insurance Services PO Box 4927 Orlando, FL 32802-4927 407 691-9600	PHONE (A/C, No, Ext): 407 691-9600	FAX (A/C, No): 888-635-4183
	E-MAIL ADDRESS:	

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : New York Marine & General Insurance Co	
INSURER B : Navigators Insurance Company	
INSURER C : Manufacturers Alliance Insurance Co	
INSURER D : American Longshore Mutual Association	
INSURER E : Safe Harbor Pollution Insurance	
INSURER F :	

INSURED
RUSH Marine, LLC
6285 Riverfront Center Blvd
Titusville, FL 32780

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 INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY	X	X	ML202400002185	04/01/2024	04/01/2025	EACH OCCURRENCE	$1,000,000
	CLAIMS-MADE X OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	$100,000
	X Ded-$5,000						MED EXP (Any one person)	$5,000
							PERSONAL & ADV INJURY	$1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$2,000,000
	POLICY X PRO-JECT LOC						PRODUCTS - COMP/OP AGG	$2,000,000
	OTHER:						Claim Exp	$1,000,000
A	AUTOMOBILE LIABILITY	X	X	AU202400019735	04/01/2024	04/01/2025	COMBINED SINGLE LIMIT (Ea accident)	$1,000,000
	X ANY AUTO						BODILY INJURY (Per person)	$
	OWNED AUTOS ONLY / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	HIRED AUTOS ONLY / NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	$
								$
A	UMBRELLA LIAB X OCCUR	X	X	ML202400002184	04/01/2024	04/01/2025	EACH OCCURRENCE	$10,000,000
	X EXCESS LIAB CLAIMS-MADE						AGGREGATE	$
B	DED X RETENTION $25,000			NY24LIAZ0DQJC01	04/01/2024	04/01/2025	Each Occ/Agg	$9,000,000
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y / N	N / A	X	1155720Y	04/01/2024	04/01/2025	X PER STATUTE OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? N						E.L. EACH ACCIDENT	$1,000,000
	(Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$1,000,000
							E.L. DISEASE - POLICY LIMIT	$1,000,000
A	P & I			ML202400002185	04/01/2024	04/01/2025	1,000,000; ded-$5,000	
A	Marine Empl Liab			ML202400002185	04/01/2024	04/01/2025	Included; ded-$5,000	
D	WC-USL&H			ALMA0242004	04/01/2024	04/01/2025	1,000,000-Each Acc/Agg	

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

Insurer E: Vessel Pollution Liability-Policy #V1583724 -Limit-$5,000,000
Insurer B: Site Pollution Liability-Policy NY24ECPX01414NC -Limit-$1,000,000 per occr / 2,000,000 Ann Agg/ $10,000 deductible.

RE: ITB# 24-09 - Memorial Park Piers Rehabilitation
(See Attached Descriptions)

CERTIFICATE HOLDER

City of Port Orange, Florida
1000 City Center Circle
Port Orange, FL 32129

CANCELLATION

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

AUTHORIZED REPRESENTATIVE

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DESCRIPTIONS (Continued from Page 1)

CERTHOLDER and PROJECT OWNER IF APPLICABLE or OWNER is/are included as Additional insured(s) with respect to General Liability and Auto liability when required by written contract and per policy terms and conditions. Additional insured and waiver of subrogation has been endorsed onto the Excess. The Excess is over the General Liability, Auto Liability and State Act Workers' Compensation. A Waiver of Subrogation applies to the General Liability, Auto Liability and Workers Compensation when required by written contract. The attached pages noting additional terms, conditions, coverage and/or comments applies. All supporting endorsements(s) and policy forms(s) attached, if any, comprise the Certificate of Liability Insurance in its entirety. Please review these endorsement(s) and policy form(s) as certain coverage provided by them may only apply when a written contract or agreement between the parties requires such coverage be provided.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COMMERCIAL AUTO COVERAGE EXTENSION - FLORIDA

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

SCHEDULE

A.	Airbag Coverage	**K.**	Extra Expense – Stolen Autos
B.	Audio, Visual And Data Electronic Equipment Coverage	**L.**	Hybrid Payment Coverage
C.	Blanket Additional Insured Required By Contract	**M.**	New Vehicle Replacement Cost
D.	Blanket Waiver Of Subrogation	**N.**	Personal Effects And Property Of Others
E.	Duties In The Event Of Accident, Claim, Suit Or Loss	**O.**	Rental Reimbursement Coverage
F.	Employees As Insureds	**P.**	Sign Coverage
G.	Employee Hired Autos Liability Coverage	**Q.**	Supplementary Payments – Bail Bonds
H.	Expanded Towing Coverage	**R.**	Supplementary Payments – Loss Of Earnings
I.	Expanded Transportation Expenses	**S.**	Temporary Substitute Autos – Physical Damage Coverage
J.	Extended Glass Coverage	**T.**	Unintentional Failure To Disclose Information

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BUSINESS AUTO COVERAGE FORM is amended to include the following additions and extensions of coverage:

Coverage extensions under this endorsement only apply in the event that no other specific coverage for these extensions is provided under this policy. If such specific coverage applies, the terms, conditions and limits of that coverage are the sole and exclusive coverage applicable under this policy, unless otherwise noted in this endorsement.

A. AIRBAG COVERAGE

Paragraph **B.2** of the **Exclusions** provisions of **SECTION III – PHYSICAL DAMAGE COVERAGE** is amended by the addition of the following:

The exclusion for mechanical or electrical breakdown does not apply to the accidental discharge of an airbag when "you" carry Comprehensive or Collision Coverage. This coverage is excess over any other collectible insurance or warranty. No deductible applies to this coverage.

B. AUDIO, VISUAL AND DATA ELECTRONIC EQUIPMENT COVERAGE

Paragraph **A.4. Coverage Extensions** of **SECTION III – PHYSICAL DAMAGE COVERAGE** is amended by the addition of the following:

1. We will pay for "loss" to any electronic equipment that receives or transmits audio, visual or data signals and that is not designed solely for the reproduction of sound. This coverage applies only if the equipment is permanently installed in the covered "auto" at the time of the" loss" or the equipment is removable from a housing unit which is permanently installed in the covered "auto" at the time of "loss" and such equipment is designed to be solely operated by use of the power from the covered "auto's" electrical system, in or upon the covered "auto", including its accessories. However, this does not include tapes, records or discs.

The Exclusions listed under Paragraph **B.** of **SECTION III – PHYSICAL DAMAGE COVERAGE**, except for the exclusion relating to Audio, Visual and Data Electronic Equipment, also apply to coverage provided herein. In addition, the following exclusion applies:

We will not pay, under this coverage, for either any electronic equipment or accessories used with such electronic equipment that is:

(a) Necessary for the normal operations of the covered "auto" or the monitoring of the covered "autos" operating system; or

(b) Both:

(i) An integral part of the same unit housing any sound reproducing equipment designed solely for the reproduction of sound if the sound reproducing equipment is permanently installed in the covered "auto"; and

(ii) Permanently installed in the opening of the dash or console normally used by the manufacturer for the installation of a radio.

Paragraph **C.1.a.** of the **Limits of Insurance** provision of **SECTION III – PHYSICAL DAMAGE COVERAGE** is deleted and replaced by the following:

2. The most we will pay for all loss or damage to audio, visual or data electronic equipment and any accessories used with this equipment as a result of any one "loss" is the lesser of:

a. The actual cash value of the damaged or stolen property as of the time of the "loss"; or

b. The cost of repairing or replacing the damaged or stolen property with other property of like kind and quality; or

c. $500

An adjustment for depreciation and physical condition will be made in determining actual cash value at the time of "loss".

Paragraph **D. Deductible** of **SECTION III – PHYSICAL DAMAGE COVERAGE** is deleted and replaced by the following:

3. Deductibles applicable to **SECTION III – PHYSICAL DAMAGE COVERAGE** do not apply to this Audio, Visual and Data Electronic Equipment Coverage.

If there is other coverage provided by this policy for audio, visual and data electronic equipment, the coverage provided here is excess. However, you may elect to apply the limit, or any portion thereof, of coverage provided in this policy to pay any deductibles that is applicable under the provisions of the other coverage.

C. BLANKET ADDITIONAL INSURED COVERAGE – REQUIRED BY CONTRACT

Paragraph **A.1. Who Is An Insured** of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**, is amended by the addition of the following:

1. Any person or organization with respect to the operation, maintenance, or use, of a covered auto, provided that you and such person or organization have agreed under an expressed provision in a written contract or written agreement or a written permit issued to you by a governmental or public authority, to add such person, organization, or governmental or public authority to this policy as an insured.
However, such person or organization is an insured:

a. Only with respect to the operation, maintenance, or use, of a covered auto; and

b. Caused in whole or part by your acts or omissions or the acts or omissions of those acting on your behalf.

c. Only for, bodily injury or property damage caused by an accident which takes place after:

(1) You executed the "insured contract" or written agreement; or

(2) The permit has been issued to you.

D. BLANKET WAIVER OF SUBROGATION

Paragraph **A.5. Transfer Of Rights Of Recovery Against Others To Us** of **SECTION IV – BUSINESS AUTO CONDITIONS** is amended by the addition of the following:

We waive any right of recovery we may have against any person or organization to the extent required of you by a written contract executed prior to any "accident" because of payments we make for damages under this coverage from.

E. DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS

Paragraph **A.2.a.** of the **Loss Conditions** provision of **SECTION IV – BUSINESS AUTO CONDITIONS** is deleted and replaced by the following:

1. In the event of "accident", claim, "suit" or "loss":

a. You must give us or our authorized representative prompt notice of the "accident" or "loss" after it becomes known to:

(1) You, if you are an individual;

(2) Your partner or member, if you are a partnership or joint venture;

(3) Your member, if you are a limited liability company; or

(4) Your executive officer if you are an organization other than a partnership, joint venture or limited liability company.

(5) Your authorized representative or insurance manager.

Knowledge of an "accident" by persons other than those listed above does not imply that those listed above also have such knowledge.

b. To the extent possible, notice should include:

(1) How, when and where the **"**accident" or "loss" took place;

(2) The names and addresses of any injured persons and witnesses; and

(3) The nature and location of any injury or damage arising out of the "accident".

F. EMPLOYEES AS INSUREDS

Paragraph **A.1. Who Is An Insured** of **SECTION II – COVERED AUTOS LIABILITY COVERAGE** is amended by the addition of the following:

Any "employee" of yours is an "insured" while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

G. EMPLOYEE HIRED AUTOS LIABILITY COVERAGE

Paragraph **A.1. Who Is An Insured** of **SECTION II – COVERED AUTOS LIABILITY COVERAGE** is amended to add the following:

An "employee" of yours is an "insured" while operating an "auto" hired or rented under a written contract or written agreement in that "employee's" name, with your permission, while performing duties related to the conduct of your business.

H. EXPANDED TOWING COVERAGE

Paragraph **A.2. Towing** of **SECTION III – PHYSICAL DAMAGE COVERAGE** is deleted and replaced by the following:

We will pay up to:

1. $250 for a covered “auto” you own of the private passenger type; or

2. $750 for a covered “auto” you own that is not of the private passenger type;

For towing and labor costs incurred each time the covered “auto” is disabled. However, the labor must be performed at the place of disablement. A $250 deductible will be applied to covered “autos” that are not of the private passenger type.

This coverage applies only for an “auto” covered on this policy for Comprehensive or Specified Causes of Loss Coverage and Collision Coverage.

I. EXPANDED TRANSPORTATION EXPENSE

Paragraph **A.4.a. Transportation Expenses** of **SECTION III – PHYSICAL DAMAGE COVERAGE** is deleted and replaced by the following:

We will pay up to $50 per day to a maximum of $1,000 for temporary transportation expense incurred by you because of the total theft of a covered “auto” of the private passenger type. We will only pay for those covered “autos” for which you carry Comprehensive or Specified Causes of Loss Coverage. We will pay for temporary transportation expenses incurred during the period beginning 48 hours after the theft and ending, regardless of the policy’s expiration, when the covered “auto” is returned to use or we pay for its “loss”.

J. EXTENDED GLASS COVERAGE

Paragraph **A.3.a**. of the **Glass Breakage – Hitting A Bird Or Animal – Falling Objects Or Missiles** provision of **SECTION III – PHYSICAL DAMAGE COVERAGE** is deleted and replaced by the following:

Glass breakage – if glass other than a windshield, or a windshield, must be replaced and there is no other damage associated with the "loss", the deductible applicable to glass other than a windshield will be $250, and no deductible will apply to the windshield. If glass can be repaired and is actually repaired rather than replaced, the deductible applicable to glass other than a windshield will be $100, and no deductible will apply to the windshield. You have the option of having the glass repaired rather than replaced.

K. EXTRA EXPENSE – STOLEN AUTOS

Paragraph **A.4. Coverage Extensions** of **SECTION III – PHYSICAL DAMAGE COVERAGE** is amended by the addition of the following:

We will pay up to $5,000 for the expense of returning a stolen covered “auto” to you. We will pay only for those covered “autos” for which you carry Comprehensive or Specified Causes of Loss Coverage.

L. HYBRID PAYMENT COVERAGE

Paragraph **A.4. Coverage Extensions** of **SECTION III – PHYSICAL DAMAGE COVERAGE** is amended by the addition of the following:

1. In the event of a total loss to a “non-hybrid” auto for which Comprehensive, Specified Causes of Loss, or Collision coverages are provided under this Coverage Form, then such Physical Damage Coverages are amended as follows:

   a. If the auto is replaced with a “hybrid” auto or an auto powered solely by electricity or natural gas, we will pay an additional 10%, to a maximum of $2,500, of the “non-hybrid” auto’s actual cash value or replacement cost, whichever is less;

b. The auto must be replaced and a copy of the bill of sale or new lease agreement is received by us within 60 days of the date of "loss";

c. Regardless of the number of autos deemed a total loss, the most we will pay under this Hybrid Payment Coverage provision for any one "loss" is $10,000.

For the purposes of this coverage provision;

a. "Non-hybrid" auto means an auto that uses only an internal combustion engine to move the auto but does not include autos powered solely by electricity or natural gas.

b. "Hybrid" auto means an auto with an internal combustion engine and one or more electric motors; and that uses the internal combustion engine and one or more electric motors to move the auto; or the internal combustion engine to charge one or more electric motors, which move the auto.

M. NEW VEHICLE REPLACEMENT COST

Paragraph **C. Limit of Insurance** of **SECTION III – PHYSICAL DAMAGE COVERAGE** is amended by the addition of the following:

The provisions of paragraph **1.** and **2.** do not apply to a covered "auto" of the private passenger type or a vehicle with a gross vehicle weight of 10,000 pounds or less which is a "new vehicle".

In the event of total "loss" to your "new vehicle" to which this coverage applies, we will pay at your option:

a. The verifiable "new vehicle" purchase price you paid for your damaged vehicle, not including any insurance or warranties purchased; or

b. If it is available, the purchase price, as negotiated by us, of a "new vehicle" of the same make, model and equipment or the most similar model available, not including any furnishings, parts or equipment not installed by the manufacturer or manufacturer's dealership; or

c. The market value of your damaged vehicle, not including any furnishings, parts or equipment not installed by the manufacturer or manufacturer's dealership.

We will not pay for initiation or set up costs associated with loans or leases.

For the purposes of this coverage provision, "new vehicle" means an "auto" of which you are the original owner that has not been previously titled and which you purchased less than 365 days before the date of the "loss".

N. PERSONAL EFFECTS AND PROPERTY OF OTHERS

1. Paragraph **B.6. Care, Custody Or Control** under the **Exclusions** provision of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**, does not apply to "property damage" to property, other than your property, up to an amount not exceeding $250 in any one "accident". Coverage is excess over any other valid and collectible insurance.

2. Paragraph **A.4. Coverage Extensions** under the **Coverage** provision of **SECTION III – PHYSICAL DAMAGE COVERAGE,** is amended by the addition of the following:

We will pay up to $5,000 for your personal property that is lost or damaged as a result of a covered "loss", without applying a deductible. Coverage is excess over any other valid and collectible insurance.

O. RENTAL REIMBURSEMENT COVERAGE

Paragraph **A.4. Coverage Extensions of SECTION III – PHYSICAL DAMAGE COVERAGE** is amended by the addition of the following:

1. This coverage applies only to a covered "auto" for which Physical Damage Coverage is provided on this policy.

2. We will pay for rental reimbursement expenses incurred by you for the rental of an "auto" because of "loss" to a covered "auto". Payment applies in addition to the otherwise applicable amount of each coverage you have on a covered "auto". No deductibles apply to this coverage.

3. We will pay only for those expenses incurred during the policy period beginning 24 hours after the "loss" and ending, regardless of the policy's expiration, with the lesser of the following number of days:

a. The number of days reasonably required to repair or replace the covered "auto". If "loss" is caused by theft, this number of days is added to the number of days it takes to locate the covered "auto" and return it to you.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

4. Our payment is limited to the lesser of the following amounts:

a. Necessary and actual expenses incurred.

b. $100 for any one day and to a maximum of $3,000.

5. This coverage does not apply while there are spare or reserve "autos" available to you for your operations.

P. SIGN COVERAGE

Paragraph **A.4. Coverage Extensions** of **SECTION III – PHYSICAL DAMAGE COVERAGE** is amended by the addition of the following:

We will pay for "loss" to signs, murals, paintings or graphics, as part of the equipment, which are displayed on a covered "auto".

The most we will pay for "loss" in any one "accident" is the lesser of:

(1) The actual cash value of the property as of the time of the "loss"; or

(2) The cost of repairing or replacing the damaged or stolen property with other property of like kind and quality; or

(3) $2,000.

Q. SUPPLEMENTARY PAYMENTS – BAIL BONDS

Paragraph **A.2.a. (2)** of the **Coverage Extensions** provision of **SECTION II – COVERED AUTOS LIABILITY COVERAGE** is deleted and replaced by the following:

Up to $2,500 for cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.

R. SUPPLEMTARY PAYMENTS – LOSS OF EARNINGS

Paragraph **A.2.a. (4)** of the **Coverage Extensions** provision of **SECTION II – COVERED AUTOS LIABILITY COVERAGE** is deleted and replaced by the following:

All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to $500 a day because of time off from work.

S. TEMPORARY SUBSTITUE AUTOS – PHYSICAL DAMAGE COVERAGE

Paragraph **C. Certain Trailers, Mobile Equipment and Temporary Substitute Autos** of **SECTION I – COVERED AUTOS** is amended by the addition of the following:

If Physical Damage Coverage is provided under this Coverage Form, the following types of vehicles are also covered "autos" for Physical Damage Coverage:

Any "auto" you do not own while used with the permission of its owner as a temporary substitute for a covered "auto" you own that is out of service because of its:

a. Breakdown;

b. Repair;

c. Servicing;

d. "Loss"; or

e. Destruction.

T. UNINTENTIONAL FAILURE TO DISCLOSE INFORMATION

Paragraph **B.2. Concealment, Misrepresentation Or Fraud** of **SECTION IV – BUSINESS AUTO CONDITIONS** is amended by the addition of the following:

If you unintentionally fail to disclose any hazards existing at the inception date of this policy, we will not deny coverage under this Coverage Form because of such failure.

However, this provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.

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ENDORSEMENT #2

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

MARINE GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Blanket when required by written contract.

A. "Who Is An Insured" under the Marine General Liability section of the Longshore+ Marine Package Policy is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the Schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

However:
1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to **Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:
1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations whichever is less. This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations

ALL OTHER TERMS AND CONDITIONS REMAINING UNCHANGED

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ENDORSEMENT #1

ADDITIONAL INSURED – STATE OR GOVERNMENTAL AGENCY OR SUBDIVISION OR POLITICAL SUBDIVISION – PERMITS OR AUTHORIZATIONS

This endorsement modifies insurance provided under the following

MARINE GENERAL LIABILTY COVERAGES
PROTECTION AND INDEMNITY INCLUDING MARINE EMPLOYMENT LIABILITY:

Name of State Or Governmental Agency Or Subdivision Or Political Subdivision:

Blanket when required by written contract.

"Who Is An Insured" under the Marine General Liability Section of the Longshore+ Marine Package Policy is amended to include as an insured any state or governmental agency or subdivision or political subdivision shown in the Schedule, subject to the following provisions:

1. This insurance applies only with respect to operations performed by you or on your behalf for which the state or governmental agency or subdivision or political subdivision has issued a permit or authorization.

2. This insurance does not apply to: **a.** "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the federal government, state or municipality; or **b.** "Bodily injury" or "property damage" included within the "products-completed operations hazard".

ALL OTHER TERMS AND CONDITIONS REMAINING UNCHANGED

ENDORSEMENT #1

ADDITIONAL INSURED – STATE OR GOVERNMENTAL AGENCY OR SUBDIVISION OR POLITICAL SUBDIVISION – PERMITS OR AUTHORIZATIONS

This endorsement modifies insurance provided under the following

MARINE GENERAL LIABILTY COVERAGES
PROTECTION AND INDEMNITY INCLUDING MARINE EMPLOYMENT LIABILITY:

Name of State Or Governmental Agency Or Subdivision Or Political Subdivision:

Blanket when required by written contract.

"Who Is An Insured" under the Marine General Liability Section of the Longshore+ Marine Package Policy is amended to include as an insured any state or governmental agency or subdivision or political subdivision shown in the Schedule, subject to the following provisions:

1. This insurance applies only with respect to operations performed by you or on your behalf for which the state or governmental agency or subdivision or political subdivision has issued a permit or authorization.

2. This insurance does not apply to: **a.** "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the federal government, state or municipality; or **b.** "Bodily injury" or "property damage" included within the "products-completed operations hazard".

ALL OTHER TERMS AND CONDITIONS REMAINING UNCHANGED

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

5. The Policy shall include as additional insureds:

a. Additional Insureds any person or organization to whom the Named Insured has agreed by written contract to provide coverage, but only with respect to operations performed by or on behalf of the Named Insured and only with respect to occurrences subsequent to the making of such written contract.

b. Any entity required by written contract (hereinafter called additional Insured) to be named as an insured is an insured but only with respect to liability arising out of your premises, "your work" for the additional Insured, or acts or omissions of the additional Insured, in connection with their general supervision of "your work" to the extent set forth below:

1. The Limits of Insurance provided on behalf of the additional Insured(s) will not be greater than The Limits of Insurance provided in this policy.

2. Except as provided herein all insuring agreements, exclusions and conditions of this policy apply to such Additional Insured(s).

3. The Insurance provided by us to the additional Insured will not be greater than that required by contract and to the extent that such insurance is more restrictive the terms of the insuring agreements, exclusions and conditions of this policy shall be deemed to be amended accordingly.

c. In no event shall Coverages or Limits of Insurance in this policy be increased by such contract.

6. This insurance does not apply to:

a. "Bodily Injury" or "Property Damage" occurring after:

1. All work on the project (other than service maintenance or repairs) to be performed by or on behalf of the Additional Insured(s) at the site of the covered operations has been completed; or

2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

b. "Bodily Injury" or "Property Damage" arising out of any act, omission or negligence of the additional Insured(s) or any of their employees, other than the general supervision of work performed for the additional Insured(s) by you.

c. "Property Damage" to:

1. Property owned, used or occupied by or rented to the additional Insured(s);

2. Property in care, custody or control of the additional Insured(s) or over which the additional Insured(s) are for any purpose exercising physical control; or

3. "Your Work" for the additional Insured(s).

d. With respect to Additional Insured(s), who are architects, engineers or surveyors, this insurance does not apply to "Bodily Injury," "Property Damage," or “personal and advertising injury” arising out of the rendering of or the failure to render any professional service by or for you, including:

1. The preparing, approving or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications; and

2. Supervisory, inspection or engineering services.

G. LIMITS OF INSURANCE

The limits below apply only to **Section I, MARINE GENERAL LIABILITY**

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

a. Insureds;

b. Claims made or "suits" brought; or

c. Persons or organizations making claims or bringing "suits".

2. The Claims Expenses Limit of Liability is the most we will pay for "claims expenses" under Coverages **A** and **B**.

3. The General Aggregate Limit is the most we will pay for the sum of:

a. Medical expenses under Coverage **C**;

b. Damages under Coverage **A**, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and

c. Damages under Coverage **B**; and

4. The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage **A** for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".

5. Subject to **3**. above, the Personal and Advertising Injury Limit is the most we will pay under Coverage **B** for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization.

6. Subject to **3.** or **4.** above, whichever applies, the Each Occurrence Limit it is the most we will pay for the sum of:

a. Damages under Coverage **A**; and

b. Medical expenses under Coverage **C** because of all "bodily injury" and "property damage" arising out of any one "occurrence";

7. Subject to **5.** above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage **A** for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, while rented to you or temporarily occupied by you with permission of the owner.

8. Subject to **6**. above, the Medical Expense Limit is the most we will pay under Coverage **C** for all medical expenses because of "bodily injury" sustained by any one person.

9. If a Per Project Aggregate Limit is shown in the Declarations, such limit (and not the General Aggregate Limit), shall apply separately to each of your projects away from premises owned by or rented to you. If no Per Project Aggregate Limit is shown in the Declarations, the General Aggregate shall apply to all of your projects away from premises owned by or rented to you.

10. The Claims Expenses Limit on the Declarations apply separately to Each Occurrence. The Limits of Insurance of this coverage apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

H. MARINE GENERAL LIABILITY CLAUSES

1. Cancellation

In the event of cancellation, the insured agrees to furnish the company with an accurate statement of gross receipts for the period from the attachment date of this policy up to and including the date of cancellation, such statement to be the basis for premium adjustment as provided herein. If the policy is subject to a 25% minimum premium, revised Minimum and Deposit Premiums will be calculated as set forth below, and the Earned Premium for the amended Policy Period will be applied against these revised Minimum and Deposit Premiums.

In the event of cancellation by the company, the revised Deposit Premium will be calculated by subtracting the pro rata return premium due from the Deposit Premium set forth in the Declarations. The revised Minimum Premium will be determined by dividing the Minimum Premium set forth in the Declarations by the Deposit Premium forth in Declarations and multiplying the resultant fraction unless prohibited by state insurance laws.

In the event of cancellation by the insured, the revised Deposit Premium will be calculated by subtracting the "short-rate return premium" due from the Deposit Premium. In such event, unless modified by specific endorsement, the revised Minimum Premium will be the same as the revised Deposit Premium.

2. Blanket Waiver Of Subrogation

It is agreed that the company waives any rights of subrogation to which it may be entitled if prior to loss the Insured has agreed to such waiver in writing, but only to the extent required by said written agreement.

3. Primary and Non-Contributory By Written Contract

Where required by written contract, it is agreed that this policy shall be primary to any insurance carried by an additional insured, and any insurance carried by such additional insured shall not be called upon to contribute to any claim covered under this policy, provided that the claim arises directly from work performed by the Named Insured or others working directly on behalf of the Named Insured and provided further that the "occurrence" that gives rise to such claim happened subsequent to the execution of the written contract.

4. Premium Adjustment and Reporting

The premium charged for this policy has been calculated at the rate of per policy Declarations, per $100.00 of gross receipts during the Policy Period. On or before the 30th day following the expiration of this policy, the insured agrees to submit a report to us containing gross receipts during the Policy Period.

Earned Premium will be calculated at the above rate, and any premium in excess of the Deposit Premium shall be immediately due and payable upon furnishing the aforesaid report. In the event that the Earned Premium is less than the Deposit Premium but more than the Minimum Premium, the company will return the difference between the Deposit Premium and the Earned Premium. In the event that the Earned Premium is less than the Minimum Premium, the Minimum Premium will apply and the company will return the difference (if any) between the Deposit Premium and the Minimum Premium.

5. Sub-Contractor Condition

In consideration of the premium charged, it is hereby a condition of this policy and the Named Insured agrees that in the event that the Named Insured hires any subcontractors that the Named Insured will obtain a Certificate of Insurance from each subcontractor evidencing valid and collectible Comprehensive General Liability Insurance in an amount of not less than $1,000,000 any one occurrence subject to aggregate limits only where customary.

ENDORSEMENT #4

BLANKET WAIVER OF SUBROGATION

It is agreed that the Company waives any rights of subrogation to which it may be entitled if prior to loss the Insured has agreed to such waiver in writing, but only to the extent required by said written agreement.

It is further agreed that there shall be no coverage for any liability arising under this endorsement unless such liability is covered by valid and collectible underlying insurance as listed in the Schedule of Underlying Insurance, for the full limit shown therein, and then only for such hazards for which coverage is afforded under said underlying insurance.

ALL OTHER TERMS AND CONDITIONS REMAINING UNCHANGED.

SECTION II. WATERCRAFT COVERAGE

A. HULL AND MACHINERY

If an "**X**" is marked on the Declarations by **Hull And Machinery** then the following **Hull And Machinery** coverages apply:

1. INSURED

If claim is made under this Section of the Policy by anyone other than the Owner of the Vessel, such person shall not be entitled to recover to a greater extent than would the Owner, had claim been made by the Owner as an Insured named in this Policy.

The company waives any right of subrogation against affiliated, subsidiary or interrelated companies of the Insured, provided that such waiver shall not apply in the event of a collision between the Vessel and any vessel owned, demise chartered or otherwise controlled by any of the aforesaid companies, or with respect to any loss, damage or expense against which such companies are insured.

2. BLANKET LOSS PAYEE

We will adjust "loss" to Covered Property with you, if caused by or resulting from a Covered Cause of Loss. We will pay any claims for "loss" jointly to you and any or Loss Payee as their interests may appear where required by agreement. This applies to all Covered Property for which a Loss Payee is on file with us or your insurance broker or agent.

3. VESSEL

The Subject Matter of this insurance is the Vessel as shown on the Schedule or by whatsoever name or names the said Vessel is or shall be called, which for purposes of this insurance shall consist of and be limited to her hull, launches, lifeboats, rafts, furniture, bunkers, stores, supplies, tackle, fittings, equipment, apparatus, machinery, boilers, refrigerating machinery, insulation, motor generators and other electrical machinery.

In the event any equipment or apparatus not owned by the Insured is installed for use on board the Vessel and the Insured has assumed responsibility therefor, it shall also be considered part of the Subject Matter and the aggregate value thereof shall be included in the Agreed Value. Notwithstanding the foregoing, cargo containers, and lighters shall not be considered a part of the Subject Matter of this insurance as per Declaration Page.

Should the Vessel at the expiration of this Policy be at sea, or in distress, or at a port of refuge or of call, she shall, provided previous notice be given to the company, be held covered at a pro rata monthly premium to her port of destination.

In the event of payment by the company for Total Loss of the Vessel this Policy shall thereupon automatically terminate.

4. AGREED VALUE

The Vessel, for so much as concerns the Insured, by agreement between the Insured and the company in this Policy, is and shall be valued as shown on the Schedule.

5. DEDUCTIBLE

Notwithstanding anything in this Policy to the contrary, there shall be deducted from the aggregate of all claims (including claims under the Sue and Labor Clause and claims under the Collision Liability clause) arising out of each separate accident, the sum shown on the Schedule unless the accident results in a Total Loss of the Vessel in which case this clause shall not apply. A recovery from other interests, however, shall not operate to exclude claims under this Policy provided the aggregate of such claims arising out of one separate accident if unreduced by such recovery exceeds that sum. For the purpose of this clause each accident shall be treated separately, but it is agreed that (a) a sequence of damages arising from the same accident shall be treated as due to that accident and (b) all heavy weather damage, or damage caused by contact with floating ice, which occurs during a single sea passage between two successive ports shall be treated as though due to one accident.

ENDORSEMENT #9

BLANKET ADDITIONAL INSURED
(FOLLOW-FORM LIMITATION)

It is agreed that this Policy shall include as Additional Insureds any person or organization to whom the Named Insured has agreed by written contract to provide coverage, but only with respect to operations performed by or on behalf of the Named Insured and only with respect to occurrences subsequent to the making of such written contract.

It is further agreed that there shall be no coverage for any liability arising under this endorsement unless such liability is covered by valid and collectible underlying insurance as listed in the Schedule of Underlying Insurance, for the full limit shown therein, and then only for such hazards for which coverage is afforded under said underlying insurance.

ALL OTHER TERMS AND CONDITIONS REMAINING UNCHANGED.

ENDORSEMENT #10

BLANKET WAIVER OF SUBROGATION
(FOLLOW-FORM LIMITATION)

It is agreed that the Company waives any rights of subrogation to which it may be entitled if prior to loss the Insured has agreed to such waiver in writing, but only to the extent required by said written agreement.

It is further agreed that there shall be no coverage for any liability arising under this endorsement unless such liability is covered by valid and collectible underlying insurance as listed in the Schedule of Underlying Insurance, for the full limit shown therein, and then only for such hazards for which coverage is afforded under said underlying insurance.

ALL OTHER TERMS AND CONDITIONS REMAINING UNCHANGED.

POLICY NUMBER: 202401-11-55-72-0Y

ALTERNATE EMPLOYER ENDORSEMENT

This endorsement applies only with respect to bodily injury to your employees while in the course of special or temporary employment by the alternate employer in the state named in Item 2 of the Schedule. Part One (Workers Compensation Insurance) and Part Two (Employers Liability Insurance) will apply as though the alternate employer is insured. If an entry is shown in Item 3 of the Schedule the insurance afforded by this endorsement applies only to work you perform under the contract or at the project named in the Schedule.

Under Part One (Workers Compensation Insurance) we will reimburse the alternate employer for the benefits required by the workers compensation law if we are not permitted to pay the benefits directly to the persons entitled to them.

The insurance afforded by this endorsement is not intended to satisfy the alternate employer's duty to secure its obligations under the workers compensation law. We will not file evidence of this insurance on behalf of the alternate employer with any government agency.

We will not ask any other insurer of the alternate employer to share with us a loss covered by this endorsement.

Premium will be charged for your employees while in the course of special or temporary employment by the alternate employer.

The policy may be canceled according to its terms without sending notice to the alternate employer.

Part Four (Your Duties If Injury Occurs) applies to you and the alternate employer. The alternate employer will recognize our right to defend under Parts One and Two and our right to inspect under Part Six.

Schedule

	Alternate Employer	Address
1.	AS INDICATED BY WRITTEN CONTRACT	WHERE REQUIRED BY WRITTEN CONTRACT

2. **State of Special or Temporary Employment**
   FL

3. **Contract or Project**
   WRITTEN CONTRACT BETWEEN NAMED INSURED AND SUCH ALTERNATE EMPLOYER ON FILE

DATE OF ISSUE: 03-29-24

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POLICY NUMBER: 202401-11-55-72-0Y

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Schedule

ANY PERSONS OR ORGANIZATIONS WITH WHOM THE NAMED INSURED HAS AGREED BY WRITTEN CONTRACT TO FURNISH THIS WAIVER.

DATE OF ISSUE: 03-29-24

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

ADDENDUM #1
July 17, 2024

ITB #24-09 MEMORIAL PARK PIERS REHABILITATION

To All Bidders:
The following changes, clarifications and additions are hereby made part of the bidding and specifications for the above referenced project dated June 21, 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.

A. REVISIONS:
None

B. CHANGES TO THE ITB:
None

C. CLARIFICATIONS:
None

D. QUESTIONS AND ANSWERS:

Question #1: Plan Sheet C-04 Pier "A" Site Plan shows turbidity barrier along the shoreline and outer area of the boardwalk. In an effort for cost savings, we feel the interior barrier running parallel with shoreline can be omitted. Is this a requirement to have or an option for double barrier with no turbidity being created? We feel the single outer barrier will keep all items within the working area for Pier A.
Answer: Turbidity barriers as shown on the Plans will be required.

Question #2: If the pile caps are degraded and incapable of being reused, is there a repair detail for the piles and pile caps to maintain the proper boardwalk elevation?
Answer: Upon removal of the existing decking, the Contractor shall notify the Engineer within 48 hours of removal to allow observation of the existing piles. If degradation of the cap is identified, the Engineer will issue a repair detail of the pile cap accordingly.

Question #3: 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 a Base Bid for the complete rehabilitation and repair of both Memorial Park Piers A & B, using wood piers and handrails with composite horizontal top handrail as detailed in Attachment 2 Technical Specifications. For the base bid will the piers be reframed on the existing pilings?
Answer: Yes, the base bid is that the existing piles are to remain. Please refer to the leader on sheet C-03, titled "Demolition Plan", that states "…existing piles & cross-bracing to remain.".

Question #4: Bid Alternate 1 for the complete rehabilitation and repair of Memorial Park Pier B using wood piers and handrails with composite horizontal top handrail and the complete demolition, removal, hauling and disposal of existing Pier A as detailed in Attachment 2 Technical Specifications. Will alternate 1 include installation of new 10 butt wood pilings on pier B only?
Answer: No. The construction plans do not indicate any installation of piles.

Question #5: Bid Alternate 2 for the complete rehabilitation and repair of both Memorial Park Piers A & B, using all composite piers and handrails as detailed in Attachment 2 Technical Specifications. Will Alternate 2 include installation of new 10" composite pilings on both piers A&B?
Answer: No. The construction plans do not indicate any installation of piles.

Question #6: Can you provide a copy of the Wage Determination or Decision Number to use for Davis-Bacon Act?
Answer: A copy of the Davis Bacon Act Wage Determination, General Decision Number FL20240137 dated 5.10.2024 is attached.

Question #7: If Bid Alternate #1 is selected, can water-jetting be used to remove the existing posts/piles?
Answer: Water jetting can be used to remove the existing piles.

Question #8: Can gas-powered motorized boats be utilized?
Answer: Motorized boats are permitted; contractor shall ensure boats are in idle speed and the wake does not impact/erode the banks. The contractor shall be liable for any damages and will be required to correct any damages prior to demobilization.

Question #9: What should be the course of action if encountering piles that are intended to stay in place but are in need of replacing?
Answer: Upon removal of the existing decking, the Contractor shall notify the Engineer, within 48 hours of removal, to allow observation of the existing piles. If degradation of the cap is identified, the Engineer will issue a repair detail of the pile cap accordingly.

Question #10: If Bid Alternate 1 is selected, can the piles at pier “A” be cut off or should they be pulled?
Answer: Piles at pier "A" shall be completely removed.

Question #11: Which brand and product line of composite materials should be used?
Answer: No brand is preferred; the awarded contractor shall submit shop drawings of the proposed product or an approved equivalent product to the engineer of record for approval prior to ordering and installing. Per the project construction plans, the awarded contractor shall provide the engineer of record a minimum of 72 hours to respond to any and all submittals unless otherwise specified in the plans.

Question #12: Can the parking lot at the southern point of the project be used as a lay down/storage area?
Answer: The City approves this location for a lay down/storage area (see attached).

Question #13: Can the signage located in the parking lot at the southern point of the project be removed, preserved, and reinstalled for the purpose of access to water?
Answer: Yes, the signage can be removed, preserved, and reinstalled after construction.

Question #14: Is there a specific hurricane strap that should be used?
Answer: No brand is preferred; the awarded contractor shall submit shop drawings of the proposed product or an approved equivalent product to the engineer of record for approval prior to ordering and installing. Per the project construction plans, the awarded contractor shall provide the engineer of record a minimum of 72 hours to respond to any and all submittals unless otherwise specified in the plans.

In all other respects, except as specifically stated herein, the subject ITB #24-09 MEMORIAL PARK PIERS REHABILITATION remains the same.

END OF ADDENDUM #1

Chip Kent
Purchasing Agent
ckent@port-orange.org

Detail by Entity Name

Florida Limited Liability Company
RUSH MARINE, LLC

Filing Information

Document Number	L18000016697
FEI/EIN Number	82-4091915
Date Filed	01/18/2018
Effective Date	01/18/2018
State	FL
Status	ACTIVE
Last Event	LC AMENDMENT
Event Date Filed	01/31/2018
Event Effective Date	NONE

Principal Address

6285 RIVERFRONT CENTER BLVD.
TITUSVILLE, FL 32780

Changed: 02/22/2019

Mailing Address

6285 RIVERFRONT CENTER BLVD.
TITUSVILLE, FL 32780

Changed: 02/22/2019

Registered Agent Name & Address

CHIVERS, WILLIAM
6285 RIVERFRONT CENTER BLVD.
TITUSVILLE, FL 32780

Address Changed: 02/22/2019

Authorized Person(s) Detail

Name & Address

Title MBR

RUSH CONSTRUCTION, INC.
6285 RIVERFRONT CENTER BLVD.
TITUSVILLE, FL 32780

Title P

LANDRY, ANTHONY
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Title VP

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DAPORE, DAVID
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Annual Reports

Report Year	Filed Date
2022	03/16/2022
2023	03/10/2023
2024	02/01/2024

Document Images

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2024 FLORIDA LIMITED LIABILITY COMPANY ANNUAL REPORT

FILED
Feb 01, 2024
Secretary of State
4095538042CC

DOCUMENT# L18000016697

Entity Name: RUSH MARINE, LLC

Current Principal Place of Business:

6285 RIVERFRONT CENTER BLVD.
TITUSVILLE, FL 32780

Current Mailing Address:

6285 RIVERFRONT CENTER BLVD.
TITUSVILLE, FL 32780 US

FEI Number: 82-4091915

Certificate of Status Desired: No

Name and Address of Current Registered Agent:

CHIVERS, WILLIAM
6285 RIVERFRONT CENTER BLVD.
TITUSVILLE, FL 32780 US

The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida.

SIGNATURE:

Electronic Signature of Registered Agent — Date

Authorized Person(s) Detail :

Title	MBR	Title	P
Name	RUSH CONSTRUCTION, INC.	Name	LANDRY, ANTHONY
Address	6285 RIVERFRONT CENTER BLVD.	Address	6285 RIVERFRONT CENTER BLVD.
City-State-Zip:	TITUSVILLE FL 32780	City-State-Zip:	TITUSVILLE FL 32780
Title	VP	Title	S
Name	CHIVERS, WILLIAM	Name	DAPORE, DAVID
Address	6285 RIVERFRONT CENTER BLVD.	Address	6285 RIVERFRONT CENTER BLVD.
City-State-Zip:	TITUSVILLE FL 32780	City-State-Zip:	TITUSVILLE FL 32780

I hereby certify that the information indicated on this report or supplemental report is true and accurate and that my electronic signature shall have the same legal effect as if made under oath; that I am a managing member or manager of the limited liability company or the receiver or trustee empowered to execute this report as required by Chapter 605, Florida Statutes; and that my name appears above, or on an attachment with all other like empowered.

SIGNATURE: DAVID DAPORE SECRETARY 02/01/2024

Electronic Signature of Signing Authorized Person(s) Detail — Date

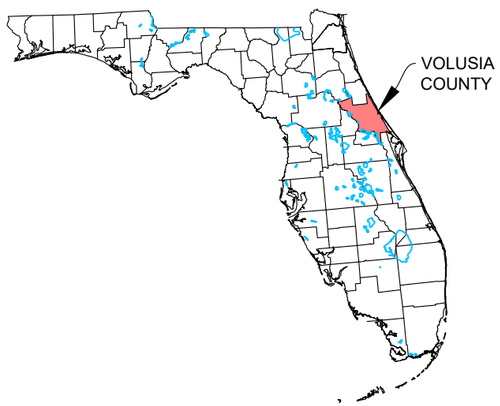
100% PLANS

CONSTRUCTION DRAWINGS

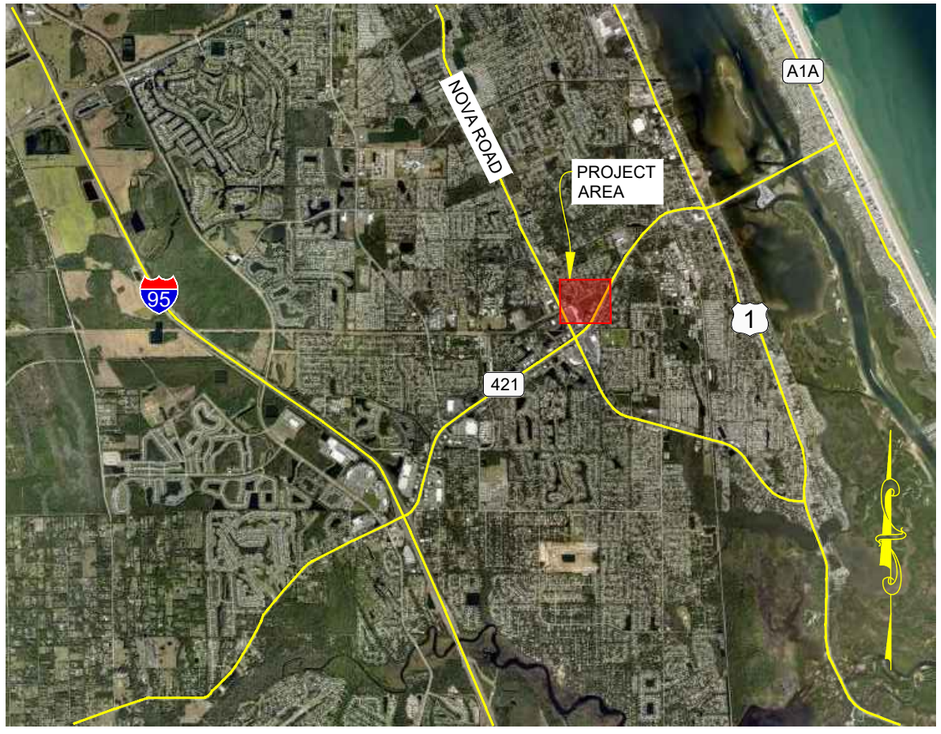
CITY OF PORT ORANGE
MEMORIAL PARK
OBSERVATION PIERS REHABILITATION

MAY 28, 2024

FLORIDA



PROJECT LOCATION MAP
SECTION 09, TOWNSHIP 16S, RANGE 33E



PROJECT ADDRESS: 3801 JACKSON STREET, PORT ORANGE, FL 32127

INDEX

SHEET	DESCRIPTION
CVR	INDEX & LOCATION MAP
C-01	EXISTING CONDITIONS
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C-05	PIER PLAN & ELEVATION
C-06	PIER CROSS-SECTION
C-07	GRADE BEAM DETAILS
C-08	SIDEWALK DETAILS
C-09	SCHEDULE OF MATERIALS
C-10	GENERAL NOTES
C-11	GENERAL NOTES
1 OF 4	SURVEY, SLIGER & ASSOCIATES, INC.
2 OF 4	SURVEY, SLIGER & ASSOCIATES, INC.
3 OF 4	SURVEY, SLIGER & ASSOCIATES, INC.
4 OF 4	SURVEY, SLIGER & ASSOCIATES, INC.

CITY COUNCIL

DONALD O. BURNETTE	CITY MAYOR
REED FOLEY	DISTRICT 1
TRACY GRUBBS	DISTRICT 2
DREW BASTIAN	DISTRICT 3
SCOTT STILTNER	DISTRICT 4, VICE MAYOR

NOTE TO CONTRACTOR:

THESE DRAWINGS AND THE PROJECT SPECIFICATIONS ARE COMPLEMENTARY, AND ANY REQUIREMENT OF ONE SHALL BE A REQUIREMENT OF THE OTHER. IT IS THE CONTRACTOR'S RESPONSIBILITY TO EXAMINE THE DRAWINGS AND SPECIFICATIONS AND TO COMPARE THE REQUIREMENTS OF EACH DIVISION AND ENSURE THAT EACH TRADE OR SUBCONTRACTOR IS MAKING THE ALLOWANCES NECESSARY TO PROVIDE THE OWNER A COMPLETE FACILITY, OPERATIONAL IN ALL RESPECTS, UNLESS OTHERWISE SPECIFICALLY STATED IN THE DRAWINGS OR PROJECT MANUAL.

IT IS ALSO THE CONTRACTOR'S RESPONSIBILITY TO NOTIFY THE ENGINEER OF ANY DEFICIENCIES OR DISCREPANCIES AMONG THE DIVISIONS OF THE DRAWING AND SPECIFICATIONS PRIOR TO THE DEADLINE FOR BID SUBMITTAL. NEITHER THE OWNER OR ENGINEER WILL BE RESPONSIBLE FOR ANY DEFICIENCIES OR DISCREPANCIES RAISED AFTER THE BID OPENING. ACCORDINGLY, IN LIGHT OF THESE OBLIGATIONS, THE ENGINEER IS OBLIGATED TO INTERPRET THE DRAWINGS SPECIFICATIONS IN A MANNER THAT WILL PROVIDE THE OWNER WITH A COMPLETE, FUNCTIONING FACILITY FOR THE BID PRICE.

ENGINEER CERTIFICATION:

I HEREBY CERTIFY THAT I AM A REGISTERED PROFESSIONAL ENGINEER IN THE STATE OF FLORIDA PRACTICING WITH DMC, DREDGING & MARINE CONSULTANTS LLC, A CORPORATION, AUTHORIZED TO OPERATE AS AN ENGINEERING BUSINESS, CERTIFICATE OF AUTHORIZATION # 9410, BY THE STATE OF FLORIDA DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION, AND THAT I, OR OTHERS UNDER MY DIRECT SUPERVISION, HAVE PREPARED OR APPROVED THE EVALUATIONS, FINDINGS, OPINIONS, CALCULATIONS, CONCLUSIONS OR TECHNICAL ADVICE HEREBY REPRESENTED BY THESE DRAWINGS.

CURTIS N. TODD, P.E.
FLORIDA LICENSE No. 37136

811 Know what's **below.** **Call** before you dig.

REPRODUCTION SCALE:
THESE PLANS SHALL BE PRINTED IN COLOR AND ARE SCALED TO ACCURATELY BE REPRODUCED ON 11X17 SIZED SHEETS. ALL OTHER SHEET SIZES ARE NOT TO SCALE.

Dredging & Marine Consultants
DMC
ENGINEERS • SCIENTISTS
4643 S. Clyde Morris Blvd
Unit 302
Port Orange, FL 32129
Phone:(386) 304-6505
Fax:(386) 304-6506
www.dmces.com

Drawing Name: E:\My ShareSync\DMC Projects\026 - City of Port Orange\23-026-34 Memorial Park Observation Dock\Drawings\Memorial Park Observation Pier.dwg By: DMC-USER Tab: COVER (0) 5/28/2024

EXISTING OBSERVATION PIER "A", FACING NORTH DMC, 10-05-2023

EXISTING OBSERVATION PIER "B", FACING NORTHWEST DMC, 10-05-2023

EXISTING OBSERVATION PIER "A", FACING NORTHEAST DMC, 10-05-2023

EXISTING OBSERVATION PIER "B", FACING NORTH DMC, 10-05-2023

DRAWING: EXISTING CONDITIONS
DMC JOB NO. 23-026-34
SHEET NO. C-01
DRAWN BL CAD C3D
CHECKED CNT SCALE AS SHOWN
APPROVED CNT DATE 05-28-2024

PROJECT NAME: MEMORIAL PARK OBSERVATION PIERS REHABILITATION

CLIENT: CITY OF PORT ORANGE

CURTIS N. TODD, P.E.
FLORIDA LICENSE No. 37136

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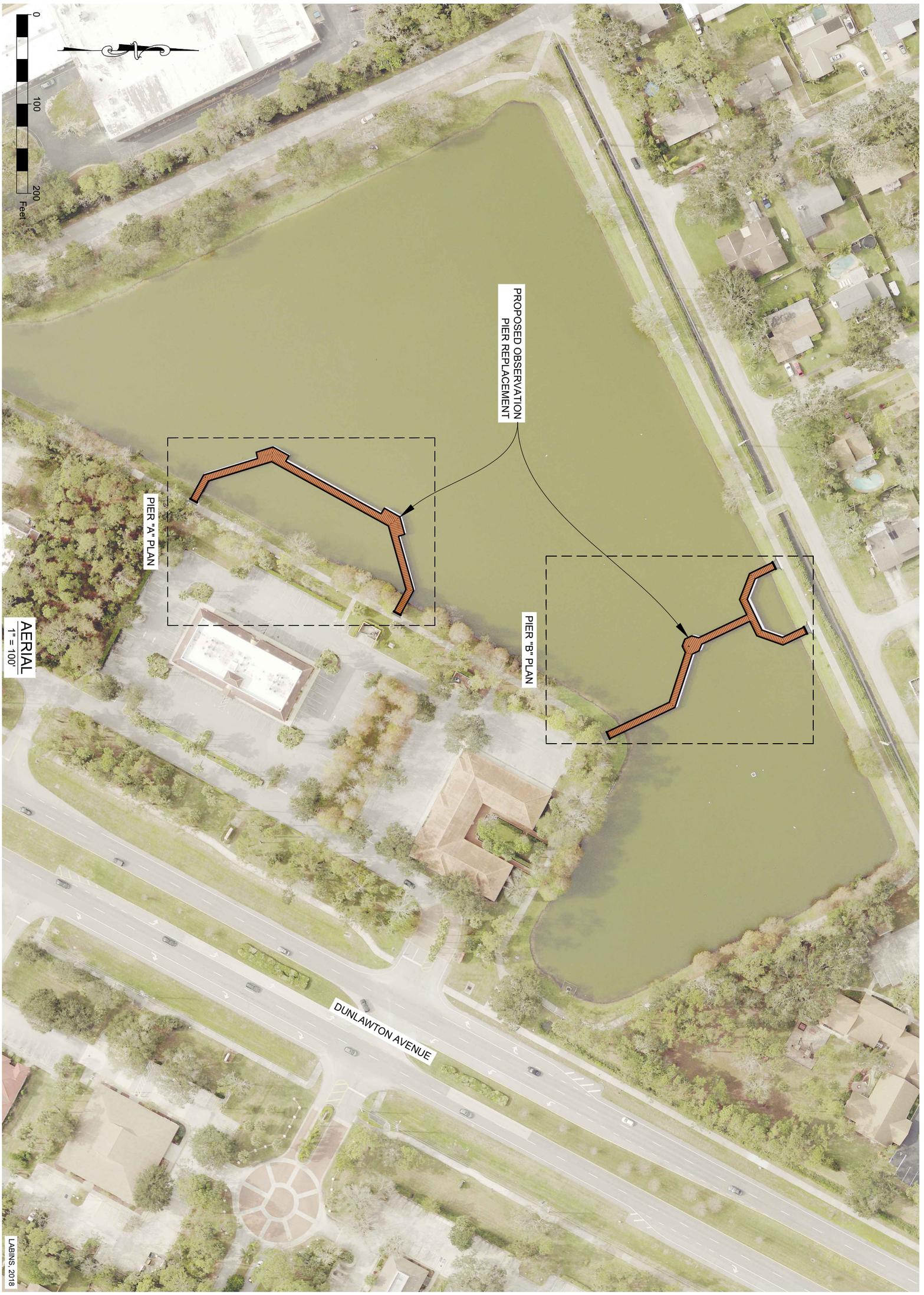

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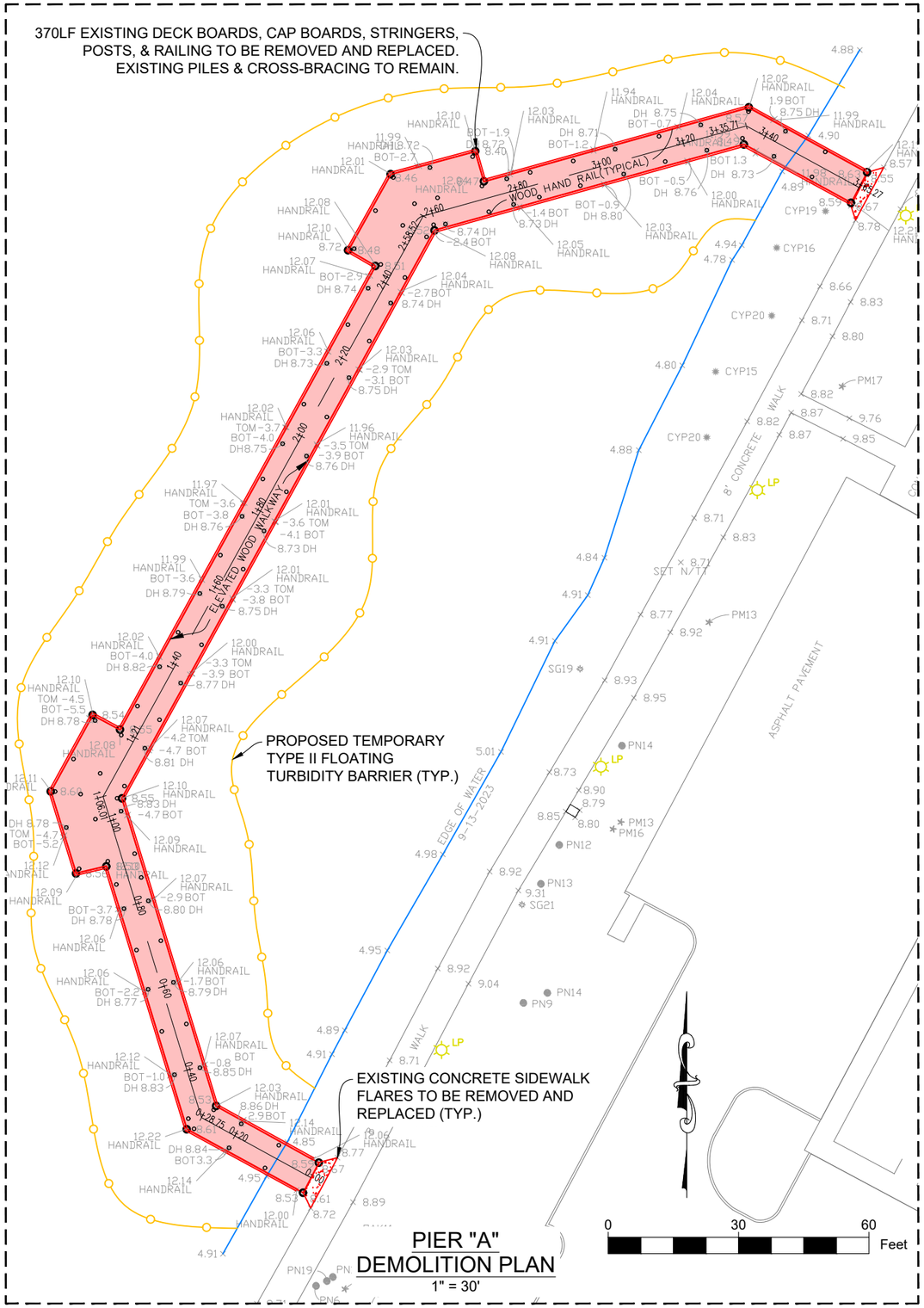
CURTIS N. TODD, P.E.
FLORIDA LICENSE No. 37136

PROJECT NAME:
MEMORIAL PARK
OBSERVATION PIERS
REHABILITATION

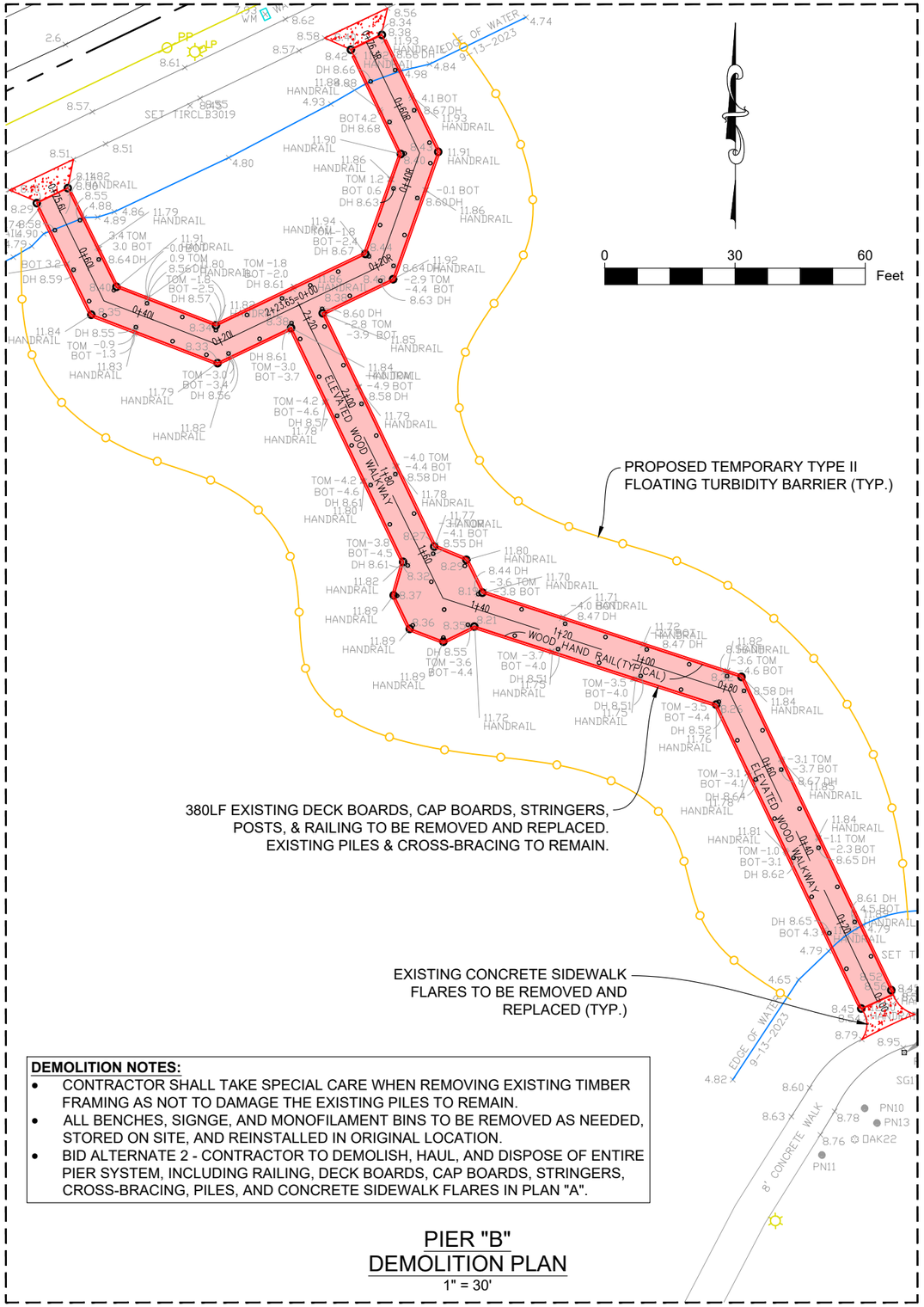
CLIENT:
CITY OF PORT ORANGE

DRAWING:	AERIAL
DMC JOB NO.	23-026-34
DRAWN BL	CAD C3D
CHECKED CNT	SCALE AS SHOWN
APPROVED CNT	DATE 05-28-2024
SHEET NO.	C-02

370LF EXISTING DECK BOARDS, CAP BOARDS, STRINGERS, POSTS, & RAILING TO BE REMOVED AND REPLACED. EXISTING PILES & CROSS-BRACING TO REMAIN.



PIER "A"
DEMOLITION PLAN
1" = 30'



DEMOLITION NOTES:

- CONTRACTOR SHALL TAKE SPECIAL CARE WHEN REMOVING EXISTING TIMBER FRAMING AS NOT TO DAMAGE THE EXISTING PILES TO REMAIN.
- ALL BENCHES, SIGNGE, AND MONOFILAMENT BINS TO BE REMOVED AS NEEDED, STORED ON SITE, AND REINSTALLED IN ORIGINAL LOCATION.
- BID ALTERNATE 2 - CONTRACTOR TO DEMOLISH, HAUL, AND DISPOSE OF ENTIRE PIER SYSTEM, INCLUDING RAILING, DECK BOARDS, CAP BOARDS, STRINGERS, CROSS-BRACING, PILES, AND CONCRETE SIDEWALK FLARES IN PLAN "A".

PIER "B"
DEMOLITION PLAN
1" = 30'

DRAWING: DEMOLITION PLAN
DMC JOB NO.: 23-026-34
SHEET NO.: C-03
DRAWN: BL | CAD: C3D | SCALE AS SHOWN
CHECKED: CNT | DATE: 05-28-2024
APPROVED: CNT

PROJECT NAME: MEMORIAL PARK OBSERVATION PIERS REHABILITATION

CLIENT: CITY OF PORT ORANGE

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370 LF PROPOSED OBSERVATION PIER REPAIR,
TOP OF DECK EL. VARIES (MATCH EXISTING EL.).
SEE SHEET C-09 FOR BID ALTERNATES

PROPOSED CONCRETE SIDEWALK
FLARE (MATCH EXISTING EL.) (TYP.)

PROPOSED TEMPORARY
TYPE II FLOATING
TURBIDITY BARRIER (TYP.)

PROPOSED CONCRETE
GRADE BEAM (TYP.)

8' CONCRETE WALK

ASPHALT PAVEMENT

EDGE OF WATER 9-13-2023

0 30 60 Feet

PIER "A" SITE PLAN
1" = 30'

PROPOSED CONCRETE
GRADE BEAM (TYP.)

8'-0" (TYP.)

90°

PROPOSED TEMPORARY TYPE II
FLOATING TURBIDITY BARRIER (TYP.)

380LF PROPOSED OBSERVATION PIER REPAIR,
TOP OF DECK EL. VARIES (MATCH EXISTING EL.).
SEE SHEET C-09 FOR BID ALTERNATES

PROPOSED CONCRETE SIDEWALK FLARE
(MATCH EXISTING EL.) (TYP.)

8' CONCRETE WALK

EDGE OF WATER 9-13-2023

0 30 60 Feet

PIER "B" SITE PLAN
1" = 30'

DRAWING: SITE PLAN
DMC JOB NO.: 23-026-34
SHEET NO.: C-04

DRAWN	BL	CAD	C3D
CHECKED	CNT	SCALE	AS SHOWN
APPROVED	CNT	DATE	05-28-2024

PROJECT NAME: MEMORIAL PARK OBSERVATION PIERS REHABILITATION

CLIENT: CITY OF PORT ORANGE

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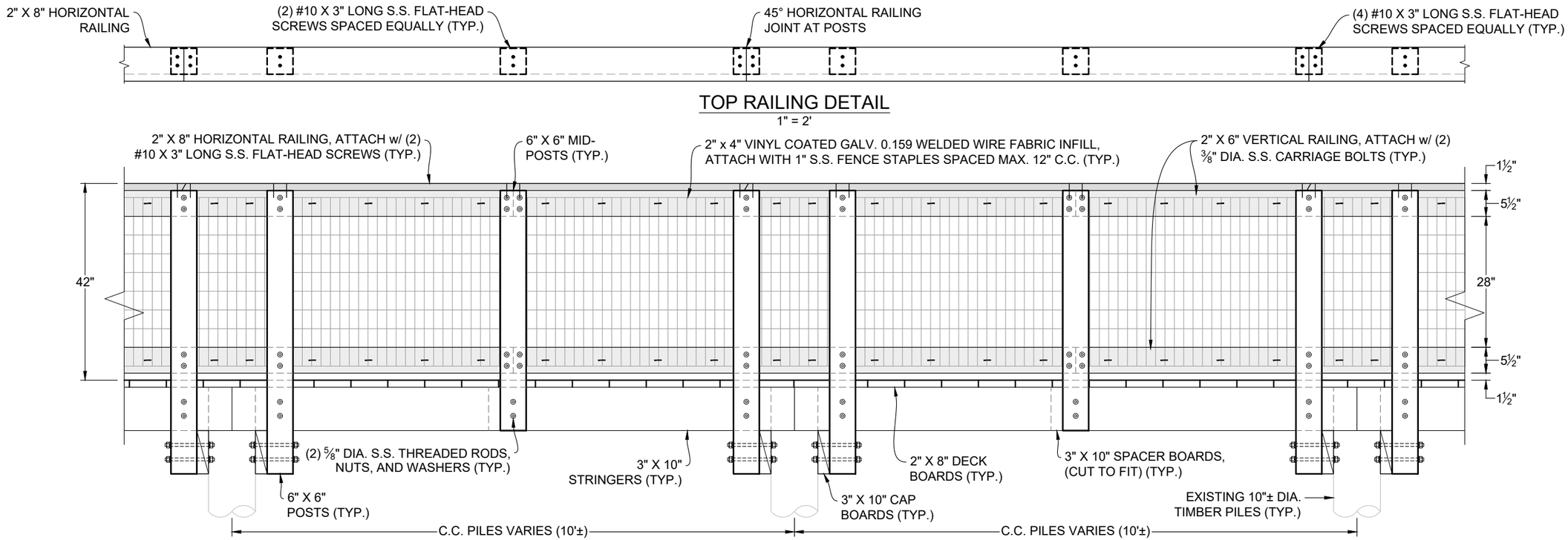
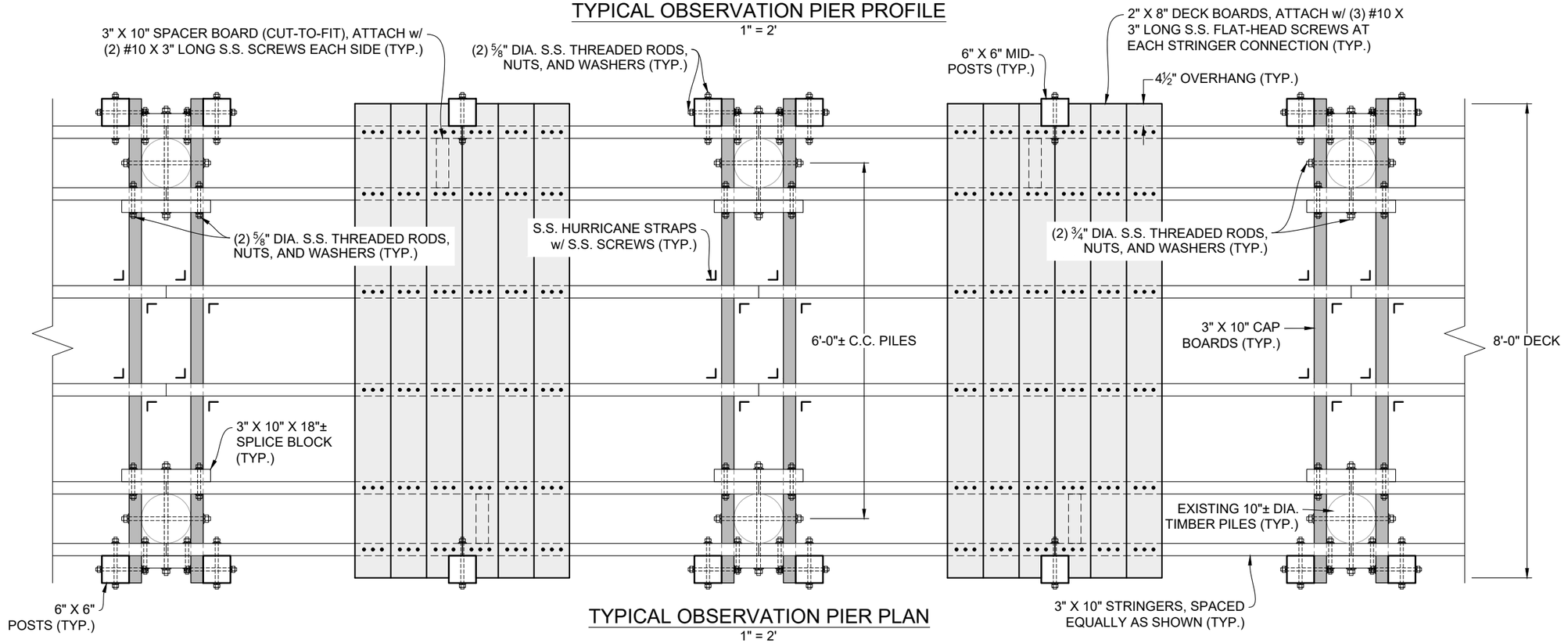


TOP RAILING DETAIL

1" = 2'

TYPICAL OBSERVATION PIER PROFILE

1" = 2'



TYPICAL OBSERVATION PIER PLAN

1" = 2'

DRAWING: PIER PROFILE AND PLAN
DMC JOB NO.: 23-026-34
SHEET NO.: C-05
DRAWN: BL | CAD: C3D | SCALE AS SHOWN | DATE: 05-28-2024
CHECKED: CNT | APPROVED: CNT

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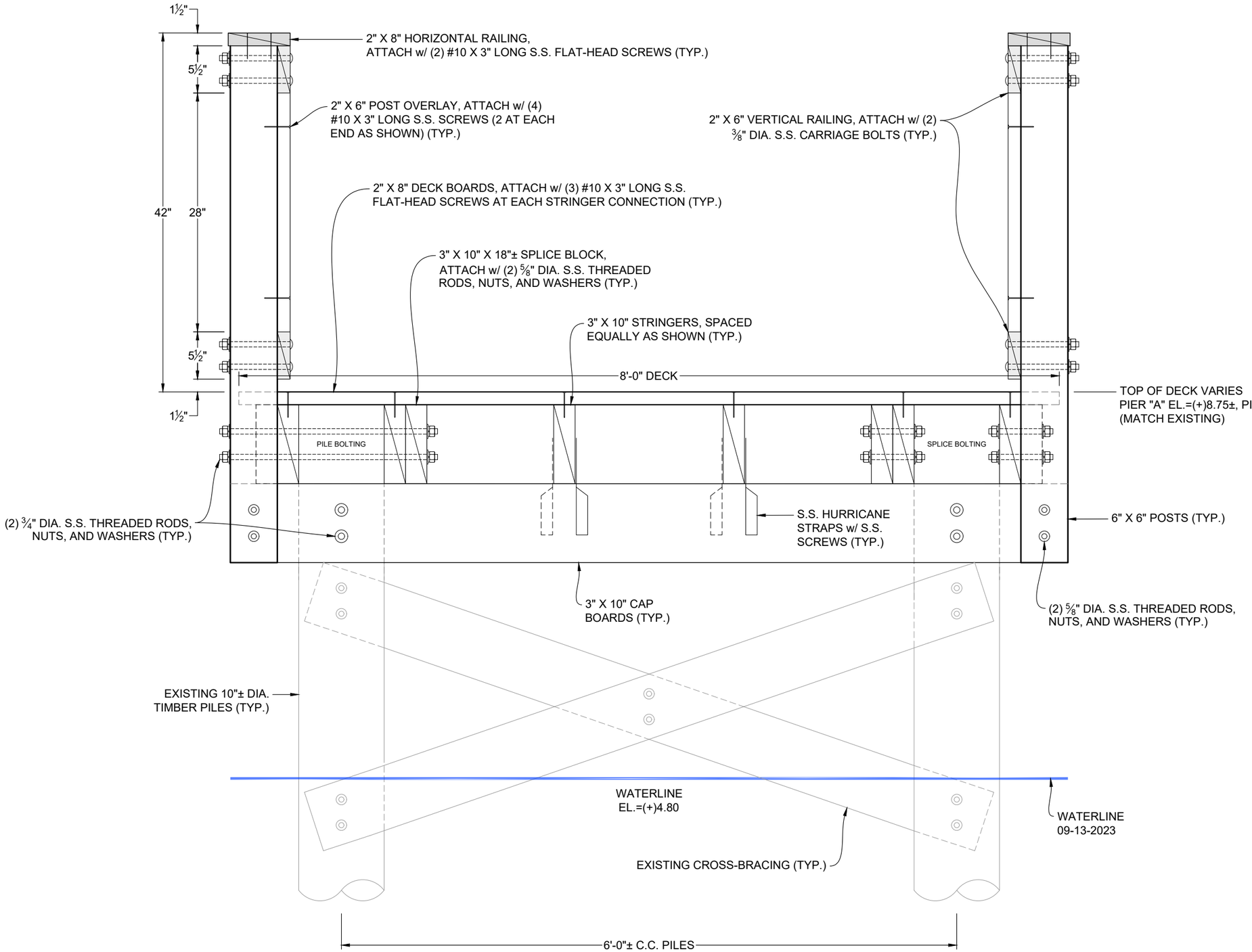

TYPICAL OBSERVATION PIER CROSS-SECTION

1" = 1'

DRAWING: PIER CROSS-SECTION
DMC JOB NO. 23-026-34
SHEET NO. C-06
DRAWN BL | CAD C3D | SCALE AS SHOWN
CHECKED CNT | DATE 05-28-2024
APPROVED CNT

PROJECT NAME: MEMORIAL PARK OBSERVATION PIERS REHABILITATION

CLIENT: CITY OF PORT ORANGE

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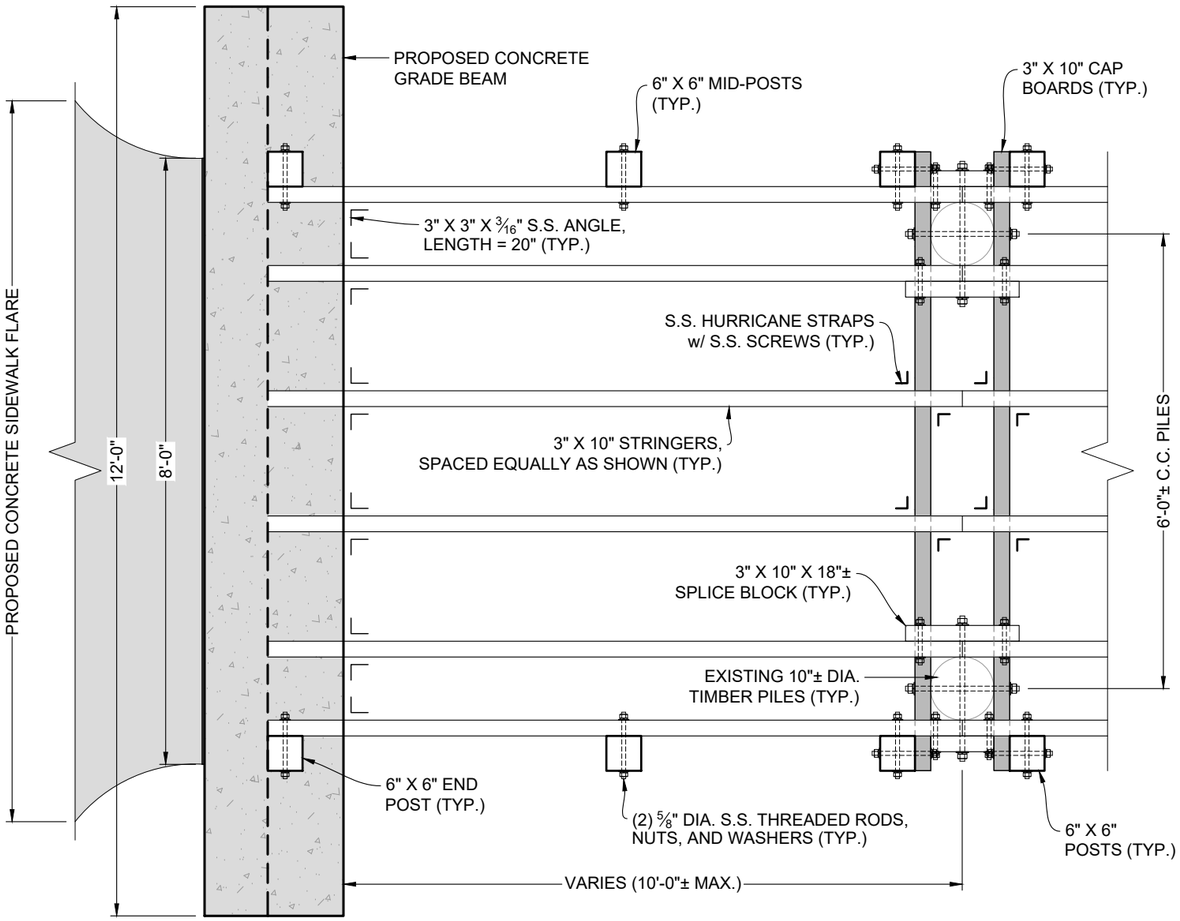
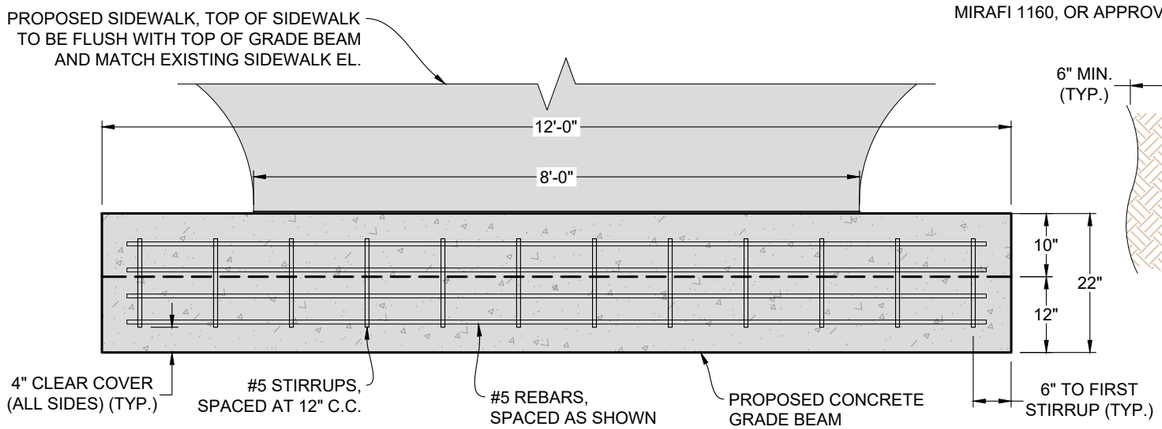
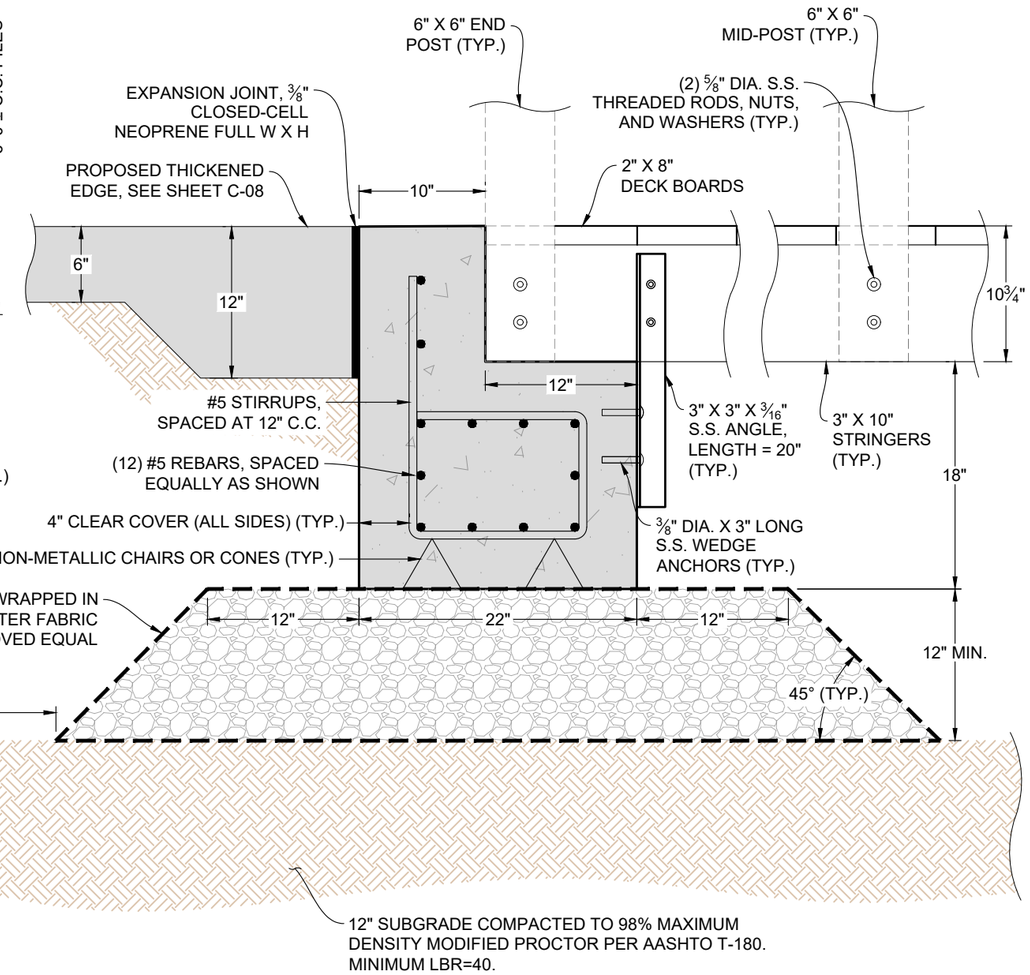


END BENT PLAN
1" = 2'



GRADE BEAM PLAN
1" = 2'

CONCRETE GRADE BEAM MIX:
1. f'c ≥ 6,000 psi
2. w/c ≤ 0.40
3. 6% MICROSILICA
4. NO PEA GRAVEL
5. OTHER SPECIFICATIONS, SEE GENERAL NOTES



GRADE BEAM CROSS-SECTION
1" = 1'

DRAWING: GRADE BEAM DETAILS
DMC JOB NO. 23-026-34
SHEET NO. C-07
DRAWN BL | CAD C3D | SCALE AS SHOWN
CHECKED CNT | DATE 05-28-2024
APPROVED CNT

PROJECT NAME: MEMORIAL PARK OBSERVATION PIERS REHABILITATION

CLIENT: CITY OF PORT ORANGE

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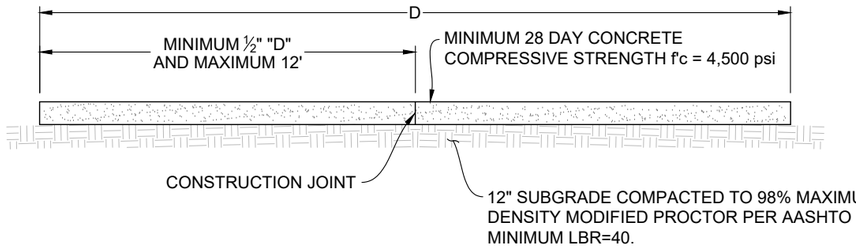
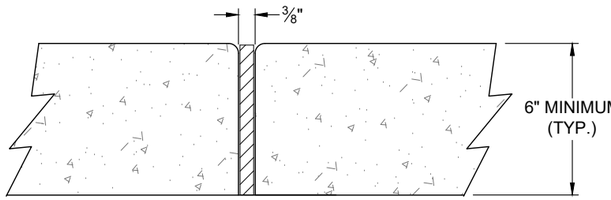
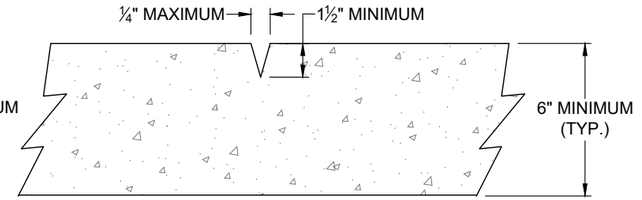




EXPANSION JOINT



CONTRACTION JOINT

THICKENED EDGE

NOTES:

1. THE BEARING SUBGRADE SHALL HAVE ALL ORGANIC, LOOSE, AND DELETERIOUS MATTER REMOVED AND THE REMAINING CLEAN SOIL SHALL BE SMOOTH, SOUND AND SOLID. COMPACT TO 98% MAXIMUM DENSITY MODIFIED PROCTOR PER AASHTO T-180. ANY FILL MATERIAL SHALL BE COMPACTED WITH A VIBRATORY OR IMPACT COMPACTION MACHINE IN MAXIMUM 12 INCH LIFTS OR COMPACTED WITH A HAND TAMPER IN MAXIMUM 4 INCH LIFTS TO 98% MAXIMUM DENSITY MODIFIED PROCTOR PER AASHTO T-180.
2. MINIMUM 28 DAY CONCRETE COMPRESSIVE STRENGTH f'c = 4,500 psi.
3. EXPANSION JOINTS SHALL BE CLOSED-CELL NEOPRENE, FULL W X H.
4. CONCRETE MIX DESIGN AND CONCRETE NOTES SEE GENERAL NOTES.

CONCRETE SIDEWALK DETAILS

N.T.S.

DRAWING: SIDEWALK DETAILS
DMC JOB NO. 23-026-34
SHEET NO. C-08
DRAWN BL | CAD C3D | SCALE AS SHOWN
CHECKED CNT | DATE 05-28-2024
APPROVED CNT

PROJECT NAME: MEMORIAL PARK OBSERVATION PIERS REHABILITATION
CLIENT: CITY OF PORT ORANGE

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Drawing Name: E:\My ShareSync\DMC Projects\026 - City of Port Orange\23-026-34 Memorial Park Observation Dock\Drawings\Memorial Park Observation Pier.dwg By: DMC-USER Tab: DETAILS (8) 5/28/2024

NOTES:
1. ALL COMPONENT DIMENSIONS SHALL BE PER PLANS.
2. ALL HARDWARE SIZES AND MATERIAL SHALL BE PER PLANS.
3. ALL COMPOSITE SHALL BE COLOR GRAY AND MATCHING IN COLOR.
4. FOR BIDDING PURPOSES: ALTERNATE 1, PIER "A" (INCLUDING TIMBER PILES & CROSS-BRACING) WILL BE DEMOLISHED ENTIRELY AND WILL NOT BE REBUILT.
5. CONTRACTOR SHALL SUBMIT SHOP DRAWINGS PRIOR TO ORDERING AND INSTALLING ALL PIER COMPONENTS.

SCHEDULE OF MATERIALS

	PIER "A"				PIER "B"			
	COMPONENT	BASE BID	BID ALTERNATE 1	BID ALTERNATE 2	COMPONENT	BASE BID	BID ALTERNATE 1	BID ALTERNATE 2
SUBSTRUCTURE	CAP BOARDS	S.Y.P. No.2 GRADE	-	S.Y.P. No.2 GRADE	CAP BOARDS	S.Y.P. No.2 GRADE	S.Y.P. No.2 GRADE	S.Y.P. No.2 GRADE
	STRINGERS	S.Y.P. No. 2 GRADE	-	S.Y.P. No. 2 GRADE	STRINGERS	S.Y.P. No. 2 GRADE	S.Y.P. No. 2 GRADE	S.Y.P. No. 2 GRADE
	SPLICE BLOCKS	S.Y.P. No. 2 GRADE	-	S.Y.P. No. 2 GRADE	SPLICE BLOCKS	S.Y.P. No. 2 GRADE	S.Y.P. No. 2 GRADE	S.Y.P. No. 2 GRADE
	SPACER BOARDS	S.Y.P. No. 2 GRADE	-	S.Y.P. No. 2 GRADE	SPACER BOARDS	S.Y.P. No. 2 GRADE	S.Y.P. No. 2 GRADE	S.Y.P. No. 2 GRADE
SUPERSTRUCTURE	DECK BOARDS	S.Y.P. No. 1 PRIME GRADE	-	COMPOSITE	DECK BOARDS	S.Y.P. No. 1 PRIME GRADE	S.Y.P. No. 1 PRIME GRADE	COMPOSITE
	POSTS	S.Y.P. No. 1 GRADE	-	S.Y.P. No. 1 GRADE w/ COMPOSITE POST SLEEVE	POSTS	S.Y.P. No. 1 GRADE	S.Y.P. No. 1 GRADE	S.Y.P. No. 1 GRADE w/ COMPOSITE POST SLEEVE
	MID-POSTS	S.Y.P. No. 1 GRADE	-	S.Y.P. No. 1 GRADE w/ COMPOSITE POST SLEEVE	MID-POSTS	S.Y.P. No. 1 GRADE	S.Y.P. No. 1 GRADE	S.Y.P. No. 1 GRADE w/ COMPOSITE POST SLEEVE
	POST OVERLAY	S.Y.P. No. 1 PRIME GRADE	-	COMPOSITE	POST OVERLAY	S.Y.P. No. 1 PRIME GRADE	S.Y.P. No. 1 PRIME GRADE	COMPOSITE
	VERTICAL RAILING	S.Y.P. No. 1 PRIME GRADE	-	COMPOSITE	VERTICAL RAILING	S.Y.P. No. 1 PRIME GRADE	S.Y.P. No. 1 PRIME GRADE	COMPOSITE
	HORIZONTAL TOP RAILING	COMPOSITE	-	COMPOSITE	HORIZONTAL TOP RAILING	COMPOSITE	COMPOSITE	COMPOSITE
	RAILING INFILL	GALV. WELDED WIRE	-	GALV. WELDED WIRE	RAILING INFILL	GALV. WELDED WIRE	GALV. WELDED WIRE	GALV. WELDED WIRE

DRAWING: SCHEDULE OF MATERIALS
DMC JOB NO.: 23-026-34
SHEET NO.: C-09
DRAWN: BL | CAD: C3D | SCALE: AS SHOWN | DATE: 05-28-2024
CHECKED: CNT | APPROVED: CNT

PROJECT NAME: MEMORIAL PARK OBSERVATION PIERS REHABILITATION
CLIENT: CITY OF PORT ORANGE

CURTIS N. TODD, P.E.
FLORIDA LICENSE No. 37136

Dredging & Marine Consultants
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Drawing Name: C:\Users\DMC-User\AppData\Local\Temp\AcPublish_30096\Memorial Park Observation Pier.dwg By: DMC-User Tab: SCHEDULE (9) 5/30/2024

IMPORTANT NOTES TO BIDDERS:

1. The Contractor shall retain all material delivery tickets, material testing reports and cut-sheets/shop drawings for manufactured products for the project and provide copies to the Engineer on a weekly basis. The Engineer will not make a structure certification if the Contractor does not comply with this requirement.
2. The Engineer must be given advanced notice of the critical stages of construction such as demolition, initial construction stakeout, initial timber framing, forming and rebar placement prior to casting concrete, first casting of concrete, etc. The Engineer will not make a structure certification if the Contractor does not comply with this requirement.
3. The location of existing utilities, utility services, facilities, and structural features shown on these plans has been determined from the information available at the time of the preparation of these plans, but do not purport to be absolutely correct and are provided for only the convenience of the Contractor. Any inaccuracy or omission in such information shall not relieve the Contractor of its responsibility to protect the existing features from damage and unscheduled interruption of service or from the responsibility to relocate utilities are required. Should a discrepancy arise between these plans and actual field conditions which would appreciably affect the execution of the plans the Contractor shall stop construction and notify the County and utility or facility owner immediately. The Contractor shall verify, prior to construction, the exact location, elevation, dimensions of all existing utilities, facilities, structures, and other features (whether or not shown in the plans). The Contractor shall be solely responsible for coordination of any utilities to be adjusted by others for the construction of this project and shall coordinate with other utilities and entitles as required to ensure the successful implementation of this project.
4. A pre-construction meeting must be scheduled before start of construction and all parties are to attend including: Owner or Owner's Representative, Engineer, Prime Contractor, Subcontractor(s), Surveyor, Applicable Tradesmen, etc. The Engineer will lead the meeting and provide a list of critical items to discuss.

GENERAL:

1. Owner hereinafter refers to Owner's Representative, City, County, Town, Developer or Private Entity.
2. All elevations in the project plans are referenced to feet N.A.V.D. 88.
3. The project shall be straight, plumbed, level, and elevations are correct as shown in plans.
4. Any deviation from these plans, notes or specifications must be approved in writing by the Owner or Engineer, or else the deviation will be considered construction non-compliant with the plans and specifications.
5. Any discrepancies amongst the plans, notes, specifications and other bid documents must be resolved in writing by the Owner or Engineer prior to continuing the work in question.
6. These plans, notes and specifications, along with the other components of the project bidding documents, constitute the only instructions to bidders/contractors, unless written addenda are issued.
7. All construction, manufacturing, fabrication and testing of materials shall be performed under the guidelines set forth in applicable local, state and federal codes, and/or under recommendations provided in technical publications of respected professional or industry organizations. Material testing programs, where applicable, shall be presented to the Engineer for review and approval prior to construction.
8. All products constructed or manufactured/supplied for the project shall be accompanied by industry acceptable warranties or guarantees.
9. For the purpose of these specifications. "Project Completion" is defined as completion of an agreed upon list of punchlist items compiled in a planned project walkthrough held at a time the Contractor considers the project to be "Substantially Complete". The Contractor shall notify the Owner and Engineer at least 72 hours in advance of substantial completion and schedule a mutually agreeable walkthrough.
10. A portion of the site lies within flood zones “X" as indicated on Federal Emergency Management Agency Flood Insurance Rate Map Community Panel No.12127C0369J dated September 29, 2017.
11. Any materials interfering with construction, and all abandoned utility lines, pipes, structures and other subterranean objects to be removed, shall be disposed of as directed by the Owner. All materials not claimed by the Owner shall be disposed of at the Contractor's expense in areas provided by the Contractor.
12. All materials to be removed from the existing structures per the construction plans.
13. The Contractor shall provide all sheeting, shoring and bracing required to meet the requirements of the "Trench Safety Act” and to protect adjacent structures or to minimize trench width. Where a separate pay item is not provided, the cost for all sheeting, shoring and bracing required shall be included in the contract price for the item of work for which sheeting, shoring and bracing is anticipated to be required.
14. The Contractor shall endeavor to protect private property. Any damage caused by the Contractor in the performance of his work shall be corrected to the satisfaction of the Engineer at the Contractor's expense. Payment shall not be made for this work.
15. Any damage to state, county, or local roads caused by the Contractor's hauling or excavation equipment shall be repaired by the Contractor to the satisfaction of the Engineer. Payment shall not be made for this work.
16. The construction lengths indicated in these plans are approximate. Actual limits may be set in the fields as directed by the Engineer.
17. During land alteration and construction activities, it shall be unlawful to remove vegetation by grubbing, or to place soil deposits, debris, solvents, construction material, machinery or other equipment of any kind within the dripline of a tree to remain on site unless approved by the Engineer.
18. All trimming undertaken on a tree protected by provisions of the land development code shall be pruned in accordance with the National Arborist Association (NAA) Pruning Standards.
19. The Owner and the Engineer reserve the right to perform quality assurance testing on all materials delivered to project and to reject all materials not meeting acceptable standards.
20. The Contractor shall be responsible for the complete stake-out of the project, i.e., line, grade, slope stake, utility relocations or any other stake-out that may be required to complete the project in accordance with the plans and specifications. Any and all expenses incurred for this work shall be included in the unit price bid for other items. No additional payment shall be made for this work. Contractor shall also be required to provide a certified as-built survey of the grading, drainage and earthwork improvements and meet any minimum requirements of Owner.
21. Overall cleanup shall be accomplished by the Contractor in accordance with Owner standards or as directed by the Engineer. Any and all expenses incurred for this work shall be included in the unit price bid for other items.
22. If, during construction activities, any evidence of historic resources including, but not limited to, aboriginal or historic pottery, prehistoric stone tools, bone or shell tools, historic trash pits, or historic building foundations are discovered, work shall come to an immediate stop and the client and the Florida Division of Historical Resources shall be notified within two working days.
23. All materials and construction shall be in accordance with the more stringent of the current FDOT Standards and Specifications or City of Port Orange Standards and Specifications.
24. Contractor shall be responsible for independently calculating all quantities for the project including earthwork. It is the Contractors responsibility to verify the Engineers estimated quantities included on the bid schedule.
25. The Contractor shall provide pumping equipment and devices to properly remove and dispose of water during construction, if needed.
26. Refer to construction pollution prevention plan for erosion control notes.

SURVEY INFORMATION:

Topographic information shown hereon from survey performed by Sliger & Associates, Inc. September 19, 2023. Referenced on the North American Vertical Datum of 1988 (N.A.V.D. 88).

ENVIRONMENTAL AND PERMITS:

1. The U.S. Army Corps of Engineers (USACE), Florida Department of Environmental Protection (FDEP) and the local city or county may exert jurisdiction over construction of the project. The Contractor shall be responsible to understand and comply with all applicable permit conditions imposed by the jurisdictional agencies, if permits are necessary. If not, the Contractor must at least comply with general state water quality standards for siltation and guidelines for encounters with threatened and endangered species.
2. All building and construction-related permits from the local (city or county) or state authorities are the responsibility of the Contractor.
3. The Contractor shall be responsible for penalties and/or fines levied due to work that is not in accordance with permit conditions.

SUBMITTALS:

All submittals shall be made to the Engineer of Record for review and approval, in writing, prior to ordering and before construction. Submittals also include but are not limited to, shop drawings, mark-up drawings, sketches, cut-sheets, product literature, additional specifications, photographs and letters.

Submittals list:

1. Schedule for completion of work with tasks and durations defined.
2. Shipping, Stockpile and Site Administration Plan (SSSAP).
3. Temporary Traffic Control plan (TTC) for vehicles and pedestrians, including material deliveries, stockpile area(s), worker's parking and construction equipment.
4. Site-Specific Safety Plan shall be distributed and reviewed with all site workers prior to said workers commencing work on the project site. See "Site Safety" heading.
5. Complete list of required shop drawing submittals shall be provided by the Engineer at the preconstruction meeting.
6. Changes, alternates or other methods different from project plans must be approved, in writing, via submittals required by the Engineer and/or Owner.
7. After completing the punchlist in the field, the Contractor must submit a itemized punchlist, as-built survey and record drawings for final changes and the Engineer of Record approving in writing.
8. The Contractor shall be responsible for keeping a log of change orders, RFI's and shop drawings. The log shall be updated and available upon request.

INSPECTION COORDINATION:

1. The Engineer will be conducting routine observations and observations at critical stages of construction. A minimum of 72 hours notice shall be given to the Engineer prior to commencing the critical stages of construction. In general, critical stages are the initial work on the major structure components. Examples of critical stages of construction include: demolition, initial construction stakeout, initial timber framing, forming and rebar placement prior to casting concrete, first casting of concrete, etc.
2. The local city or county may perform their own construction observations in addition to the Engineer. No observers other than the Engineer or his/her designated representative shall have the authority to determine compliance with plans and specifications.
3. Other observers may relay information to the Engineer, but it will be the Contractor's ultimate responsibility to maintain contact and resolve disputes, questions, field changes, payment requests, etc. directly with the Owner or Engineer.

CONSTRUCTION SURVEYING:

1. Stake-out survey of the project is the responsibility of the Contractor. Beginning and end points will be provided by the Owner or Engineer in the project drawings.
2. The staked project must be approved by the Engineer prior to commencing construction. The Engineer reserves the right to make alignment changes based on conditions portrayed by the initial stakeout.
3. Methods and frequency of continuing stake-out during construction shall be submitted to the Engineer for approval prior to beginning construction.
4. The Contractor must perform an independent construction record survey (as-built survey) as a check for compliance at the end of the project. The record survey must be signed and sealed by a State of Florida Licensed Professional Surveyor. The record survey must be referenced to feet N.A.V.D. 88.
5. The Prime Contractor is advised that certification of the project elevations and alignment is required by the Engineer for final acceptance of work.

SITE SAFETY:

The Contractor shall prepare and adhere to a Site-Specific Safety Plan. The contents of the plan are:

1. Identification of potential hazards and injuries pertaining to the specific site and project.
2. Location of nearest hospital.
3. Assure availability of at least one working cell phone and one vehicle on site at all times.
4. Emergency contacts within the Subcontractor's organization and at the Prime Contractor's organization.
5. All field personnel shall wear appropriate safety attire and utilize appropriate personal protection equipment for a given task/operation such as safety glasses/goggles, masks, shields, gloves, harnesses, hard hats, steel-toed boots,etc.
6. Safety kit shall be available onsite at all times with appropriate materials for potential hazards and injuries.
7. The Site-Specific Safety Plan shall be distributed and reviewed with all site workers prior to said workers commencing work on the project site.
8. The Contractor shall follow all applicable local, state, and federal codes regarding site safety.
9. The Contractor shall adjust the means and methods of this plan as appropriate for maintaining site and operational safety.

SITE MAINTENANCE:

1. The Contractor shall maintain a clean and neat site, void of loose debris, trash, remnant parts or materials.
2. Trash receptacles and removal service shall be maintained by the Contractor specifically for this project. Pre-existing trash/debris facilities shall not be used to maintain the project.
3. Temporary debris piles shall be limited in number as much as practical and contained in designated areas until removal. Debris and trash shall not be scattered in areas outside the limited designated areas at any time.
4. Removal of trash/debris shall be scheduled as appropriate to not allow piles to reach five-feet in height or greater than ten-feet in diameter. Debris individually larger than these dimensions shall be removed from the site within five working days. Receptacles shall not overflow at any time.
5. Where necessary, the Contractor shall employ a Temporary Traffic Control plan (TTC) for vehicles and pedestrians, including material deliveries, stockpile area(s), worker parking and construction equipment. The plan must be in writing, including sketches or drawings, and must be submitted to the Owner or Engineer for review and approval before commencement of any work.
6. The Contractor shall follow all applicable local, state and federal codes regarding site maintenance.

DRAWING: GENERAL NOTES
DMC JOB NO. 23-026-34
SHEET NO. C-10
DRAWN BL | CAD | C3D
CHECKED CNT | SCALE AS SHOWN
APPROVED CNT | DATE 05-28-2024

PROJECT NAME: MEMORIAL PARK OBSERVATION PIERS REHABILITATION
CLIENT: CITY OF PORT ORANGE

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CITY OF PORT ORANGE FLORIDA 1867

Drawing Name: E:\My ShareSync\DMC Projects\026 - City of Port Orange\23-026-34 Memorial Park Observation Dock\Drawings\Memorial Park Observation Pier.dwg By: DMC-USER Tab: GN (10) 5/28/2024

MOBILIZATION AND DEMOBILIZATION:

1. It is understood that this project will require work in and over water. Access to near water construction areas is required for material storing, hauling, erection and construction. All facilities, public or private, used for such purposes shall be repaired to their original condition following "Completion" of the project, including grade and topping (sod, tree/vegetation cover, established road, etc.)
2. The Contractor shall present a Shipping, Stockpile and Site Administration Plan (SSSAP) to the Owner or Engineer for approval. The plan shall be specific to the project requirements for the particular materials to be delivered to the site, describing delivery points, stockpile areas, temporary debris/trash storage areas, temporary field office (including utilities maintained there), fencing, security and a statement of commitment and details for maintaining safety on the site.
3. The Owner or Engineer shall have the right to exercise reasonable alterations or additions to the SSSAP.
4. It is the Contractor's responsibility to coordinate, and pay for, necessary utilities to occupy the site and perform the work.
5. The Contractor shall not demobilize until project completion, and all parties have agreed and signed off in writing.

TECHNICAL SPECIFICATIONS FOR SITE PLAN TESTING:

1. MATERIAL
   The inspection and testing of materials and finished articles to be incorporated in the work shall be made by bureaus, laboratories, or agencies approved by the Engineer of Record. The Contractor shall submit such samples, or such special or test pieces of materials as the Engineer of Record may require. The Contractor shall not incorporate any material or finished article into the work until the results of the inspections or tests are known and the Contractor has been notified by the Engineer of Record that the material or finished article is accepted. All materials must be of the specified quality and be equal to the approved sample if a sample has been submitted. Certified copies of all tests made shall be submitted to the Engineer of Record as well as to the Owner's designated site inspector. The Owner's designated site inspector must receive copies of all testing reports and certificates prior to the Engineer of Record requesting a final project inspection from the Owner.
2. LABORATORY CONTROL AND CERTIFICATES SPECIFICATIONS:
   Sampling, testing, and laboratory methods shall be in accordance with the standard specifications of the AASHTO or ASTM. Where AASHTO or ASTM specifications are used, the reference shall be construed to be the most recent standard specifications or tentative specifications of the AASHTO or ASTM in force on the date of the test.
   TEST AND CERTIFICATES:
   The Contractor shall engage an approved testing laboratory to provide the following tests and certifications signed by a registered Engineer of the State of Florida. All technicians performing the tests shall be state certified for the testing performed. Additional tests that may be required by either the Engineer of Record or the Owner shall also be provided by the Contractor, and the following shall not be taken as a complete and exhaustive list of the Contractor's testing responsibilities.
   a. Soil analysis for structural fill material prior to installation.
   b. Proctor densities, moisture content, compacted field densities and Atterberg limits.

FILL MATERIAL AND SURFACE TREATMENT:

1. Fill material shall be from an upland source and shall be clean, construction-quality, free from organics, oils, grease and debris. The source company shall provide a sieve analysis to the Engineer for approval prior to shipping material.
2. Fill material shall be placed in maximum 12-inch lifts and compacted to minimum 98% percent optimum proctor moisture content and density. The bottom, middle and top of fill shall be tested, at the expense of the Contractor, by a qualified independent testing company. The testing company name, qualifications and contact information shall be provided to the Owner or Engineer for approval prior to commencing soil testing.
3. The filling and compaction should be performed with the smallest practical equipment to reduce surcharge on the structure during the operation. The Contractor shall review backfilling procedure with the Engineer prior to commencing.
4. Area to be filled shall be stripped of organic materials prior to filling.
5. If any muck material is discovered, it shall be required to be removed and replaced with a suitable material that is properly filled, compacted and tested using AASHTO T-180 modified proctor method.

EROSION AND TURBIDITY CONTROL:

The following measures represent minimum standards to be adhered to by the Contractor throughout the construction of this project. The Owner reserves the right to require additional measures to be employed when warranted by extreme conditions and/or the failure of the Contractor to employ the appropriate erosion and turbidity control best management practices. Failure to comply with these provisions shall result in the issuance of a "stop work order".

1. It shall be the responsibility of the Contractor to have all protective vegetation barricades, erosion and turbidity control structures and measures in place prior to the commencement of any work. These measures include, but are not limited to, temporary construction fences, hay bales, silt fences, and floating turbidity barriers. Further, it shall be the responsibility of the Contractor to maintain all erosion control devices throughout the duration of the entire project. Maintenance shall include periodic inspection and removal of debris abutting erosion control devices.
2. Prior to the installation of any fill materials on subject site, silt fences shall be installed (1) along subject site boundary and property lines, (2) at the edge of conservation easements and wetlands, (3) adjacent to natural landscape buffers, (4) around the perimeter of existing storm water treatment facilities, and (5) at any additional areas that the Owner deems necessary to be protected from potential erosion impacts during construction. These conditions shall apply in all instances where fill material is being installed within 25-feet of any of the aforementioned locations. While these items represent the minimum requirements, the Owner reserves the right to impose additional protective measures, as determined during actual site visits conducted throughout project construction.
3. At a minimum, the Contractor shall seed and mulch all disturbed areas. Sufficient grass coverage is to be established within thirty days.
4. Soils are to be stabilized by water or other means during construction. This is intended to reduce soil erosion and the impact to neighboring communities. Adequate watering methods should be employed to allow daily coverage of the entire limits of all areas that do not have an established vegetative cover. Methods to be employed include, but are not limited to, water trucks, permanent irrigation systems, temporary sprinkler systems operated by pumping units connected to wet retention ponds, water cannons, temporary irrigation systems mounted atop stockpile areas, and other methods as deemed necessary by the Owner.
5. Any permitted demolition or removal from submerged lands or adjacent uplands shall be fully contained within siltation devices such that permit turbidity requirements and state water quality standards are met.

DEMOLITION, CLEARING AND RESTORATION:

1. Demolition or clearing may require permits. The Contractor shall acquire all necessary building permits from the local municipality prior to commencing work.
2. Clearing and removal of vegetation, rocks and debris will be required within the project structure footprint.
3. Demolition or removal of objects, debris, or material specified or obstructing construction shall take place only to the extent necessary.
4. The site shall be restored by removing and finishing all evidence of construction including temporary haul roads, vehicle ruts, stockpile areas, shoreline slopes and vegetation, sod and areas subject to project work.

AS-BUILT SURVEY AND RECORD DRAWINGS:

1. As-built survey and record drawings shall be submitted at the time of the punchlist review and shall be reviewed by the Engineer for completeness and correctness.
2. The record drawings shall be a designated set of drawings maintained on site for the purpose of hand-making all changes and deviations from the original design, no matter how slight. Color markings are preferred.
3. The record drawings shall also contain any and all field changes with respect to location, alignment, height, width, length, depth, materials, products, etc.

DESIGN SPECIFICATIONS:

1. Reinforced Concrete Design, Wang & Salmon, First Edition, 1976.
2. Introductory Soil Mechanics & Foundations, Sowers & Sowers, Third Edition, 1970.
3. Florida Safety Code, Latest edition.
4. ASCE 7-22, Wind Loads on Other Structures
5. ASCE 7-22, Impact Loads (Debris)
6. ASCE 7-22, Hydrodynamic Loads (Current)
7. Simplified Design of Structural Wood, Third edition, Harry Parker.
8. Florida Building Code: Accessibility, 2010 Edition.

DESIGN LOAD- LL, DL AND WIND LATERAL:

1. Live Load: 60 psf (Boardwalk)
2. Dead Load: 29 psf total (S.Y.P.) - piles, railings, stringers, cap boards, & deckboards

STEEL/MISCELLANEOUS:

1. All reinforcing steel shall be ASTM A615, Grade 60.
2. All structural steel and miscellaneous metal items (other than aluminum) shall be in accordance with structural steel, Grade 316 Stainless Steel or ASTM A36 Steel.

TIMBER

1. Southern Yellow Pine (S.Y.P.) Lumber:
   a. See schedule of materials, sheet C-09.
2. Treatment of timber shall be as follows: decking, posts, mid-posts, and post overlay; 0.40 PCF ACQ (Alkaline Copper Treatment), stringers, pile cap boards and other components; 0.6 CCA (Copper Chromium Arsenate). All timber and lumber shall be marine grade and identified by the grade and treatment mark of a recognized organization or independent agency certified by the American Lumber Standards Committee.
3. Decking shall be placed with ¼-inch gaps between boards.
4. One layer of roofing felt shall be placed between deck (each board) and stringers. All boards for decking shall be installed crown down.

COMPOSITE LUMBER:

1. See schedule of materials, sheet C-09.
2. Contractor shall submit shop drawings and color palettes for approval prior to ordering and installing.

BOLTS, SCREWS & FASTENERS:

1. All fasteners, including nails, screws, threaded rods, bolts, nuts, washers, plates, lags, etc. shall be grade 316 stainless steel (S.S.). Washers used with single-bolted or double bolted connections (for example: stringer to piling connection, cap board connections or cross-bracing) shall be minimum 3-inch diameter "dock washers". Standard washers for splice block and railings.
2. Bolts shall extend fully through the nuts but not extend beyond the nut more than ½-inch.
3. Stainless Steel (S.S.) screws as shown in plans.
4. Simpson Strong Tie Twist Straps (stainless steel hurricane straps), MTS. Screws shall be Simpson Strong Tie 9-inch x 1½-inch Stainless Steel (S.S.).

CONCRETE - GRADE BEAM STRUCTURES:

1. All mix designs by the concrete supplier or Contractor must be submitted to the Engineer for approval prior to submitting order.
2. All end bent concrete shall be of the same mix design as follows:
   a. Compressive Strength: 6,000 psi minimum (grade beams) and 4,500 psi minimum (sidewalk flares)
   b. Water-cement ratio </= 0.40
   c. Air Entrainment: Minimum 2 to 3%
   d. Potable water, no chlorides
   e. Type I Cement.
   f. 6% addition of microsilica per weight of binders.
   g. Large and small aggregates washed and free of chlorides or reactive chemicals.
   h. No pea gravel allowed.
   i. Retarders or accelerators not allowed unless justified to the Engineer prior to their use.
3. Concrete cover from all exterior faces shall be 4-inch clear to the outmost face of any reinforcement, including stirrups, unless otherwise noted in the plans.
4. No greater than 45 minutes may transpire between individual castings. Trucks may not sit on for grater than 45 minutes. Trucks sitting full on site for grater than 45 minutes shall be rejected at the Contractor's expense. Delays in casting a given form greater than 45 minutes shall be rejected unless an acceptable construction join can be made.
5. A working concrete vibrator must be on site prior to delivery of first concrete. The Owner, Owner's representative or Engineer shall not allow concrete to be cast otherwise.
6. Vibrate concrete fully, particularly at corners and edges, in a continuous vertical plunging motion, never allowing the vibrator to become motionless in the concrete. Concrete with substantial voids or honeycombing will be rejected.
7. Use non-metallic chairs and spacers in reinforcement placing, or for any other necessary in-form attachments or alignments.
8. Continually wet water cure horizontal surfaces for at least three days and all exposed concrete surfaces after concrete is set. For the purpose of this specification "set" is when the concrete surface is hard enough so that when "knocked" with the knuckles the concrete is not dented. The Contractor is responsible for arranging a water source for curing purposes prior to commencing casting of concrete.
9. Apply Master Builders/BASF "ConFilm" or Euclid Chemical "Eucobar" product immediately after first float and then after final finish. Refer to manufacturer's recommendations for mixing and application.
10. The final alignment of the concrete end bent shall be straight and level per elevations and plans provided.
11. Concrete materials testing per acceptable ASTM methods and intervals. A material testing program must be prepared by the Contractor and/or manufacture for review and approval by the Engineer. At least one set of four cylinders shall be cast for any one day's work, or work between construction joints, or more if prescribed by ASTM.

DRAWING: GENERAL NOTES
DMC JOB NO. 23-026-34
SHEET NO. C-11

DRAWN	BL	CAD	C3D
CHECKED	CNT	SCALE	AS SHOWN
APPROVED	CNT	DATE	05-28-2024

PROJECT NAME: MEMORIAL PARK OBSERVATION PIERS REHABILITATION

CLIENT: CITY OF PORT ORANGE

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FLORIDA LICENSE No. 37136

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Drawing Name: E:\My ShareSync\DMC Projects\026 - City of Port Orange\23-026-34 Memorial Park Observation Dock\Drawings\Memorial Park Observation Pier.dwg By: DMC-USER Tab: GN (11) 5/28/2024

SPECIFIC PURPOSE SURVEY

FOR

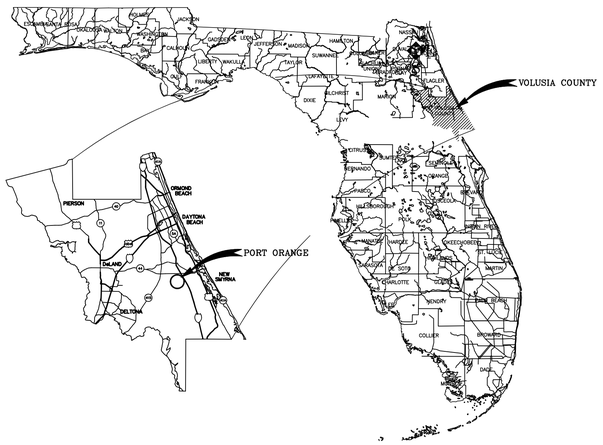
CITY OF PORT ORANGE, FLORIDA

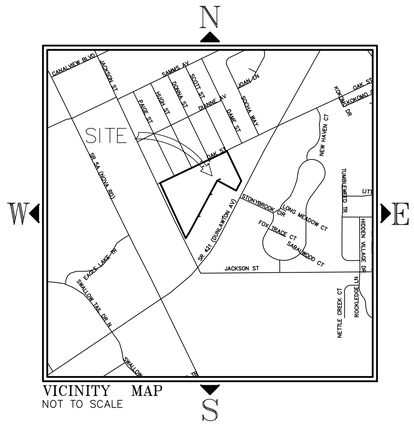
A PORTION OF

SECTION 9–TOWNSHIP 16 SOUTH–RANGE 33 EAST
VOLUSIA COUNTY, FLORIDA

LOCATION

DUNLAWTON AVENUE, PORT ORANGE , FL.





VICINITY MAP
NOT TO SCALE

KEY SHEET

DESCRIPTION: (PER ORB 5339, PG 1067)

PARCEL NO. 138 SECTION 79190–2514

ALL of those lands as described in Official Records Book 3691, Page 1411, Public Records of Volusia County, Florida,

That part of:

Lot Two (2) and Lot Three (3), Section Nine (9), Township 16 South, Range 33 East, Volusia County, Florida. Described as follows:

"Commence at a recovered 5/8" iron rod monumenting the intersection of the existing northerly right of way line of Dunlawton Boulevard (SR 421) and the existing easterly right of way line of Jackson Street (a 60 foot street) said intersection being 110.68 feet North 24°50'46" West of an intersection point at Station 42+92.81 on the centerline of survey of said Dunlawton Boulevard as shown on Florida Department of Transportation Right of Way Map Section 79190–2514, in Section 9, ToWnShip 16 South, Range 33 East, Volusia County, Florida; thence departing said intersection run North 24°50'46" West 342.54 feet along said existing easterly right of way line of Jackson Street for the POINT OF BEGINNING; thence continue along said right of way line and said bearing 827.85 feet to a point on the south line of Oak Street per occupied Beacon Woods No. 2 and 3 as recorded in Map Book 33, Page 177 and Map Book 34 Page 104; thence continue North 24°50'46" West 25.00 feet; thence North 64°25'24" East 1042.93 feet; thence South 25°29'10" East 461.40 feet to the existing northerly right of way line of said Dunlawton Boulevard; thence along said right of way South 28°14'08" West 160.00 feet; thence departing said right of way line run North 61°45'52" West 300.00 feet; thence South 28°14'08" West 787.74 feet to the beginning of a curve concave northwesterly having a radius of 1509.86 feet and a chord bearing of South 30°46'03" West; thence southerly along the arc of said curve through a central angle of 05°03'50" a distance of 133.44 feet to the Point of Beginning.

Containing 13.230 acres, more or less.

SURVEY NOTES:

1. THIS PLAT OF SURVEY HAS BEEN PREPARED WITHOUT THE BENEFIT OF A CURRENT REPORT FROM AN AUTHORIZED TITLE PROFESSIONAL, OR A TITLE OPINION ISSUED BY AN ATTORNEY LICENSED BY THE FLORIDA BAR. THEREFORE, THERE MAY BE ADDITIONAL MATTERS OF RECORD NOT SHOWN ON THIS SURVEY.

2. BEARING STRUCTURE BASED ON DEED, WITH THE BEARING ON THE EASTERLY RIGHT OF WAY LINE OF JACKSON STREET, BEING N24°50'46"W.

3. UNLESS OTHERWISE SHOWN, RECORD DISTANCES AND DIRECTIONS AND FIELD MEASURED DISTANCES AND DIRECTIONS ARE THE SAME.

4. DIMENSIONS ARE SHOWN IN FEET AND DECIMALS THEREOF.

5. UNDERGROUND FOUNDATIONS, IF ANY HAVE NOT BEEN LOCATED OR SHOWN AS A PART OF THIS SURVEY.

6. ELEVATIONS REFER TO NAVD 1988 DATUM, ST. JOHNS RIVER WATER MANAGEMENT DISTRICT MONUMENT 04–08–061–0, HAVING A PUBLISHED ELEVATION 8.069 FEET

7. THIS PROPERTY IS LOCATED IN FLOOD INSURANCE RATE MAP (F.I.R.M.) ZONE X. THIS LOCATION IS DETERMINED BY SCALING FROM F.I.R.M. MAP NO. 12127C0369J MAP EFFECTIVE DATE: SEPTEMBER 29, 2017, APPROXIMATE SCALE: 1"=500'.

NOTE:
THIS SURVEY IS NOT VALID WITHOUT SHEETS 1 TO 4

SURVEYOR'S REPORT:

PURPOSE OF SURVEY:

TO PREPARE A SPECIFIC PURPOSE SURVEY TO SHOW FEATURES AND ELEVATIONS PER CLIENT DIRECTIONS.

HORIZONTAL DATUM:

FLORIDA STATE PLANE COORDINATE SYSTEM, EAST ZONE, 1983 NORTH AMERICAN DATUM, 2007 ADJUSTMENT,

METHODOLOGY:

BEARING STRUCTURE BASED ON DEED, WITH THE BEARING ON THE EASTERLY RIGHT OF WAY LINE OF JACKSON STREET, BEING N24°50'46"W. LOCATION OF FEATURES DONE WITH CONVENTION SURVEY METHODS.

VERTICAL DATUM:

NORTH AMERICAN VERTICAL DATUM OF 1988,

VERTICAL CONTROL WAS ESTABLISHED BY A 3 WIRE LEVEL LOOP THROUGH THE HORIZONTAL CONTROL ESTABLISHED HEREON. STARTING FROM ST. JOHNS RIVER WATER MANAGEMENT DISTRICT BENCHMARK 04–08–061–0.

INDEX OF SHEETS:

1. COVER SHEET (CURRENT), SITE MAP, KEY SHEET, DESCRIPTION, SURVEYOR'S NOTES, SURVEYOR'S REPORT AND CERTIFICATIONS.
2. SPECIFIC PURPOSE SURVEY

NOT A BOUNDARY SURVEY

NOTICE:

THIS SURVEY IS NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OR A VALID ELECTRONIC SIGNATURE OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

SURVEYOR'S CERTIFICATION:

CERTIFIED TO AND FOR THE BENEFIT OF: CITY OF PORT ORANGE, FLORIDA;

I HEREBY CERTIFY THAT THIS SURVEY MEETS THE STANDARDS OF PRACTICE SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS IN CHAPTER 5J–17, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.027, FLORIDA STATUTES.

DATE:

JEFFREY S. HATTENDORF
PROFESSIONAL SURVEYOR AND MAPPER
FLORIDA LICENSE NUMBER 6193

SLIGER & ASSOCIATES, INC.
PROFESSIONAL LAND SURVEYORS
3921 NOVA ROAD
PORT ORANGE, FL. 32127
LICENSED BUSINESS CERTIFICATION NUMBER 3019

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No.	Date	Revision

FIELD DATE: SEPTEMBER 19, 2023 | FIELD BOOK:1517
PARTY CHIEF: K. HELMICK | PAGE (S):65-68
DRAWN BY: J. MOLLER
CHECKED BY: J. HATTENDORF

SPECIFIC PURPOSE SURVEY

DUNLAWTON AVENUE ,
PORT ORANGE, FL.

CLIENT: DREDGING AND MARINE CONSULTANTS

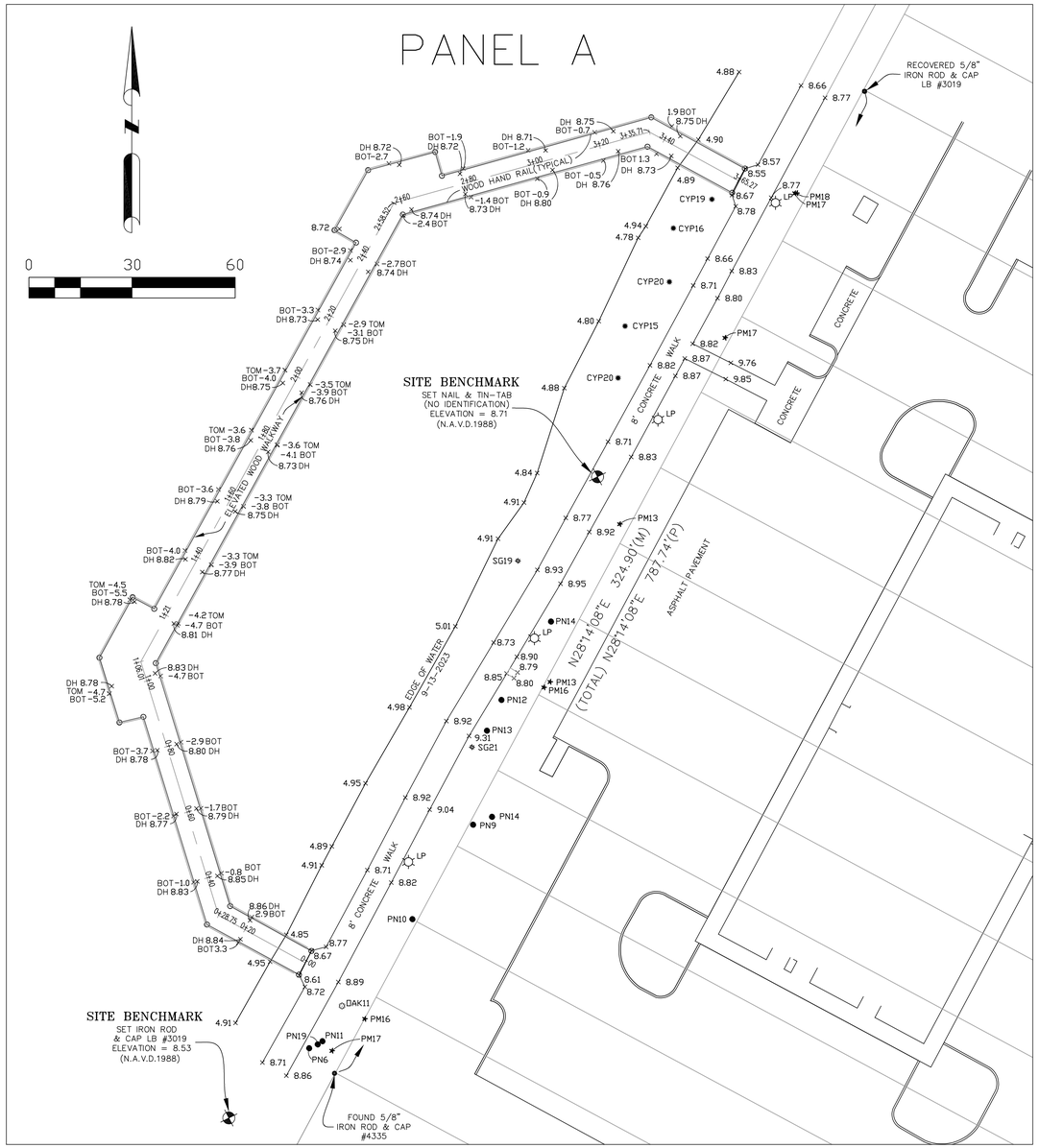
PROJECT: 03925
JOB: 23-0827
SCALE: N/A
SHEET: 1 OF 1

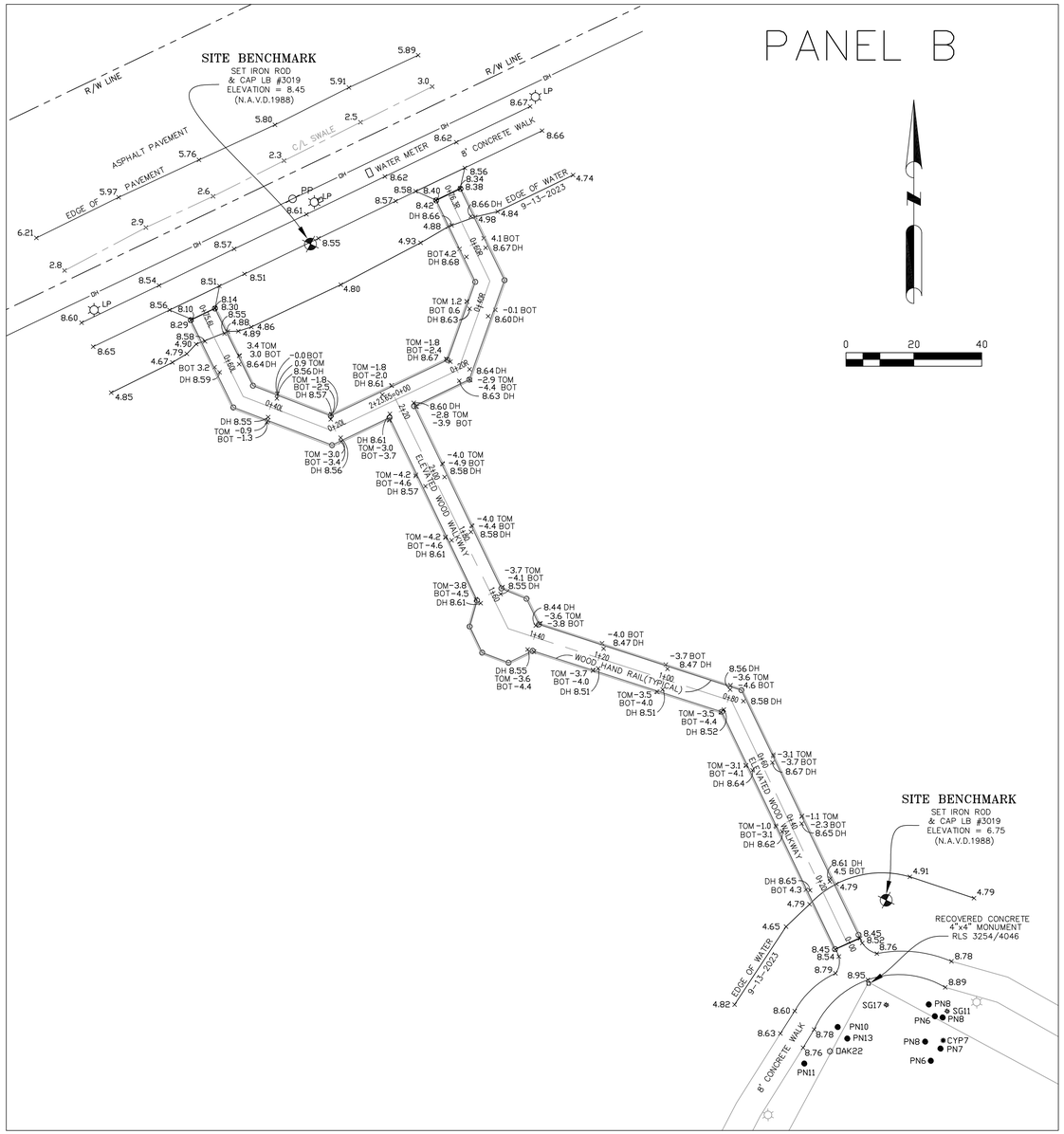
FILE: K:\LIBRARY\TEMPLATES\2022 TEMPLATES\24X36 SURVEY IN PROGRESS.DWG

SPECIFIC PURPOSE SURVEY

FOR

CITY OF PORT ORANGE, FLORIDA





ADDITIONAL ABBREVIATIONS

TOM	TOP OF MUCK
BOT	BOTTOM
DH	DECK HEIGHT

ADDITIONAL ABBREVIATIONS–TREE LEGEND

PNP	POND PINE	UK	UNKNOWN TREE	MG	MAGNOLIA
PNL	LOBLOLLY PINE TREE	MP	MAPLE TREE	BY	BAY TREE
PN	SLASH PINE TREE	SC	SYCAMORE TREE	EM	ELM TREE
PNS	SAND PINE TREE	OK	OAK TREE	CB	CHINABERRY TREE
PNF	LONGLEAF PINE TREE	SG	SWEET GUM TREE	CY	CYPRESS TREE
BT	BLACK TUPELO TREE	HK	HICKORY TREE	PM	PALM TREE
CD	CEDAR TREE	BH	BIRCH TREE	MU	MULBERRY TREE
DDD	INDICATES THAT THE TREE IS LIKELY DEAD, DISEASED OR DYING				

TREE TYPE — OK24 8 — TREE SIZE (INCHES) DIAMETER AT BREAST HEIGHT

TREE SYMBOL — MULTIPLE TRUNKS

NOTE:

THIS SURVEY IS NOT VALID WITHOUT SHEETS 1 TO 4

SLIGER & ASSOCIATES, INC.
PROFESSIONAL LAND SURVEYORS
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(386) 761-5385
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No.	Date	Revision
1		
2		
3		
4		
5		

FIELD DATE: SEPTEMBER 19, 2023 | FIELD BOOK:1517
PARTY CHIEF: K. HELMICK | PAGE (S):65-68
DRAWN BY: J. MOLLER | FIELD BOOK:
CHECKED BY: J. HATTENDORF | PAGE (S):

SPECIFIC PURPOSE SURVEY

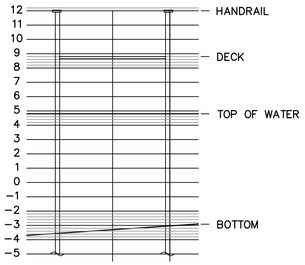
DUNLAWTON AVENUE ,
PORT ORANGE, FL.

CLIENT: DREDGING AND MARINE CONSULTANTS

PROJECT: 03925
JOB: 23-0827
SCALE: 1"=40'
SHEET: 2 OF 2

SPECIFIC PURPOSE SURVEY

CROSS SECTIONS FOR PANEL A



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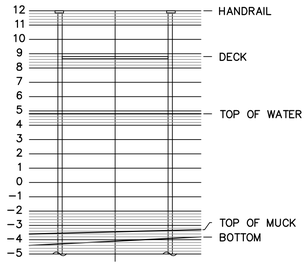
STATION 0+80
CROSS SECTION



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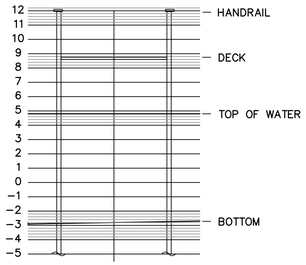

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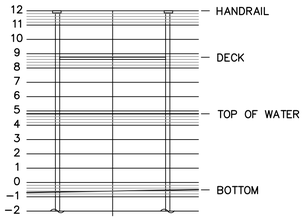

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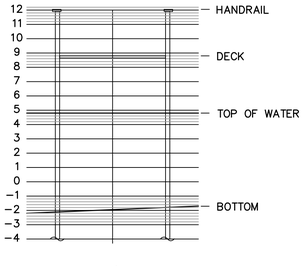

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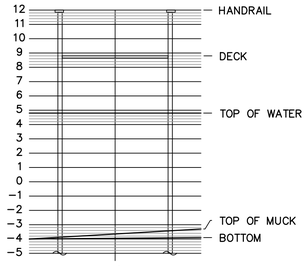

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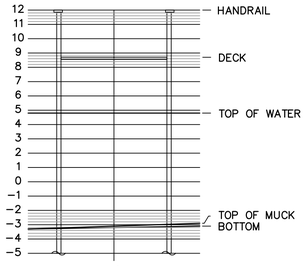

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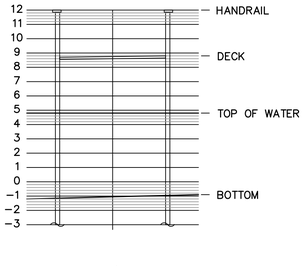

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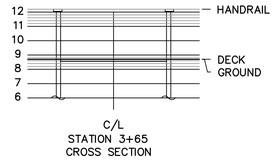

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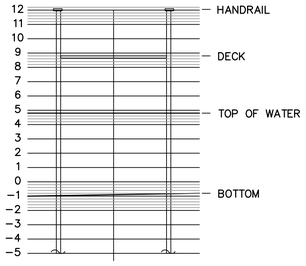

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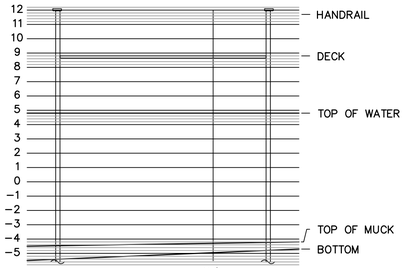

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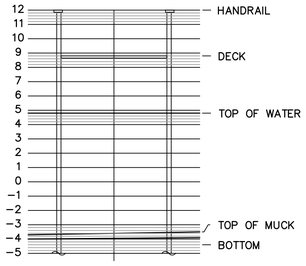

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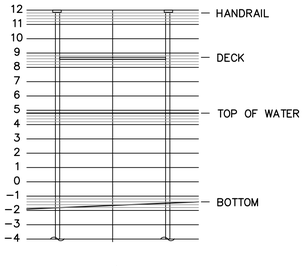

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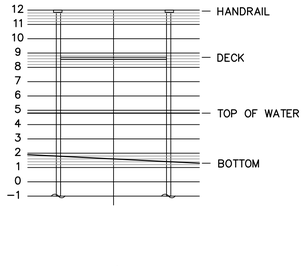

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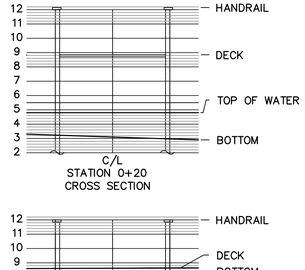

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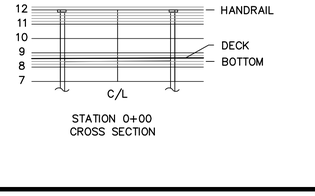

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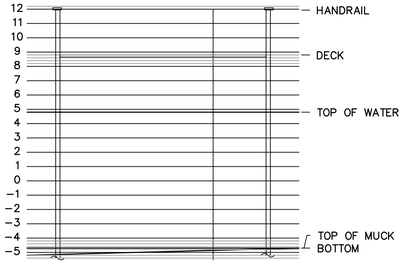

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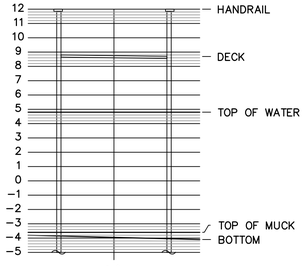

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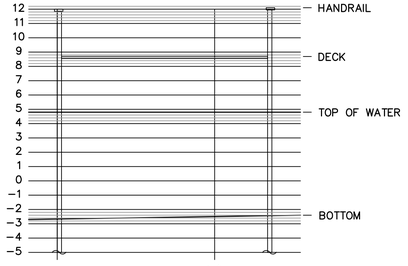

C/L
STATION 2+60
CROSS SECTION

0 5 10

HORIZONTAL & VERTICAL
SCALE 1" = 5'

NOTE:
THIS SURVEY IS NOT VALID WITHOUT SHEETS 1 TO 4

SLIGER & ASSOCIATES, INC.
PROFESSIONAL LAND SURVEYORS
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No.	Date	Revision
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FIELD BOOK:1517 | PAGE (S): 65-68 | FIELD BOOK: | PAGE (S):

FIELD DATE: SEPTEMBER 19, 2023 | PARTY CHIEF: K. HELMICK | DRAWN BY: J. MOLLER | CHECKED BY: J. HATTENDORF

SPECIFIC PURPOSE SURVEY

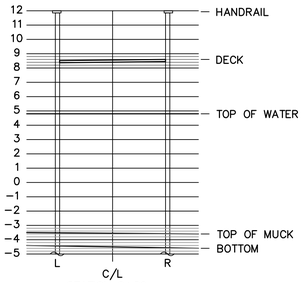
DUNLAWTON AVENUE ,
PORT ORANGE, FL.

CLIENT: DREDGING AND MARINE CONSULTANTS

PROJECT: 03925
JOB: 23-0827
SCALE: N/A
SHEET: 3 OF 4

SPECIFIC PURPOSE SURVEY

CROSS SECTIONS FOR PANEL B



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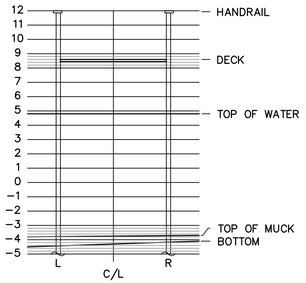

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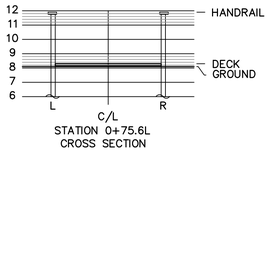

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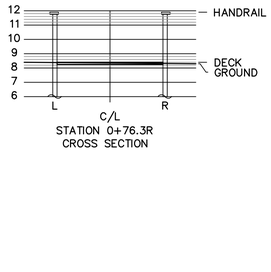

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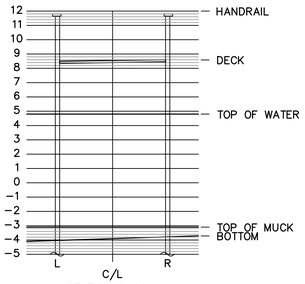

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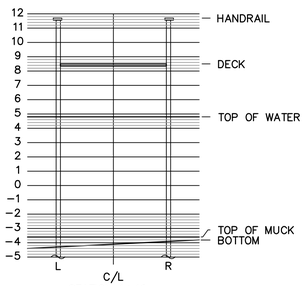

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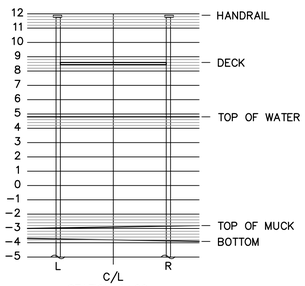

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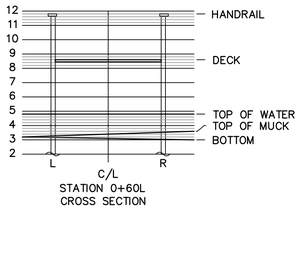

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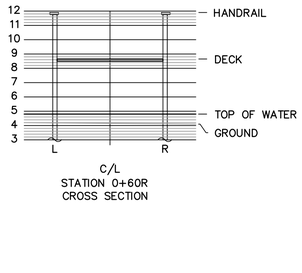

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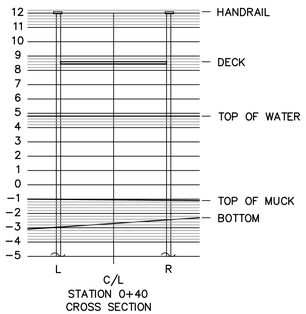

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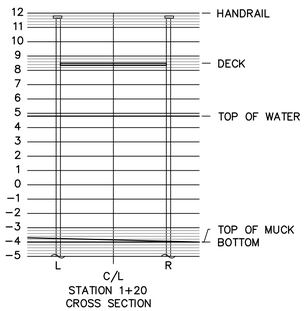

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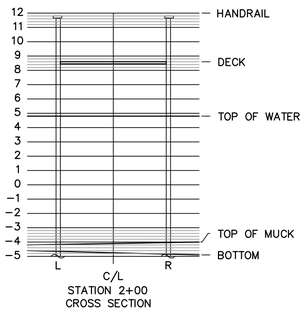

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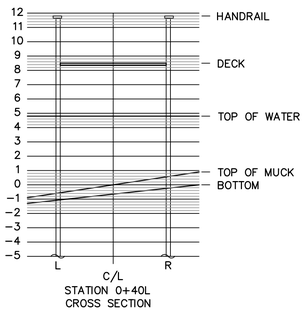

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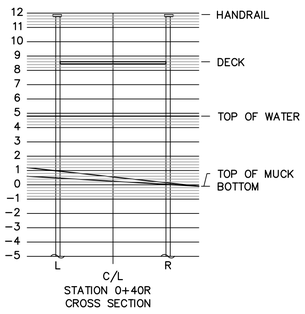

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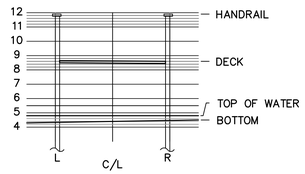

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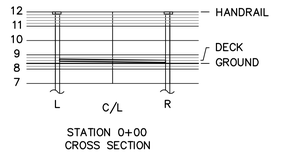

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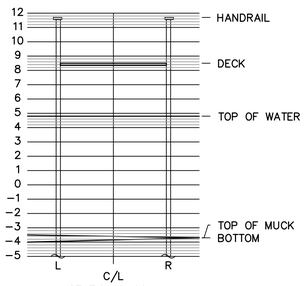

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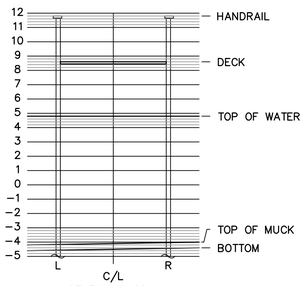

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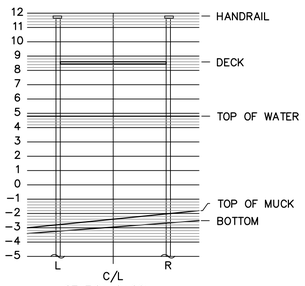

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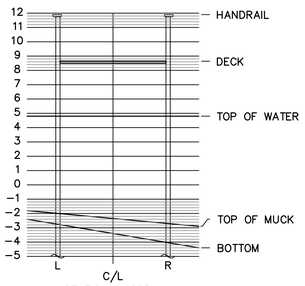

STATION 0+20R
CROSS SECTION

HORIZONTAL & VERTICAL
SCALE 1" = 5'

NOTE:
THIS SURVEY IS NOT VALID WITHOUT SHEETS 1 TO 4

SLIGER & ASSOCIATES, INC.
PROFESSIONAL LAND SURVEYORS
3921 NOVA ROAD
PORT ORANGE, FL. 32127
(386) 756-0592
LICENSED BUSINESS CERTIFICATION NUMBER 3019
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No.	Revision	Date
1		
2		
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4		

FIELD DATE: SEPTEMBER 19, 2023
PARTY CHIEF: K. HELMICK
DRAWN BY: J. MOLLER
CHECKED BY: J. HATTENDORF

FIELD BOOK:1517
PAGE (S):65-68
FIELD BOOK:
PAGE (S):

SPECIFIC PURPOSE SURVEY

DUNLAWTON AVENUE ,
PORT ORANGE, FL.

CLIENT: DREDGING AND MARINE CONSULTANTS

PROJECT: 03925
JOB: 23-0827
SCALE: 1"= 5'
SHEET: 4 OF 4

CITY OF PORT ORANGE

PROJECT TECHNICAL SPECIFICATIONS

PROJECT NAME: MEMORIAL PARK OBSERVATION PIERS

PROJECT NO.: 23-026-34

May 28, 2024

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NOTE TO CONTRACTOR: The Contractor is advised that this project includes a Base Bid, Bid Alternate 1 and Bid Alternate 2. Please refer to Sheet C-09: Schedule of Materials for Bid purposes. The City reserves the right to select Contractor based on option that is in the best interest of the City. Only one Contractor shall be selected and therefore, Contractors MUST bid all three, otherwise the bid will be considered nonresponsive.

BASE BID:

Item 1 **Mobilization and Demobilization:**

The work specified in this section consists of the preparatory work and operations necessary for the movement of personnel, equipment, supplies and incidentals to the project site, and for the establishment of temporary offices, safety equipment and first aid supplies, sanitary and other facilities, as required by these Technical Specifications, the construction plans, and State and local laws and regulations.

All costs for bid bond(s), permits and any required insurance, and any other pre-construction expense necessary for the start of the work, as well as the cost of the removal of the above items, shall also be included in this item. All costs associated with trimming/clearing of vegetation, sod, any other materials, temporary removal of existing fencing and resetting of any items once the work is complete, shall also be included in this item. All costs associated with collecting complete photographic and video documentation of the site prior to construction shall be included in this item.

At the pre-construction meeting, the CONTRACTOR shall submit a tentative work schedule, safety plan, hurricane preparation plan, shipping, stockpile and site administration plan (SSSAP), a complete list of all SUBCONTRACTORs that will be employed by the PRIME CONTRACTOR, and complete contact information for PRIME CONTRACTOR staff and all SUBCONTRACTOR staff. Personnel to be included in the contact lists shall include, but not necessarily be limited to: CONTRACTOR and SUBCONTRACTOR Principals, CONTRACTOR and SUBCONTRACTOR Project Managers, CONTRACTOR and SUBCONTRACTOR Site Superintendents and/or Foremen. In addition, emergency contact information shall be included for the PRIME CONTRACTOR and all SUBCONTRACTORs. The cost for these items should be included in this item.

The basis of payment for **Mobilization and Demobilization** shall be **LUMP SUM**. Fifty (50) percent of this lump sum cost shall be paid upon mobilization of equipment to the project site. An additional forty (40) percent of this cost shall be paid as the project progresses. The final ten (10) percent of this cost shall be paid upon removal of all equipment from the project site.

Item 2 **Construction Survey and As-Built Survey:**

The bid price for this item shall include all necessary survey work for the CONTRACTOR to complete all construction activities and to furnish an as-built survey of the completed project. Elevations for the plans are based on the NAVD 1988 vertical datum.

The CONTRACTOR shall furnish the services of a State of Florida licensed land surveyor for the field layout of all work. The CONTRACTOR's licensed land surveyor shall perform all initial site layout and shall provide follow-up verification of all work underway at a frequency of no less than once a week. All deviations from the

construction plans, no matter how minor, that are be immediately corrected and noted during the follow-up verifications shall be recorded on the project redline plan set which shall always be maintained on the site and submitted to the ENGINEER prior to project close-out.

The CONTRACTOR shall furnish the services of a State of Florida licensed land surveyor for all the survey work and during the preparation of the as-built survey. The CONTRACTOR shall submit two (2) hard copies and one (1) electronic copy of the as-built survey for the completed project. These documents shall be signed and sealed by a professional surveyor registered in the State of Florida and then submitted to the ENGINEER for approval. The CONTRACTOR shall accurately record the location and elevations of all constructed grades and structures including but not limited to: timber pier with deck and handrails (elevations at 10-foot intervals, newly constructed concrete sidewalks (elevations at 10-foot intervals), grades at all newly graded areas, ROW lines and easement lines. CONTRACTOR shall ensure proper grades and slopes as needed are maintained.

The ENGINEER must approve the initial site stakeout before any work begins; the CONTRACTOR shall provide a minimum of 72 hours' notice to the ENGINEER of the anticipated completion of the initial stake-out so the inspection and field verification can be scheduled. Prior to start of construction, the surveyor shall also locate any protected/threatened vegetative species located within or adjacent to (within 25 feet) of the project area so these may be flagged, and appropriate protective measures are set up prior to starting work. All intermediate construction surveys shall be included in this item. CONTRACTOR is cautioned that the survey must be conducted with respect to adjacent site aspects and must contact ENGINEER for any clarification prior to any construction.

The basis of payment for **Construction Survey and As-Built Survey** shall be **LUMP SUM.** Thirty (30) percent of the lump sum cost shall be paid upon acceptance of the initial site stakeout by the ENGINEER. The remainder of the cost (less retainage) shall be paid as the project progresses.

Item 3 **Environmental Compliance:**

The bid price for this item shall include, but not be limited to, the necessary manpower, equipment and materials needed to maintain Best Management Practices and all regulatory compliance and environmental protection during all phases of construction. This item includes all costs related to obtaining a NPDES permit and complying with all NPDES permit requirements. Turbidity curtains and silt fencing shall be installed and maintained around construction areas at all times and the CONTRACTOR shall take all proactive measures to reduce loss of sediment and turbidity during all construction activities. The bid price for this item shall include all costs for monitoring and reporting, as may be required by the NPDES or other permits, as well as all costs for corrective measures taken to correct meet permit conditions. Any monitoring reports shall be submitted to the ENGINEER weekly for approval, and copies of the reports shall be made available to the CITY and the ENGINEER at any time upon request.

The bid price for this item shall also include all costs associated with setting up sediment traps, booms and/or other sediment control devices at all stormwater inlets and other structures present on the site, to prevent stormwater pipes and the

stormwater treatment facility from being impacted by sediment created by construction activity or any storm events. The CONTRACTOR shall inspect these devices regularly, and clean and make repairs to these devices as required. The CONTRACTOR shall be responsible for cleaning excess sediment from the stormwater treatment facility, and for desilting stormwater inlets and pipes, if erosion control measures are not properly deployed or maintained throughout construction and will be responsible for any fines assessed. No additional payment will be made by the CITY for any needed sediment cleaning and/or pipe/inlet desilting.

The bid price for this item shall also include all costs associated with regularly inspecting and maintaining all other erosion, sediment, and turbidity control measures employed during construction of this project, as well as any necessary repairs and/or replacement of these measures, with the need determined through regular inspections conducted at minimum intervals as specified in the NPDES and other project permits, and/or at the direction of the ENGINEER and/or OWNER. Copies of the control measure inspection reports shall be submitted to the ENGINEER within one week of the inspection, and a summary of corrective measures taken to address noted deficiencies shall be included. A weekly log of these inspections shall be provided to the ENGINEER.

In addition, the CONTRACTOR shall comply with all permits for this project and all federal, state, and local water quality standards throughout the duration of the project.

The CONTRACTOR shall take all necessary precautions to avoid damage to wetland vegetation and trees to be preserved. This item includes costs related to fencing to protect vegetation and any other protective measures for these.

The basis of payment for **Environmental Compliance** shall be **LUMP SUM**. Fifty (50) percent of the lump sum cost shall be paid upon obtaining an NPDES permit and properly installing all erosion and turbidity control measures. The remainder of the cost (less retainage) shall be paid as the project progresses. Removal of all control measures from the project site once the work has been completed is required before final acceptance of the project by the CITY.

Item 4 **Temporary Traffic Control:**

The bid price for this item shall include, but not be limited to, the necessary manpower, equipment and materials needed to provide temporary traffic control through the project area for the duration of construction. The entrance of Lakeside Executive Park is along Florida 421, which is located east, southeast of Memorial Park (the project location). It is anticipated that trucks hauling materials to or from the project site will be frequently entering and leaving the project area through these entrances and along Oak Street. This park is also surrounded by residential community and thus traffic control for human safety is paramount.

Public access to Memorial Park must be maintained at all times. The CONTRACTOR shall give a minimum of 4 weeks advance notice to the CITY and the ENGINEER for any request for lane closures, if needed.

At the preconstruction meeting, the CONTRACTOR shall submit a temporary traffic control plan (TTC) to the ENGINEER and the CITY for approval. The TTC Plan shall

also include details ensuring the safe delivery and removal of materials by trucks from temporary stockpile areas established near the project area. Any personnel utilized as flaggers must have completed a Temporary Traffic Control Flagger Training course offered by an FDOT-approved provider, and set-up, inspection and maintenance of temporary traffic control devices must be performed under the supervision of personnel who have completed an Intermediate level TTC course offered by an FDOT-approved provider. The CONTRACTOR shall maintain copies of all training certificates on the project site at all times. The ENGINEER must be informed once TTC measures have been fully implemented so an inspection may be scheduled. The CONTRACTOR shall regularly inspect barricades, signs, fencing and other TTC devices employed on the job site, and shall repair or replace these as needed.

The basis of payment for **Temporary Traffic Control** shall be **LUMP SUM**. Fifty (50) percent of the lump sum cost shall be paid once TTC devices and signage have been deployed per the approved TTC plan. The remainder of the cost (less retainage) shall be paid as the project progresses. Removal of TTC devices and signage from the project site once the work has been completed is required before final acceptance of the project by the CITY.

Item 5 **Demolition, Hauling and Disposal:**

The bid price for this item shall include, but not be limited to, the required manpower, equipment, materials and other costs involved in all demolition, hauling, and disposal required to construct the project as indicated in the construction drawings for both Piers as indicated in the Plan set Sheet C-09 – Schedule of Materials. CONTRACTOR to preserve and avoid damage to the existing piles, cross-braces, and other existing pier structure as indicated on the plans. Any damage to the existing structure to remain per the construction plans or any other ground, grasses areas to access the structures shall be replaced and restored at the CONTRACTOR'S expense.

The CONTRACTOR shall take all necessary precautions to avoid damage to upland vegetation and trees to be preserved during removal, demolition and hauling of debris. In addition, the CONTRACTOR shall take all necessary precautions to avoid impacts to in-water resources during demolition and removal of the existing structures. All environmental protection measures shall be in place before any demolition or other construction activity commences. Any damage to site must be restored to its original or better condition and shall be included in this item. Any sod replaced must be viable and in good condition prior to project acceptance by the City or shall be replaced by the CONTRACTOR.

The basis of payment for **Demolition, Hauling and Disposal** shall be **LUMP SUM**.

Item 6 **Wood Handrail:**

The bid price for this item shall include, but not be limited to, the necessary manpower, equipment, materials, hardware and incidentals needed to construct all components of the wood handrail, as indicated in the construction plans. Components to be constructed include, but are not limited to, handrail mid posts and vertical railing, and horizontal railing.

All timber must be free of splinters, cracks, knots or sap. All timber must be treated with wood preservative products as indicated in the plans, to the treatment retention levels indicated in the plans, and must be southern yellow pine (SYP) meeting the grade requirements indicated in the plans. Any timber deemed unsuitable by the Engineer will be replaced at the CONTRACTOR's expense.

All top handrail materials are composite materials and shall be as specified in the plans. CONTRACTOR shall note sizes of composite materials and anchoring requirement of the composite material and mesh railing with staples. Please refer to Plan set Sheet C-09 – Schedule of Materials for the railing options.

CONTRACTOR to note: Shop drawings shall be submitted to the CITY and ENGINEER for approval of all materials and include manufacture's specifications for each item of the handrail prior to construction. CONTRACTOR to preserve and avoid damage to the existing piles, cross-braces, and other existing dock structure as indicated on the plans. Any damage to the existing structure to remain per the construction plans shall be replaced at the CONTRACTOR'S expense.

All hardware used for the construction of the handrail system must be 316-alloy stainless steel; under no circumstances will any alternative materials or other stainless-steel alloys be accepted. The CONTRACTOR shall ensure that all handrail components fit tightly and are sanded, beveled and finished as needed to eliminate the potential for injury to boardwalk users from gouges or contact with sharp edges.

The basis of payment for **Wood Handrail** shall be per **SQUARE FOOT**.

Item 7 **Wood Piers:**

The bid price for this item shall include, but not be limited to, the necessary manpower, equipment, materials, hardware and incidentals needed to construct all components of the wood piers, as indicated in the construction plans. Components to be constructed include, but are not limited to cap boards, stringers and deck boards.

All timber must be free of splinters, cracks, knots or sap. All timber must be treated with wood preservative products as indicated in the plans, to the treatment retention levels indicated in the plans, and must be southern yellow pine (SYP) meeting the grade requirements indicated in the plans. Any timber or composite deemed unsuitable by the Engineer will be replaced at the CONTRACTOR's expense.

All wood deck materials shall be constructed as specified in the plans. CONTRACTOR shall note sizes of wood materials and anchoring requirement of these material, mesh railing and staples.

CONTRACTOR to note: Shop drawings shall be submitted to the CITY and ENGINEER for approval of all materials and include manufacture's specifications for each item of the pier prior to construction. CONTRACTOR to preserve and avoid damage to the existing piles, cross-braces, and other existing pier structure as indicated on the plans. Any damage to the existing structure to remain per the construction plans shall be replaced at the CONTRACTOR'S expense.

All hardware used for the construction of the pier system must be 316-alloy stainless steel; under no circumstances will any alternative materials or other stainless-steel alloys be accepted. The CONTRACTOR shall ensure that all pier components fit tightly and are sanded, beveled and finished as needed to eliminate the potential for injury to boardwalk users from gouges or contact with sharp edges.

The basis of payment for **Wood Piers** shall be per **SQUARE FOOT**.

Item 8 **Side Mesh Railing and Staples (2in.x 4in., 36in. Height, 100ft rolls):**

The bid price for this item shall include, but not be limited to, the necessary manpower, equipment, materials, hardware and incidentals needed to construct all components of the side mesh railing as indicated in the construction plans. The mesh shall be vinyl coated galvanized 0.159 welded wire fabric, with 1-inch stainless steel fence staples, spaced at 12-inches center on center (maximum). Any damage to the composite railing, posts, or other components of the dock damaged during installation of the mesh railing shall be replaced at the CONTRACTOR'S expense.

The basis of payment for **Side Mesh Railing and Staples (2in.x 4in., 36in. Height, 100ft rolls)** shall be per **LINEAR FOOT**.

Item 9 **Concrete Sidewalk**

The bid price for this item shall include, but not be limited to, the necessary manpower, equipment, materials and any other provision needed to properly construct concrete sidewalks throughout the project area as indicated in the construction plans. All products, dimensions, testing methods, application methods, etc. must conform to the requirements of the Section 522 Florida Department of Transportation Standard Specifications for Road and Bridge Construction (Latest Edition), which is the source of the specification for this item.

The basis of payment for **Concrete Sidewalk** shall be per **SQUARE YARD**.

Item 10 **Concrete Grade Beam**

The bid price for this item shall include, but not be limited to, the necessary manpower, equipment, materials and any other provision needed to properly construct concrete grade beams as indicated in the construction plans.

For the concrete grade beam the CONTRACTOR shall provide concrete meeting the specifications shown in the construction plans. Compact fill areas, including cut areas under the grade beam that have been excavated more than 6 inches below the bottom of the grade beam, to a minimum of 98% of AASHTO T180 density. All organics and other unsuitable material shall be removed from compacted areas prior to compaction and replaced with clean structural fill to the required grade. The area to be compacted is defined as that area directly under the grade beam and 1 foot beyond each side of the grade beam when right-of-way allows.

A minimum of four inches of cover must be provided for all reinforcing steel used for the grade beam. Non-metallic chairs and fasteners must be used to secure reinforcing steel prior to pouring concrete, and concrete shall be poured in a manner that will not result in reinforcing steel moving during the pour. Concrete must be vibrated fully; excessively honeycombed concrete will be rejected by the ENGINEER and replaced by the CONTRACTOR at no additional cost.

The CONTRACTOR must make submittals of the concrete beam system to the ENGINEER prior to purchase or construction. Any products or materials manufactured, purchased or installed prior to shop drawing approval will be replaced at the CONTRACTOR's expense if the above noted approvals have not been obtained.

The basis of payment for **Concrete Grade Beam** shall be per **LINEAR FOOT**.

BID ALTERNATE 1:

Item 11 **Mobilization and Demobilization:**

The work specified in this section consists of the preparatory work and operations necessary for the movement of personnel, equipment, supplies and incidentals to the project site, and for the establishment of temporary offices, safety equipment and first aid supplies, sanitary and other facilities, as required by these Technical Specifications, the construction plans, and State and local laws and regulations.

All costs for bid bond(s), permits and any required insurance, and any other pre-construction expense necessary for the start of the work, as well as the cost of the removal of the above items, shall also be included in this item. All costs associated with trimming/clearing of vegetation, sod, any other materials, temporary removal of existing fencing and resetting of any items once the work is complete, shall also be included in this item. All costs associated with collecting complete photographic and video documentation of the site prior to construction shall be included in this item.

At the pre-construction meeting, the CONTRACTOR shall submit a tentative work schedule, safety plan, hurricane preparation plan, shipping, stockpile and site administration plan (SSSAP), a complete list of all SUBCONTRACTORs that will be employed by the PRIME CONTRACTOR, and complete contact information for PRIME CONTRACTOR staff and all SUBCONTRACTOR staff. Personnel to be included in the contact lists shall include, but not necessarily be limited to: CONTRACTOR and SUBCONTRACTOR Principals, CONTRACTOR and SUBCONTRACTOR Project Managers, CONTRACTOR and SUBCONTRACTOR Site Superintendents and/or Foremen. In addition, emergency contact information shall be included for the PRIME CONTRACTOR and all SUBCONTRACTORs. The cost for these items should be included in this item.

The basis of payment for **Mobilization and Demobilization** shall be **LUMP SUM**. Fifty (50) percent of this lump sum cost shall be paid upon mobilization of equipment to the project site. An additional forty (40) percent of this cost shall be paid as the project progresses. The final ten (10) percent of this cost shall be paid upon removal of all equipment from the project site.

Item 12 **Construction Survey and As-Built Survey:**

The bid price for this item shall include all necessary survey work for the CONTRACTOR to complete all construction activities and to furnish an as-built survey of the completed project. Elevations for the plans are based on the NAVD 1988 vertical datum.

The CONTRACTOR shall furnish the services of a State of Florida licensed land surveyor for the field layout of all work. The CONTRACTOR's licensed land surveyor

shall perform all initial site layout and shall provide follow-up verification of all work underway at a frequency of no less than once a week. All deviations from the construction plans, no matter how minor, that are be immediately corrected and noted during the follow-up verifications shall be recorded on the project redline plan set which shall always be maintained on the site and submitted to the ENGINEER prior to project close-out.

The CONTRACTOR shall furnish the services of a State of Florida licensed land surveyor for all the survey work and during the preparation of the as-built survey. The CONTRACTOR shall submit two (2) hard copies and one (1) electronic copy of the as-built survey for the completed project. These documents shall be signed and sealed by a professional surveyor registered in the State of Florida and then submitted to the ENGINEER for approval. The CONTRACTOR shall accurately record the location and elevations of all constructed grades and structures including but not limited to: timber pier with deck and handrails (elevations at 10-foot intervals, newly constructed concrete sidewalks (elevations at 10-foot intervals), grades at all newly graded areas, ROW lines and easement lines. CONTRACTOR shall ensure proper grades and slopes as needed are maintained.

The ENGINEER must approve the initial site stakeout before any work begins; the CONTRACTOR shall provide a minimum of 72 hours' notice to the ENGINEER of the anticipated completion of the initial stake-out so the inspection and field verification can be scheduled. Prior to start of construction, the surveyor shall also locate any protected/threatened vegetative species located within or adjacent to (within 25 feet) of the project area so these may be flagged, and appropriate protective measures are set up prior to starting work. All intermediate construction surveys shall be included in this item. CONTRACTOR is cautioned that the survey must be conducted with respect to adjacent site aspects and must contact ENGINEER for any clarification prior to any construction.

The basis of payment for **Construction Survey and As-Built Survey** shall be **LUMP SUM.** Thirty (30) percent of the lump sum cost shall be paid upon acceptance of the initial site stakeout by the ENGINEER. The remainder of the cost (less retainage) shall be paid as the project progresses.

Item 13 **Environmental Compliance:**

The bid price for this item shall include, but not be limited to, the necessary manpower, equipment and materials needed to maintain Best Management Practices and all regulatory compliance and environmental protection during all phases of construction. This item includes all costs related to obtaining a NPDES permit and complying with all NPDES permit requirements. Turbidity curtains and silt fencing shall be installed and maintained around construction areas at all times and the CONTRACTOR shall take all proactive measures to reduce loss of sediment and turbidity during all construction activities. The bid price for this item shall include all costs for monitoring and reporting, as may be required by the NPDES or other permits, as well as all costs for corrective measures taken to correct meet permit conditions. Any monitoring reports shall be submitted to the ENGINEER weekly for approval, and copies of the reports shall be made available to the CITY and the ENGINEER at any time upon request.

The bid price for this item shall also include all costs associated with setting up sediment traps, booms and/or other sediment control devices at all stormwater inlets and other structures present on the site, to prevent stormwater pipes and the stormwater treatment facility from being impacted by sediment created by construction activity or any storm events. The CONTRACTOR shall inspect these devices regularly, and clean and make repairs to these devices as required. The CONTRACTOR shall be responsible for cleaning excess sediment from the stormwater treatment facility, and for desilting stormwater inlets and pipes, if erosion control measures are not properly deployed or maintained throughout construction and will be responsible for any fines assessed. No additional payment will be made by the CITY for any needed sediment cleaning and/or pipe/inlet desilting.

The bid price for this item shall also include all costs associated with regularly inspecting and maintaining all other erosion, sediment, and turbidity control measures employed during construction of this project, as well as any necessary repairs and/or replacement of these measures, with the need determined through regular inspections conducted at minimum intervals as specified in the NPDES and other project permits, and/or at the direction of the ENGINEER and/or OWNER. Copies of the control measure inspection reports shall be submitted to the ENGINEER within one week of the inspection, and a summary of corrective measures taken to address noted deficiencies shall be included. A weekly log of these inspections shall be provided to the ENGINEER.

In addition, the CONTRACTOR shall comply with all permits for this project and all federal, state, and local water quality standards throughout the duration of the project.

The CONTRACTOR shall take all necessary precautions to avoid damage to wetland vegetation and trees to be preserved. This item includes costs related to fencing to protect vegetation and any other protective measures for these.

The basis of payment for **Environmental Compliance** shall be **LUMP SUM**. Fifty (50) percent of the lump sum cost shall be paid upon obtaining an NPDES permit and properly installing all erosion and turbidity control measures. The remainder of the cost (less retainage) shall be paid as the project progresses. Removal of all control measures from the project site once the work has been completed is required before final acceptance of the project by the CITY.

Item 14 **Temporary Traffic Control:**

The bid price for this item shall include, but not be limited to, the necessary manpower, equipment and materials needed to provide temporary traffic control through the project area for the duration of construction. The entrance of Lakeside Executive Park is along Florida 421, which is located east, southeast of Memorial Park (the project location). It is anticipated that trucks hauling materials to or from the project site will be frequently entering and leaving the project area through these entrances and along Oak Street. This park is also surrounded by residential community and thus traffic control for human safety is paramount.

Public access to Memorial Park must be maintained at all times. The CONTRACTOR shall give a minimum of 4 weeks advance notice to the CITY and the ENGINEER for any request for lane closures, if needed.

At the preconstruction meeting, the CONTRACTOR shall submit a temporary traffic control plan (TTC) to the ENGINEER and the CITY for approval. The TTC Plan shall also include details ensuring the safe delivery and removal of materials by trucks from temporary stockpile areas established near the project area. Any personnel utilized as flaggers must have completed a Temporary Traffic Control Flagger Training course offered by an FDOT-approved provider, and set-up, inspection and maintenance of temporary traffic control devices must be performed under the supervision of personnel who have completed an Intermediate level TTC course offered by an FDOT-approved provider. The CONTRACTOR shall maintain copies of all training certificates on the project site at all times. The ENGINEER must be informed once TTC measures have been fully implemented so an inspection may be scheduled. The CONTRACTOR shall regularly inspect barricades, signs, fencing and other TTC devices employed on the job site, and shall repair or replace these as needed.

The basis of payment for **Temporary Traffic Control** shall be **LUMP SUM**. Fifty (50) percent of the lump sum cost shall be paid once TTC devices and signage have been deployed per the approved TTC plan. The remainder of the cost (less retainage) shall be paid as the project progresses. Removal of TTC devices and signage from the project site once the work has been completed is required before final acceptance of the project by the CITY.

Item 15 **Demolition, Hauling and Disposal - Pier "B":**

The bid price for this item shall include, but not be limited to, the required manpower, equipment, materials and other costs involved in all demolition, hauling, and disposal required to construct the project as indicated in the construction drawings for both Piers as indicated in the Plan set Sheet C-09 – Schedule of Materials. CONTRACTOR to preserve and avoid damage to the existing piles, cross-braces, and other existing pier structure as indicated on the plans. Any damage to the existing structure to remain per the construction plans or any other ground, grasses areas to access the structures shall be replaced and restored at the CONTRACTOR'S expense.

The CONTRACTOR shall take all necessary precautions to avoid damage to upland vegetation and trees to be preserved during removal, demolition and hauling of debris. In addition, the CONTRACTOR shall take all necessary precautions to avoid impacts to in-water resources during demolition and removal of the existing structures. All environmental protection measures shall be in place before any demolition or other construction activity commences. Any damage to site must be restored to its original or better condition and shall be included in this item. Any sod replaced must be viable and in good condition prior to project acceptance by the City or shall be replaced by the CONTRACTOR.

The basis of payment for **Demolition, Hauling and Disposal** shall be **LUMP SUM**.

Item 16 **Wood Handrail - Pier "B":**

The bid price for this item shall include, but not be limited to, the necessary manpower, equipment, materials, hardware and incidentals needed to construct all components of the wood handrail, as indicated in the construction plans. Components to be constructed include, but are not limited to, handrail mid posts and vertical railing, and horizontal railing.

All timber must be free of splinters, cracks, knots or sap. All timber must be treated with wood preservative products as indicated in the plans, to the treatment retention levels indicated in the plans, and must be southern yellow pine (SYP) meeting the grade requirements indicated in the plans. Any timber deemed unsuitable by the Engineer will be replaced at the CONTRACTOR's expense.

All top handrail materials are composite materials and shall be as specified in the plans. CONTRACTOR shall note sizes of composite materials and anchoring requirement of the composite material and mesh railing with staples. Please refer to Plan set Sheet C-09 – Schedule of Materials for the railing options.

CONTRACTOR to note: Shop drawings shall be submitted to the CITY and ENGINEER for approval of all materials and include manufacture's specifications for each item of the handrail prior to construction. CONTRACTOR to preserve and avoid damage to the existing piles, cross-braces, and other existing dock structure as indicated on the plans. Any damage to the existing structure to remain per the construction plans shall be replaced at the CONTRACTOR'S expense.

All hardware used for the construction of the handrail system must be 316-alloy stainless steel; under no circumstances will any alternative materials or other stainless-steel alloys be accepted. The CONTRACTOR shall ensure that all handrail components fit tightly and are sanded, beveled and finished as needed to eliminate the potential for injury to boardwalk users from gouges or contact with sharp edges.

The basis of payment for Wood **Handrail** shall be per **SQUARE FOOT**.

Item 17 **Wood Piers - Pier "B":**

The bid price for this item shall include, but not be limited to, the necessary manpower, equipment, materials, hardware and incidentals needed to construct all components of the wood piers, as indicated in the construction plans. Components to be constructed include, but are not limited to cap boards, stringers and deck boards.

All timber must be free of splinters, cracks, knots or sap. All timber must be treated with wood preservative products as indicated in the plans, to the treatment retention levels indicated in the plans, and must be southern yellow pine (SYP) meeting the grade requirements indicated in the plans. Any timber or composite deemed unsuitable by the Engineer will be replaced at the CONTRACTOR's expense.

All wood deck materials shall be constructed as specified in the plans. CONTRACTOR shall note sizes of wood materials and anchoring requirement of these material, mesh railing and staples.

CONTRACTOR to note: Shop drawings shall be submitted to the CITY and ENGINEER for approval of all materials and include manufacture's specifications for each item of the pier prior to construction. CONTRACTOR to preserve and avoid damage to the existing piles, cross-braces, and other existing pier structure as indicated on the plans. Any damage to the existing structure to remain per the construction plans shall be replaced at the CONTRACTOR'S expense.

All hardware used for the construction of the pier system must be 316-alloy stainless steel; under no circumstances will any alternative materials or other stainless-steel alloys be accepted. The CONTRACTOR shall ensure that all pier components fit tightly and are sanded, beveled and finished as needed to eliminate the potential for injury to boardwalk users from gouges or contact with sharp edges.

The basis of payment for Wood Piers shall be per **SQUARE FOOT**.

Item 18 **Side Mesh Railing and Staples (2in.x 4in., 36in. Height, 100ft rolls) - Pier "B":**

The bid price for this item shall include, but not be limited to, the necessary manpower, equipment, materials, hardware and incidentals needed to construct all components of the side mesh railing as indicated in the construction plans. The mesh shall be vinyl coated galvanized 0.159 welded wire fabric, with 1-inch stainless steel fence staples, spaced at 12-inches center on center (maximum). Any damage to the composite railing, posts, or other components of the dock damaged during installation of the mesh railing shall be replaced at the CONTRACTOR'S expense.

The basis of payment for **Side Mesh Railing and Staples (2in.x 4in., 36in. Height, 100ft rolls)** shall be per **LINEAR FOOT**.

Item 19 **Concrete Sidewalk - Pier "B":**

The bid price for this item shall include, but not be limited to, the necessary manpower, equipment, materials and any other provision needed to properly construct concrete sidewalks throughout the project area as indicated in the construction plans. All products, dimensions, testing methods, application methods, etc. must conform to the requirements of the Section 522 Florida Department of Transportation Standard Specifications for Road and Bridge Construction (Latest Edition), which is the source of the specification for this item.

The basis of payment for **Concrete Sidewalk** shall be per **SQUARE YARD**.

Item 20 **Concrete Grade Beam - Pier "B":**

The bid price for this item shall include, but not be limited to, the necessary manpower, equipment, materials and any other provision needed to properly construct concrete grade beams as indicated in the construction plans.

For the concrete grade beam the CONTRACTOR shall provide concrete meeting the specifications shown in the construction plans. Compact fill areas, including cut areas under the grade beam that have been excavated more than 6 inches below the bottom of the grade beam, to a minimum of 98% of AASHTO T180 density. All organics and other unsuitable material shall be removed from compacted areas prior to compaction and replaced with clean structural fill to the required grade. The area to be compacted is defined as that area directly under the grade beam and 1 foot beyond each side of the grade beam when right-of-way allows.

A minimum of four inches of cover must be provided for all reinforcing steel used for the grade beam. Non-metallic chairs and fasteners must be used to secure reinforcing steel prior to pouring concrete, and concrete shall be poured in a manner that will not result in reinforcing steel moving during the pour. Concrete must be vibrated fully; excessively honeycombed concrete will be rejected by the ENGINEER and replaced by the CONTRACTOR at no additional cost.

The CONTRACTOR must make submittals of the concrete beam system to the ENGINEER prior to purchase or construction. Any products or materials manufactured, purchased or installed prior to shop drawing approval will be replaced at the CONTRACTOR's expense if the above noted approvals have not been obtained.

The basis of payment for **Concrete Grade Beam** shall be per **LINEAR FOOT**.

Item 21 **Demolition, Hauling and Disposal of Existing Pier "A":**

The bid price for this item shall include, but not be limited to, the required manpower, equipment, materials and other costs involved in complete demolition, hauling, and disposal required for Pier "A" as indicated in the Plans.

The CONTRACTOR shall take all necessary precautions to avoid impacts to in-water resources during demolition and removal of the existing structures. All environmental protection measures shall be in place before any demolition or other construction activity commences. Any damage to site must be restored to its original or better condition and shall be included in this item. Any sod replaced must be viable and in good condition prior to project acceptance by the City or shall be replaced by the CONTRACTOR.

The basis of payment for **Demolition, Hauling and Disposal** shall be **LUMP SUM**.

BID ALTERNATE 2:

Item 22 **Mobilization and Demobilization:**

The work specified in this section consists of the preparatory work and operations necessary for the movement of personnel, equipment, supplies and incidentals to the project site, and for the establishment of temporary offices, safety equipment and first aid supplies, sanitary and other facilities, as required by these Technical Specifications, the construction plans, and State and local laws and regulations.

All costs for bid bond(s), permits and any required insurance, and any other pre-construction expense necessary for the start of the work, as well as the cost of the removal of the above items, shall also be included in this item. All costs associated with trimming/clearing of vegetation, sod, any other materials, temporary removal of existing fencing and resetting of any items once the work is complete, shall also be included in this item. All costs associated with collecting complete photographic and video documentation of the site prior to construction shall be included in this item.

At the pre-construction meeting, the CONTRACTOR shall submit a tentative work schedule, safety plan, hurricane preparation plan, shipping, stockpile and site administration plan (SSSAP), a complete list of all SUBCONTRACTORs that will be employed by the PRIME CONTRACTOR, and complete contact information for PRIME CONTRACTOR staff and all SUBCONTRACTOR staff. Personnel to be included in the contact lists shall include, but not necessarily be limited to: CONTRACTOR and SUBCONTRACTOR Principals, CONTRACTOR and SUBCONTRACTOR Project Managers, CONTRACTOR and SUBCONTRACTOR Site Superintendents and/or Foremen. In addition, emergency contact information

shall be included for the PRIME CONTRACTOR and all SUBCONTRACTORs. The cost for these items should be included in this item.

The basis of payment for **Mobilization and Demobilization** shall be **LUMP SUM**. Fifty (50) percent of this lump sum cost shall be paid upon mobilization of equipment to the project site. An additional forty (40) percent of this cost shall be paid as the project progresses. The final ten (10) percent of this cost shall be paid upon removal of all equipment from the project site.

Item 23 **Construction Survey and As-Built Survey:**

The bid price for this item shall include all necessary survey work for the CONTRACTOR to complete all construction activities and to furnish an as-built survey of the completed project. Elevations for the plans are based on the NAVD 1988 vertical datum.

The CONTRACTOR shall furnish the services of a State of Florida licensed land surveyor for the field layout of all work. The CONTRACTOR's licensed land surveyor shall perform all initial site layout and shall provide follow-up verification of all work underway at a frequency of no less than once a week. All deviations from the construction plans, no matter how minor, that are be immediately corrected and noted during the follow-up verifications shall be recorded on the project redline plan set which shall always be maintained on the site and submitted to the ENGINEER prior to project close-out.

The CONTRACTOR shall furnish the services of a State of Florida licensed land surveyor for all the survey work and during the preparation of the as-built survey. The CONTRACTOR shall submit two (2) hard copies and one (1) electronic copy of the as-built survey for the completed project. These documents shall be signed and sealed by a professional surveyor registered in the State of Florida and then submitted to the ENGINEER for approval. The CONTRACTOR shall accurately record the location and elevations of all constructed grades and structures including but not limited to: timber pier with deck and handrails (elevations at 10-foot intervals, newly constructed concrete sidewalks (elevations at 10-foot intervals), grades at all newly graded areas, ROW lines and easement lines. CONTRACTOR shall ensure proper grades and slopes as needed are maintained.

The ENGINEER must approve the initial site stakeout before any work begins; the CONTRACTOR shall provide a minimum of 72 hours' notice to the ENGINEER of the anticipated completion of the initial stake-out so the inspection and field verification can be scheduled. Prior to start of construction, the surveyor shall also locate any protected/threatened vegetative species located within or adjacent to (within 25 feet) of the project area so these may be flagged, and appropriate protective measures are set up prior to starting work. All intermediate construction surveys shall be included in this item. CONTRACTOR is cautioned that the survey must be conducted with respect to adjacent site aspects and must contact ENGINEER for any clarification prior to any construction.

The basis of payment for **Construction Survey and As-Built Survey** shall be **LUMP SUM.** Thirty (30) percent of the lump sum cost shall be paid upon acceptance of the initial site stakeout by the ENGINEER. The remainder of the cost (less retainage) shall be paid as the project progresses.

Item 24 **Environmental Compliance:**

The bid price for this item shall include, but not be limited to, the necessary manpower, equipment and materials needed to maintain Best Management Practices and all regulatory compliance and environmental protection during all phases of construction. This item includes all costs related to obtaining a NPDES permit and complying with all NPDES permit requirements. Turbidity curtains and silt fencing shall be installed and maintained around construction areas at all times and the CONTRACTOR shall take all proactive measures to reduce loss of sediment and turbidity during all construction activities. The bid price for this item shall include all costs for monitoring and reporting, as may be required by the NPDES or other permits, as well as all costs for corrective measures taken to correct meet permit conditions. Any monitoring reports shall be submitted to the ENGINEER weekly for approval, and copies of the reports shall be made available to the CITY and the ENGINEER at any time upon request.

The bid price for this item shall also include all costs associated with setting up sediment traps, booms and/or other sediment control devices at all stormwater inlets and other structures present on the site, to prevent stormwater pipes and the stormwater treatment facility from being impacted by sediment created by construction activity or any storm events. The CONTRACTOR shall inspect these devices regularly, and clean and make repairs to these devices as required. The CONTRACTOR shall be responsible for cleaning excess sediment from the stormwater treatment facility, and for desilting stormwater inlets and pipes, if erosion control measures are not properly deployed or maintained throughout construction and will be responsible for any fines assessed. No additional payment will be made by the CITY for any needed sediment cleaning and/or pipe/inlet desilting.

The bid price for this item shall also include all costs associated with regularly inspecting and maintaining all other erosion, sediment, and turbidity control measures employed during construction of this project, as well as any necessary repairs and/or replacement of these measures, with the need determined through regular inspections conducted at minimum intervals as specified in the NPDES and other project permits, and/or at the direction of the ENGINEER and/or OWNER. Copies of the control measure inspection reports shall be submitted to the ENGINEER within one week of the inspection, and a summary of corrective measures taken to address noted deficiencies shall be included. A weekly log of these inspections shall be provided to the ENGINEER.

In addition, the CONTRACTOR shall comply with all permits for this project and all federal, state, and local water quality standards throughout the duration of the project.

The CONTRACTOR shall take all necessary precautions to avoid damage to wetland vegetation and trees to be preserved. This item includes costs related to fencing to protect vegetation and any other protective measures for these.

The basis of payment for **Environmental Compliance** shall be **LUMP SUM**. Fifty (50) percent of the lump sum cost shall be paid upon obtaining an NPDES permit and properly installing all erosion and turbidity control measures. The remainder of the cost (less retainage) shall be paid as the project progresses. Removal of all

control measures from the project site once the work has been completed is required before final acceptance of the project by the CITY.

Item 25 **Temporary Traffic Control:**

The bid price for this item shall include, but not be limited to, the necessary manpower, equipment and materials needed to provide temporary traffic control through the project area for the duration of construction. The entrance of Lakeside Executive Park is along Florida 421, which is located east, southeast of Memorial Park (the project location). It is anticipated that trucks hauling materials to or from the project site will be frequently entering and leaving the project area through these entrances and along Oak Street. This park is also surrounded by residential community and thus traffic control for human safety is paramount.

Public access to Memorial Park must be maintained at all times. The CONTRACTOR shall give a minimum of 4 weeks advance notice to the CITY and the ENGINEER for any request for lane closures, if needed.

At the preconstruction meeting, the CONTRACTOR shall submit a temporary traffic control plan (TTC) to the ENGINEER and the CITY for approval. The TTC Plan shall also include details ensuring the safe delivery and removal of materials by trucks from temporary stockpile areas established near the project area. Any personnel utilized as flaggers must have completed a Temporary Traffic Control Flagger Training course offered by an FDOT-approved provider, and set-up, inspection and maintenance of temporary traffic control devices must be performed under the supervision of personnel who have completed an Intermediate level TTC course offered by an FDOT-approved provider. The CONTRACTOR shall maintain copies of all training certificates on the project site at all times. The ENGINEER must be informed once TTC measures have been fully implemented so an inspection may be scheduled. The CONTRACTOR shall regularly inspect barricades, signs, fencing and other TTC devices employed on the job site, and shall repair or replace these as needed.

The basis of payment for **Temporary Traffic Control** shall be **LUMP SUM**. Fifty (50) percent of the lump sum cost shall be paid once TTC devices and signage have been deployed per the approved TTC plan. The remainder of the cost (less retainage) shall be paid as the project progresses. Removal of TTC devices and signage from the project site once the work has been completed is required before final acceptance of the project by the CITY.

Item 26 **Demolition, Hauling and Disposal:**

The bid price for this item shall include, but not be limited to, the required manpower, equipment, materials and other costs involved in all demolition, hauling, and disposal required to construct the project as indicated in the construction drawings for both Piers as indicated in the Plan set Sheet C-09 – Schedule of Materials. CONTRACTOR to preserve and avoid damage to the existing piles, cross-braces, and other existing pier structure as indicated on the plans. Any damage to the existing structure to remain per the construction plans or any other ground, grasses areas to access the structures shall be replaced and restored at the CONTRACTOR'S expense.

The CONTRACTOR shall take all necessary precautions to avoid damage to upland vegetation and trees to be preserved during removal, demolition and hauling of debris. In addition, the CONTRACTOR shall take all necessary precautions to avoid impacts to in-water resources during demolition and removal of the existing structures. All environmental protection measures shall be in place before any demolition or other construction activity commences. Any damage to site must be restored to its original or better condition and shall be included in this item. Any sod replaced must be viable and in good condition prior to project acceptance by the City or shall be replaced by the CONTRACTOR.

The basis of payment for **Demolition, Hauling and Disposal** shall be **LUMP SUM**.

Item 27 **Composite Handrail:**

The bid price for this item shall include, but not be limited to, the necessary manpower, equipment, materials, hardware and incidentals needed to construct all components of the handrail, as indicated in the construction plans. Components to be constructed include, but are not limited to, handrail mid posts and vertical railing, and horizontal railing.

All top and side handrail materials are composite materials and shall be as specified in the plans. CONTRACTOR shall note sizes of composite materials and anchoring requirement of the composite material and mesh railing with staples. Please refer to Plan set Sheet C-09 – Schedule of Materials for the railing options.

CONTRACTOR to note: Shop drawings shall be submitted to the CITY and ENGINEER for approval of all materials and include manufacture's specifications for each item of the handrail prior to construction. CONTRACTOR to preserve and avoid damage to the existing piles, cross-braces, and other existing dock structure as indicated on the plans. Any damage to the existing structure to remain per the construction plans shall be replaced at the CONTRACTOR'S expense.

All hardware used for the construction of the handrail system must be 316-alloy stainless steel; under no circumstances will any alternative materials or other stainless-steel alloys be accepted. The CONTRACTOR shall ensure that all handrail components fit tightly and are sanded, beveled and finished as needed to eliminate the potential for injury to boardwalk users from gouges or contact with sharp edges.

The basis of payment for **Composite Handrail** shall be per **SQUARE FOOT**.

Item 28 **Composite Piers:**

The bid price for this item shall include, but not be limited to, the necessary manpower, equipment, materials, hardware and incidentals needed to construct all components of the piers, as indicated in the construction plans. Components to be constructed include, but are not limited to cap boards, stringers and deck boards.

All timber must be free of splinters, cracks, knots or sap. All timber must be treated with wood preservative products as indicated in the plans, to the treatment retention levels indicated in the plans, and must be southern yellow pine (SYP) meeting the grade requirements indicated in the plans. Any timber or composite deemed unsuitable by the Engineer will be replaced at the CONTRACTOR's expense.

All composite deck materials shall be constructed as specified in the plans. CONTRACTOR shall note sizes composite materials and anchoring requirement of these material, mesh railing and staples.

CONTRACTOR to note: Shop drawings shall be submitted to the CITY and ENGINEER for approval of all materials and include manufacture's specifications for each item of the pier prior to construction. CONTRACTOR to preserve and avoid damage to the existing piles, cross-braces, and other existing pier structure as indicated on the plans. Any damage to the existing structure to remain per the construction plans shall be replaced at the CONTRACTOR'S expense.

All hardware used for the construction of the pier system must be 316-alloy stainless steel; under no circumstances will any alternative materials or other stainless-steel alloys be accepted. The CONTRACTOR shall ensure that all pier components fit tightly and are sanded, beveled and finished as needed to eliminate the potential for injury to boardwalk users from gouges or contact with sharp edges.

The basis of payment for **Composite Piers** shall be per **SQUARE FOOT**.

Item 29 **Side Mesh Railing and Staples (2in.x 4in., 36in. Height, 100ft rolls):**

The bid price for this item shall include, but not be limited to, the necessary manpower, equipment, materials, hardware and incidentals needed to construct all components of the side mesh railing as indicated in the construction plans. The mesh shall be vinyl coated galvanized 0.159 welded wire fabric, with 1-inch stainless steel fence staples, spaced at 12-inches center on center (maximum). Any damage to the composite railing, posts, or other components of the dock damaged during installation of the mesh railing shall be replaced at the CONTRACTOR'S expense.

The basis of payment for **Side Mesh Railing and Staples (2in.x 4in., 36in. Height, 100ft rolls)** shall be per **LINEAR FOOT**.

Item 30 **Concrete Sidewalk**

The bid price for this item shall include, but not be limited to, the necessary manpower, equipment, materials and any other provision needed to properly construct concrete sidewalks throughout the project area as indicated in the construction plans. All products, dimensions, testing methods, application methods, etc. must conform to the requirements of the Section 522 Florida Department of Transportation Standard Specifications for Road and Bridge Construction (Latest Edition), which is the source of the specification for this item.

The basis of payment for **Concrete Sidewalk** shall be per **SQUARE YARD**.

Item 31 **Concrete Grade Beam**

The bid price for this item shall include, but not be limited to, the necessary manpower, equipment, materials and any other provision needed to properly construct concrete grade beams as indicated in the construction plans.

For the concrete grade beam the CONTRACTOR shall provide concrete meeting the specifications shown in the construction plans. Compact fill areas, including cut areas under the grade beam that have been excavated more than 6 inches below the bottom of the grade beam, to a minimum of 98% of AASHTO T180 density. All

organics and other unsuitable material shall be removed from compacted areas prior to compaction and replaced with clean structural fill to the required grade. The area to be compacted is defined as that area directly under the grade beam and 1 foot beyond each side of the grade beam when right-of-way allows.

A minimum of four inches of cover must be provided for all reinforcing steel used for the grade beam. Non-metallic chairs and fasteners must be used to secure reinforcing steel prior to pouring concrete, and concrete shall be poured in a manner that will not result in reinforcing steel moving during the pour. Concrete must be vibrated fully; excessively honeycombed concrete will be rejected by the ENGINEER and replaced by the CONTRACTOR at no additional cost.

The CONTRACTOR must make submittals of the concrete beam system to the ENGINEER prior to purchase or construction. Any products or materials manufactured, purchased or installed prior to shop drawing approval will be replaced at the CONTRACTOR's expense if the above noted approvals have not been obtained.

The basis of payment for **Concrete Grade Beam** shall be per **LINEAR FOOT**.

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: RUSH Marine, LLC

Signature of Owner/Officer: Anthony Sandy

Title: President Date: 8/9/2024

"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

LABO0517-002 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

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* 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"

CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 8/21/2024

SUBJECT: (C8) Resolution No. 24-31 - Accepting the Edward Byrne Memorial Justice Assistance Direct Award Grant for $10,000.00 from the Florida Department of Law Enforcement

DEPARTMENT: Police Services

GOAL: 1 - Public Safety
5 - Fiscal Sustainability

RECOMMENDED MOTION: Move to approve Resolution No. 24-31 and authorize the Mayor and City Clerk to sign all necessary grant award documents.

SUMMARY: The City has been awarded the Edward Byrne Memorial Justice Assistance Grant – Direct Award (JAGD) from FDLE in the amount of $10,000. This money will be used to purchase equipment for the Special Investigations Unit (SIU) and their participation in the fight against internet crimes. There is no City match required.

In 2023, the Port Orange Police Department (POPD) received 120 cyber tips that resulted in 25 search warrants and 13 arrests. So far in 2024, POPD has received 60 cyber tips which have resulted in several more search warrants and arrests.

The JAGD funding will help the POPD to enhance its internet surveillance capabilities by providing the necessary equipment to provide round-the-clock recorded surveillance.

PRESENTER: Manuel Marino

ATTACHMENTS:

1.	Resolution No. 24-31	Resolution No. 24-31.pdf

John McKinney	Created/Initiated - 8/1/2024
Eric Fisher	Approved - 8/1/2024
Manuel Marino	Approved - 8/5/2024
John McKinney	Approved - 8/6/2024
Matthew Jones	Approved - 8/12/2024
Wayne Clark	Approved - 8/12/2024
Tracee Cody	Final Approval - 8/12/2024

RESOLUTION NO. 24-31

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, ACCEPTING FINANCIAL GRANT ASSISTANCE FROM THE FLORIDA DEPARTMENT OF LAW ENFORCEMENT'S EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT PROGRAM FOR THE PURCHASE OF EQUIPMENT FOR THE SPECIAL INVESTIGATIONS UNIT(SIU) AND IN FURTHERANCE OF THEIR PARTICIPATION IN THE FIGHT AGAINST INTERNET CRIMES; AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AGREEMENTS AND CONTRACTS; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City has been awarded the Edward Byrne Memorial Justice Assistance Grant – Direct Award (JAGD) from the Florida Department of Law Enforcement (FDLE) in the amount of $10,000 for the purchase of equipment for the Special Investigations Unit (SIU) and in furtherance of their participation in the fight against internet crimes; and

WHEREAS, this grant is not contingent upon a City match; and

WHEREAS, the City Council of the City of Port Orange desires to accept the financial grant assistance from FDLE.

NOW, THEREFORE, BE IT RESOLVED 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 hereby accepts the FDLE Edward Byrne Memorial Justice Assistance Grant in the amount of $10,000 for the purchase of equipment for the Special Investigations Unit (SIU**)**.

Section 2. The Mayor and the City Clerk of the City of Port Orange are hereby authorized to execute agreements or contracts necessary to implement this Resolution.

Section 3. This Resolution shall become effective immediately upon adoption.

_____
MAYOR DONALD O. BURNETTE

ATTEST:

_____
Robin L. Fenwick, MMC, City Clerk

Adopted on the _____ day of _____, 2024

Reviewed and Approved: _____
Shannon K. Balmer, Senior Assistant City Attorney

CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 8/21/2024

SUBJECT: (C9) Resolution No. 24-33 - Ratification of Emergency Powers Taken During Invest 97L (Hurricane Debby)

DEPARTMENT: City Manager

GOAL: 2 - Infrastructure
3 - Quality of Life

RECOMMENDED MOTION: Move to approve Resolution No. 24-33.

SUMMARY: As Invest 97L (Hurricane Debby) approached the State of Florida, City Council adopted Resolution No. 24-32 declaring a local state of emergency and authorizing the City Manager or his designee to serve as Emergency Management Director. During the local state of emergency, the City Council waived the procedures and formalities required by law and City ordinances and authorized the City Manager to exercise all powers and duties and take all actions deemed appropriate.

While the City Manager did not execute any Executive Orders for City Council to ratify, he did authorize one day of yard waste and recycling services to be moved to a later date within the week of the emergency event and authorized the emergency pay structure for the employees who worked during and preparing for the storm.

PRESENTER: Wayne Clark

ATTACHMENTS:

1.	Resolution No. 24-33	Resolution No. 24-33 .pdf

Robin Fenwick	Created/Initiated - 8/12/2024
Shannon Balmer	Approved - 8/12/2024
Wayne Clark	Approved - 8/13/2024
Robin Fenwick	Final Approval - 8/13/2024

RESOLUTION NO. 24-33

A RESOLUTION OF THE CITY COUNCIL OF PORT ORANGE FLORIDA RATIFYING EMERGENCY POWERS TAKEN BY THE EMERGENCY MANAGEMENT DIRECTOR AND/OR DESIGNEE DURING THE INVEST 97L (HURRICANE DEBBY) STORM EVENT EMERGENCY; PROVIDING FOR REPEAL OF CONFLICTING RESOLUTIONS; PROVIDING FOR SEVERABILITY AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on August 1, 2024, Governor Ron DeSantis issued Executive Order Number 24-156, declaring that a state of emergency exists in Volusia County, Florida; and

WHEREAS, the City Council of the City of Port Orange declared a Local State of Emergency beginning August 2, 2024 at 5:00 p.m. pursuant to Resolution 24-32; and

WHEREAS, the Local State of Emergency ended on August 9, 2024; and

WHEREAS, during the local state of emergency the City Council waived the procedures and formalities required by law, in accordance with Section 252.38, Florida Statutes, and Chapter 26 of the City of Port Orange Code of Ordinances, and authorized and empowered the City Manager to exercise all powers and duties and take all actions deemed appropriate as authorized in Section 252.38, Fla. Stat., and Sections 26.6.1, et seq. of the City of Port Orange Code of Ordinances; and

WHEREAS, the actions taken by the City Manager included providing a temporary increase in spending authority for certain designated employees and providing for suspension of solid waste pick-up; and

WHEREAS, the City Council seeks to ratify the emergency actions taken by the City Manager during the Invest 97L (Hurricane Debby) Storm Event emergency.

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 ratifies all emergency actions taken by the City Manager and his designee in response to the Invest 97L (Hurricane Debby) Storm Event emergency as authorized by Resolution No. 24-32.

SECTION 2: All resolutions or parts of resolutions in conflict with the provisions of this resolution are hereby repealed to the extent of such conflict.

SECTION 3: 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 resolution which can be given effect without the invalid provision or application, and to this end the provisions of this resolution are declared severable.

SECTION 4: This Resolution shall become effective immediately upon adoption by the City Council.

_____
MAYOR DONALD O. BURNETTE

ATTEST:

_____
Robin L. Fenwick, MMC, City Clerk

Adopted on the day of

Reviewed and Approved: _____
Shannon K. Balmer, Senior Assistant City Attorney

CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 8/21/2024

SUBJECT: (C10) Amendment to Easement releasing portion of Access Drainage Retention and Maintenance Easement at 3738 Nova Road (Take 5 Oil Change)

DEPARTMENT: Community Development

GOAL: 2 - Infrastructure
3 - Quality of Life
4 - Economic Development

RECOMMENDED MOTION: Move to approve Amendment to Easement and authorize Mayor and City Clekr to sign all necessary documents.

SUMMARY: Staff has received a request for the release of a 7.45-foot x 75-foot (559 square foot) portion of an existing stormwater retention easement located on a vacant commercial lot at 3738 Nova Road, between the Waffle House and Dollar Tree. The applicant, Langan Engineering, Inc., on behalf of the property owner, Larry C. Martin Trust, has made this application in connection with the proposed development of a 1,695-square-foot Take 5 Oil Change building. To construct the building as proposed, a portion of the existing stormwater retention area contracted with the development of the Dollar Tree site needs to be relocated. The property owner will be required to provide a replacement easement over the relocated stormwater retention area once constructed and approved by the City.

The application to release the easement and legal description has been reviewed for completeness and accuracy. City departments have reviewed this request and have requested the preparation and recording of a separate individual replacement easement prior to the issuance of a certificate of completion for the Take 5 Oil Change building. If approved, the release of the existing easement will be made conditional upon the recording of the replacement stormwater easement once the stormwater system has been constructed and approved by the City.

PRESENTER: Tim Burman

ATTACHMENTS:

1.	Amendment to Easement w exhibits	Amendment to Easement w exhibits.pdf
2.	Easement Plan	2024-07-25 - Easement Plan.pdf
3.	Proposed Supplemental Replacement Easement Sketch & Legal Description: Area A	SKM_C750i24072611220.pdf
4.	Proposed Supplemental Replacement Easement Sketch & Legal Description: Area B	SKM_C750i24072611221.pdf

Lisa Epstein	Created/Initiated - 7/26/2024
Tim Burman	Approved - 8/1/2024
Shannon Balmer	Approved - 8/13/2024
Wayne Clark	Approved - 8/13/2024
Tracee Cody	Final Approval - 8/13/2024

Prepared by :
Shannon K. Balmer
Senior Assistant City Attorney
City of Port Orange
1000 City Center Circle
Port Orange FL 32129-4144

Portion of Parcel No. 6337-01-25-0015

Cross Reference to Instrument No. 2018096457
Official Records Book 7544 Page 3075

AMENDMENT TO EASEMENT

THIS AMENDMENT TO EASEMENT ("Amendment"), is made this _____ day of _____, 2024, by and between **CITY OF PORT ORANGE, FLORIDA,** a chartered municipal corporation, mailing address: 1000 City Center Circle, Port Orange FL 32129, hereinafter "City," and **Larry C. Martin, Trustee of The Martin Grantor Trust under trust dated October 1, 2014** whose address is 201 Broad Street, Suite 200, Rome, GA 30161, (where the singular is used the same shall be construed as meaning the plural unless otherwise specifically stated), hereinafter "Martin Trust".

W I T N E S S E T H:

WHEREAS, Nova Port Orange, LLC, predecessor-in-interest to Larry C. Martin, Trustee of The Martin Grantor Trust under trust dated October 1, 2014, granted to the City, an easement for the purpose of drainage retention facilities and maintenance thereof, of record in Official Records Book 7544, Pages 3075, et seq., Public Records of Volusia County, Florida (hereinafter referred to as the "Easement"), which Easement encumbers a portion of the Property, defined hereinbelow; and

WHEREAS, Martin trust, successor-in-interest to Nova Port Orange, LLC., is the fee simple owner of the property where the Easement is located said property being legally in **Exhibit "A",** attached hereto and made a part hereof by reference (hereinafter "Property"); and

WHEREAS, Martin Trust, has requested the City release a portion of the Easement due to said portion encroaching into the footprint of the structure anticipated in the course of development of the Property; and

WHEREAS, the City, as the owner of the Easement, has determined the release of the portion of the Easement, graphically depicted on **Exhibit "B",** will not adversely impact the purpose and needs of the Easement.

WHEREAS, the future development of the Property will be required to comply with the City of Port Orange Land Development Code, including the provision of any necessary supplemental drainage easements.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the Parties agree as follows:

1. RECITALS. The recitals set forth above are true and correct and are incorporated herein by this reference.

2. RELEASE. The City of Port Orange hereby releases to Martin Trust, its successors and assigns forever, the portion of the Easement more particularly described and graphically depicted on the attached **Exhibit "B", ("Released Portion").**

3. AMENDMENT. The Easement is hereby revised to release the Released Portion from the Easement. The Released Portion of the Easement is no longer a part of the Easement. Martin Trust no longer has any obligations with respect to the Released Portion under the Easement and the City no longer has any rights with respect to the Released Portion under the Easement.

4. SUCCESSORS AND ASSIGNS. It is expressly understood and agreed that the terms, covenants and conditions of this Amendment shall be and constitute covenants running with and binding upon the Property, regardless of title or ownership thereof and regardless of any future change which may take place therein.

5. CONTINUING FORCE AND EFFECT. Except as specifically hereby amended, the Easement of record in Official Records Book 7544, Pages 3075, et seq., Public Records of Volusia County, Florida shall remain in full force and effect. In the event of any conflict between the terms of the Easement and the terms of this Amendment, the terms of this Amendment shall govern.

[REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the City, has executed this *Amendment to Easement* by and through its duly authorized representatives on the day and year first written.

WITNESSES:
(as to both)

CITY OF PORT ORANGE, FLORIDA
a chartered municipal corporation

_____
Printed Name:_____
1000 City Center Circle
Port Orange, FL 32129

By:_____
Donald O. Burnette, Mayor

_____
Printed Name:_____
1000 City Center
Port Orange, FL 32129

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

(SEAL)

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing **AMENDMENT TO EASEMENT** was acknowledged before me by means of [XX] physical presence or [__] online notarization this _____ day of _____, 2024, by Donald O. Burnette, as Mayor and Robin L Fenwick, as City Clerk, both of the City of Port Orange, Florida, who acknowledged that they are duly authorized to execute the foregoing on behalf of the **CITY OF PORT ORANGE, FLORIDA**, a chartered municipal corporation, and who [X] are personally known to me, or [_] has produced _____ as identification.

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

Signed in the presence of:

Property Owner:
The Martin Grantor Trust under trust dated October 1, 2014

Witness: _____
Printed Name:_____
Address: _____
_____

_____
Larry C. Martin, Trustee

Witness: _____
Printed Name:_____
Address: _____
_____

Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing AMENDMENT TO EASEMENT instrument was sworn to and acknowledged before me by means of [XX] physical presence or [ ] online notarization this _____ day of _____, 2024, by **Larry C. Martin, Trustee of The Martin Grantor Trust under trust dated October 1, 2014,** who hereby acknowledges that they have full power and authority to convey interests in the above-described real property, and who: [__] are personally known to me, or [__] have produced _____ as identification.

_____
Notary Public, State of Florida at Large
Printed name of Notary, Commission, Seal and Expiration Date:

EXHIBIT “A”

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF PORT ORANGE, COUNTY OF VOLUSIA, STATE OF FLORIDA, AND IS DESCRIBED AS FOLLOWS:
THE NORTHERLY ONE-HALF (1/2) OF THE EASTERLY ONE-HALF (1/2) OF LOT 1, BLOCK 25, MAP OF DUNLAWTON, EXCEPT THAT PART NOW IN NOVA ROAD S.R. NO. 5, AS RECORDED IN DEED BOOK "M", PAGE 187, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA.

TOGETHER WITH THE FOLLOWING DESCRIBED LAND:
THE SOUTHERLY ONE-HALF (1/2) OF THE EASTERLY ONE-HALF (1/2) OF LOT 1, BLOCK 25, MAP OF DUNLAWTON, EXCEPT THAT PART NOW IN NOVA ROAD S.R. NO. 5, AS RECORDED IN DEED BOOK "M", PAGE 187, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA.

LESS AND EXCEPT THE FOLLOWING DESCRIBED LAND:
A PORTION OF THE EASTERLY 1/2 OF LOT 1, BLOCK 25, MAP OF DUNLAWTON, AS RECORDED IN DEED BOOK M, PAGE 187, OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
BEGIN AT THE INTERSECTION OF THE WESTERLY LINE OF THE EASTERLY 1/2 OF SAID LOT 1, BLOCK 25 WITH THE SOUTHERLY RIGHT OF WAY LINE OF SAMMS AVENUE, A 30 FOOT WIDE RIGHT OF WAY, PER SAID MAP OF DUNLAWTON; THENCE RUN N65°15'21"E, ALONG SAID SOUTHERLY RIGHT OF WAY LINE, 220.57 FEET TO THE WESTERLY RIGHT OF WAY LINE OF NOVA ROAD; THENCE S69°49'40"E, ALONG SAID WESTERLY RIGHT OF WAY LINE, 14.16 FEET TO A POINT THAT IS 10.00 FEET SOUTHERLY OF SAID SOUTHERLY RIGHT OF WAY LINE OF SAMMS AVENUE AS MEASURED PERPENDICULAR TO SAID SOUTHERLY RIGHT OF WAY LINE; THENCE S65°15'21"W, PARALLEL WITH SAID SOUTHERLY RIGHT OF WAY LINE, 230.50 FEET TO THE WESTERLY LINE OF THE EASTERLY 1/2 OF SAID LOT 1; THENCE N25°19'48"W, ALONG SAID WESTERLY LINE, 10.00 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPT THE FOLLOWING DESCRIBED LAND IN THAT CERTAIN DEED RECORDED AUGUST 5, 2014 AS DEED BOOK 7017, PAGE 1900: A PORTION OF THE EAST 1/2 OF LOT 1, BLOCK 25, MAP OF DUNLAWTON, AS RECORDED IN DEED BOOK "M", PAGE 187, AND RE-RECORDED AS A TRUE COPY IN MAP BOOK 14, PAGES 82 AND 83 OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, IN SECTION 37, TOWNSHIP 33 SOUTH, RANGE 33 EAST AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCE AT THE SOUTHWEST CORNER OF THE EAST 1/2 OF SAID LOT 1, BLOCK 25, MAP OF DUNLAWTON; THENCE RUN N25°19'48"W ALONG THE WEST LINE OF SAID EAST 1/2, A DISTANCE OF 445.10 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE ALONG SAID WEST LINE N25°19'48"W, 191.01 FEET TO THE SOUTH RIGHT OF WAY LINE OF SAMMS AVENUE AS DESCRIBED IN OFFICIAL RECORDS BOOK 6896, PAGE 225, OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA; THENCE N65°15'21"E ALONG SAID SOUTH RIGHT OF WAY LINE, 230.50 FEET TO THE WEST RIGHT OF WAY LINE OF NOVA ROAD; THENCE S69°49'40"E ALONG SAID WEST

RIGHT OF WAY LINE, 16.11 FEET; THENCE CONTINUE ALONG SAID WEST RIGHT OF WAY LINE S26°00'33"E, 179.67 FEET; THENCE S65°15'21"W, 243.92 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPT THE FOLLOWING DESCRIBED LAND IN THAT CERTAIN DEED RECORDED NOVEMBER 24, 2015 AS DEED BOOK 7188, PAGE 4662: A PORTION OF THE EAST 1/2 OF LOT 1, BLOCK 25, MAP OF DUNLAWTON, AS RECORDED IN DEED BOOK "M", PAGE 187, AND RE-RECORDED AS A TRUE COPY IN MAP BOOK 14, PAGES 82 AND 83 OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, IN SECTION 37, TOWNSHIP 16 SOUTH, RANGE 33 EAST AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGIN AT THE SOUTHWEST CORNER OF THE EAST 1/2 OF SAID LOT 1, BLOCK 25, MAP OF DUNLAWTON; THENCE RUN N25°19'48"W ALONG THE WEST LINE OF SAID EAST 1/2, A DISTANCE OF 141.02 FEET; THENCE N65°37'159"E, 247.57 FEET TO THE WEST RIGHT OF WAY LINE OF NOVA ROAD; THENCE ALONG SAID WEST RIGHT OF WAY LINE S26°00'33"E, 141.06
FEET TO THE SOUTH LINE OF SAID LOT 1; THENCE S65°37'59"W, 249.24 FEET TO THE POINT OF BEGINNING.

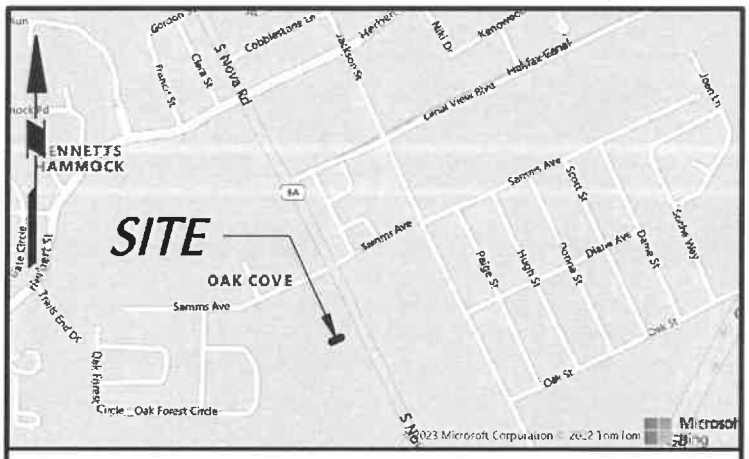
LESS AND EXCEPT THE FOLLOWING DESCRIBED LAND IN THAT CERTAIN DEED RECORDED JUNE 5, 2018 AS DEED BOOK 7554, PAGE 2882: A PORTION OF THE EAST 1/2 OF LOT 1, BLOCK 25, MAP OF DUNLAWTON, AS RECORDED IN DEED BOOK "M", PAGE 187, AND RE-RECORDED AS A TRUE COPY IN MAP BOOK 14, PAGES 82 AND 83 OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, IN SECTION 37, TOWNSHIP 16 SOUTH, RANGE 33 EAST AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS; COMMENCE AT THE SOUTHWEST CORNER OF THE EAST 1/2 OF SAID LOT 1, BLOCK 25, MAP OF DUNLAWTON; THENCE RUN N25°19'48"W ALONG THE WEST LINE OF SAID EAST 1/2, A DISTANCE OF 259.25 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE ALONG SAID WEST LINE N25°19'48"W, 185.85 FEET; THENCE N65°15'21"E, 243.92 FEET TO THE WEST RIGHT OF WAY LINE OF NOVA ROAD; THENCE S26°00'33"E ALONG SAID WEST RIGHT OF WAY LINE, 180.45 FEET; THENCE S63°59'22"W, 246.06 FEET TO THE POINT OF BEGINNING.

Said Property is also described as:
A PORTION OF THE EAST 1/2 OF LOT 1, BLOCK 25, MAP OF DUNLAWTON, AS RECORDED IN DEED BOOK "M", PAGE 187, AND RE-RECORDED AS A TRUE COPY IN MAP BOOK 14, PAGES 82 AND 83 OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, IN SECTION 37, TOWNSHIP 16 SOUTH, RANGE 33 EAST AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF THE EAST 1/2 OF SAID LOT 1, BLOCK 25, MAP OF DUNLAWTON; THENCE RUN N25°19'48"W ALONG THE WEST LINE OF SAID EAST 1/2, A DISTANCE OF 141.02 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE ALONG SAID WEST LINE N25°19'48"W, 118.23 FEET; THENCE N63°59'22"E, 246.06 FEET TO THE WEST RIGHT OF WAY LINE OF NOVA ROAD; THENCE S26°00'33"E ALONG SAID WEST RIGHT OF WAY LINE, 125.32 FEET; THENCE S65°37'59"W, 247.57 FEET TO THE POINT OF BEGINNING.

EXHIBIT "B"

PORTION OF EASEMENT FOR RELEASE



PROJECT LOCATION MAP

SCALE: NOT TO SCALE

SOURCE: Microsoft Corportation, HERE

SURVEYOR'S CERTIFICATION

I HEREBY CERTIFY THAT THE SKETCH AND DESCRIPTION SHOWN HEREON IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. ALSO, THIS SKETCH AND DESCRIPTION COMPLIES WITH THE STANDARDS OF PRACTICE, AS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL LAND SURVEYORS IN RULE 5J-17, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO CHAPTER 472.027, FLORIDA STATUTES.

GARY M. McDANIEL
PROFESSIONAL SURVEYOR AND MAPPER
LICENSE NUMBER LS7254
LANGAN ENGINEERING AND ENVIRONMENTAL SERVICES, LLC
LICENSED BUSINESS NUMBER LB8172, STATE OF FLORIDA.

GARY M MCDANIEL
License Number
LS7254
STATE OF
FLORIDA
Professional Surveyor and Mapper

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FBPE Registry No. 00006501/LB8172/LB8198

Project	Drawing Title	Project No.	Drawing No.
DRIVEN BRANDS TAKE 5 CW PORTION OF EASEMENT FOR RELEASE PORT ORANGE VOLUSIA COUNTY FLORIDA	SKETCH & DESCRIPTION	342016601 Date 7/23/2024 Drawn By GM Checked By BAM	VB101 Sheet 1 of 5

Project No. 342016601

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Date: 7/23/2024 Time: 19:01 User: gmcdaniel Style Table: Langan.stb Layout: 01 COVER Document Code: 342016601-0302-VB101-0103

SURVEYOR'S NOTES

1. THIS SKETCH AND DESCRIPTION IS NOT A SURVEY.
2. THIS SKETCH IS INTENDED TO BE DISPLAYED AT THE SCALE NOTED. LINEAR UNITS SHOWN ARE U.S. SURVEY FEET.
3. USE OF THIS SKETCH AND DESCRIPTION FOR PURPOSES OTHER THAN WHICH IT WAS INTENDED, WITHOUT WRITTEN VERIFICATION, WILL BE AT THE USER'S SOLE RISK AND WITHOUT LIABILITY TO THE SURVEYOR. NOTHING HEREIN SHALL BE CONSTRUED TO GIVE ANY RIGHTS OR BENEFITS TO ANYONE OTHER THAN THOSE CERTIFIED TO.
4. ALL ADJOINING RIGHTS-OF-WAY, SUBDIVISIONS AND INFORMATION ON ADJOINING PROPERTIES SHOWN HEREON ARE FROM INFORMATION SHOWN ON COUNTY PROPERTY APPRAISER'S WEBSITE. USERS OF THIS SURVEY ARE PLACED ON NOTICE THAT RELIANCE ON SUCH INFORMATION IS AT THEIR OWN PERIL, IN THIS REGARD.
5. THE WORD "CERTIFY" OR "CERTIFICATION" AS SHOWN AND USED HEREON, MEANS AN EXPRESSION OF PROFESSIONAL OPINION REGARDING THE FACTS OF THE SKETCH AND DOES NOT CONSTITUTE A WARRANTY OR GUARANTEE, EXPRESSED OR IMPLIED.
6. THIS SKETCH AND DESCRIPTION IS NEITHER FULL NOR COMPLETE WITHOUT ALL SHEETS OF THIS SET.
7. THE BEARINGS SHOWN HEREON ARE REFERENCED TO GRID NORTH BASED UPON THE STATE PLANE COORDINATE SYSTEM, FLORIDA EAST ZONE, NORTH AMERICAN DATUM OF 1983 (2011 ADJUSTMENT) REFERENCED TO THE FLORIDA PERMANENT REFERENCE NETWORK AND BASED UPON THE WESTERLY RIGHT OF WAY LINE OF NOVA ROAD (STATE ROUTE 5A), HAVING A BEARING OF SOUTH 26°00'33" EAST AND ALL BEARINGS ARE RELATIVE TO SAID LINE.
8. THIS SKETCH AND DESCRIPTION OR COPIES THEREOF ARE NOT VALID WITHOUT THE SIGNATURE AND ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER OR A CRYPTOAPI PRIVATE KEY IGC DIGITAL CERTIFICATE.

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Project	Drawing Title	Project No.	Drawing No.
DRIVEN BRANDS TAKE 5 CW PORTION OF EASEMENT FOR RELEASE PORT ORANGE VOLUSIA COUNTY FLORIDA	SURVEYOR'S NOTES	342016601	VB101
		Date: 7/23/2024	
		Drawn By: GM	
		Checked By: BAM	Sheet 2 of 5

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Project No. 342016601
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Date: 7/23/2024 Time: 19:01 User: gmcdaniel Style Table: Langan.stb Layout: 02 NOTES Document Code: 342016601-0302-VB101-0103

LEGAL DESCRIPTION

PORTION OF EASEMENT FOR RELEASE - AREA "C"

COMMENCING AT THE SOUTHWEST CORNER OF LAND AS DESCRIBED IN OFFICIAL RECORD BOOK 7922, PAGE 1497, ALSO KNOWN AS INSTRUMENT # 2020190865 OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA AND FURTHER DESCRIBED AS FOLLOWS;

THENCE ALONG THE SOUTH LINE OF SAID PARCEL, NORTH 65°37'25" EAST A DISTANCE OF 42.40 FEET TO THE POINT OF INTERSECTION OF THE SAID SOUTH LINE AND THE EASTERLY BOUNDARY LINE OF A UTILITY EASEMENT AS DESCRIBED IN OFFICIAL RECORD BOOK 7188, PAGE 4664, OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA;

THENCE ALONG THE EASTERLY BOUNDARY LINE OF SAID UTILITY EASEMENT, NORTH 25°19'48" WEST A DISTANCE OF 60.42 FEET TO A POINT ON THE SOUTHERLY BOUNDARY LINE OF AN ACCESS, DRAINAGE, RETENTION, AND MAINTENANCE EASEMENT AS DESCRIBED IN OFFICIAL RECORD BOOK 7544, PAGE 3075, OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA;

THENCE ALONG THE SOUTHERLY BOUNDARY LINE OF SAID ACCESS, DRAINAGE, RETENTION, AND MAINTENANCE EASEMENT, NORTH 65°40'43" EAST A DISTANCE OF 46.14 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUING ALONG THE SOUTHERLY BOUNDARY LINE OF SAID ACCESS, DRAINAGE, RETENTION, AND MAINTENANCE EASEMENT, NORTH 65°40'43" EAST A DISTANCE OF 74.95 FEET TO A POINT;

THENCE ALONG THE EASTERLY BOUNDARY LINE OF SAID ACCESS, DRAINAGE, RETENTION, AND MAINTENANCE EASEMENT, NORTH 25°19'53" WEST A DISTANCE OF 8.11 FEET TO A POINT;

THENCE DEPARTING THE EASTERLY BOUNDARY LINE OF SAID ACCESS, DRAINAGE, RETENTION, AND MAINTENANCE EASEMENT, SOUTH 64°40'07" WEST A DISTANCE OF 74.86 FEET TO A POINT;

THENCE SOUTH 24°38'40" EAST A DISTANCE OF 6.79 FEET TO THE POINT OF BEGINNING.

SAID PORTION OF EASEMENT TO BE RELEASED CONTAINING 558 SQUARE FEET OR 0.013 ACRES OF LAND MORE OR LESS.

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Project	Drawing Title	Project No.	Drawing No.
DRIVEN BRANDS TAKE 5 CW PORTION OF EASEMENT FOR RELEASE PORT ORANGE VOLUSIA COUNTY FLORIDA	DESCRIPTION	342016601 Date 7/23/2024 Drawn By GM Checked By BAM	VB101 Sheet 3 of 5

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Project No. 342016601

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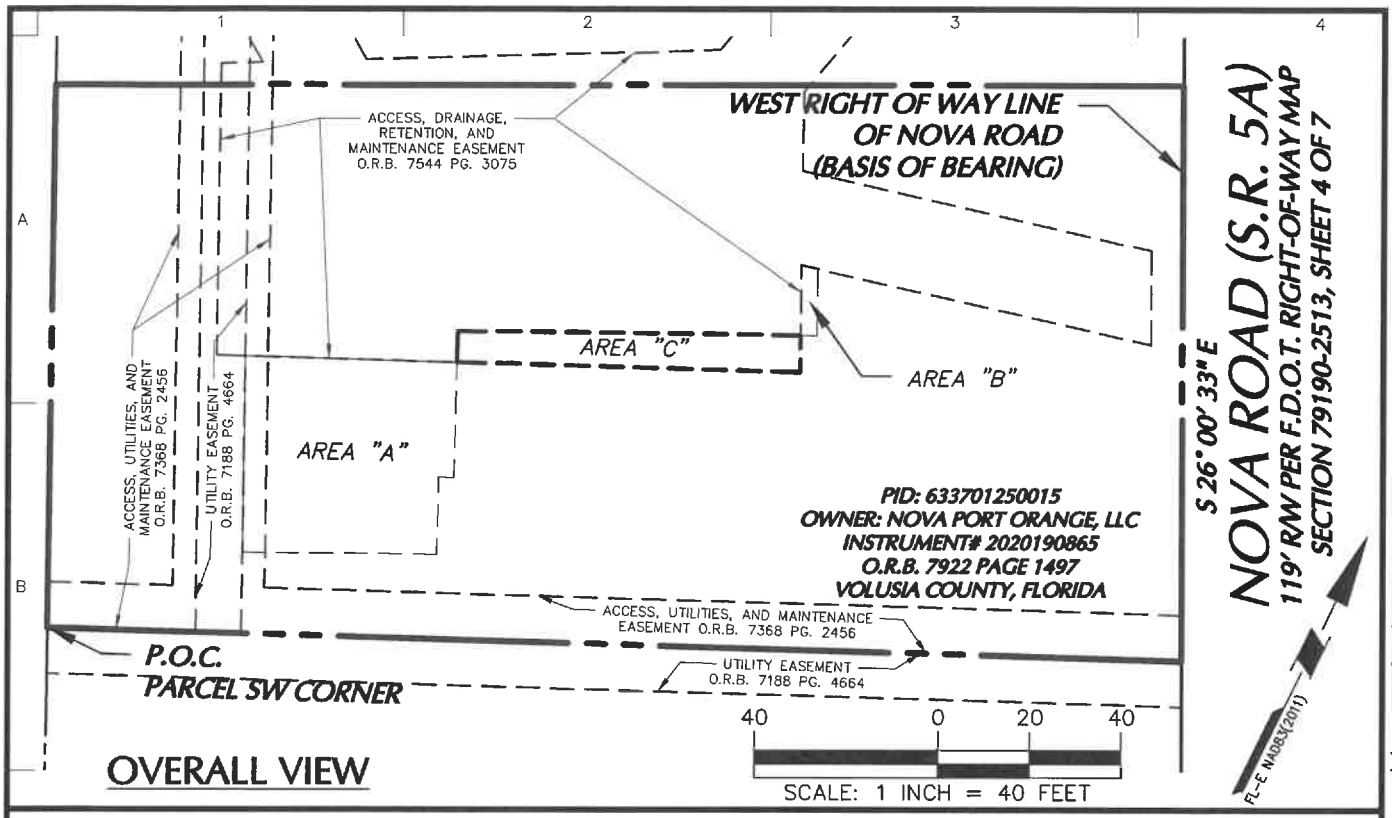
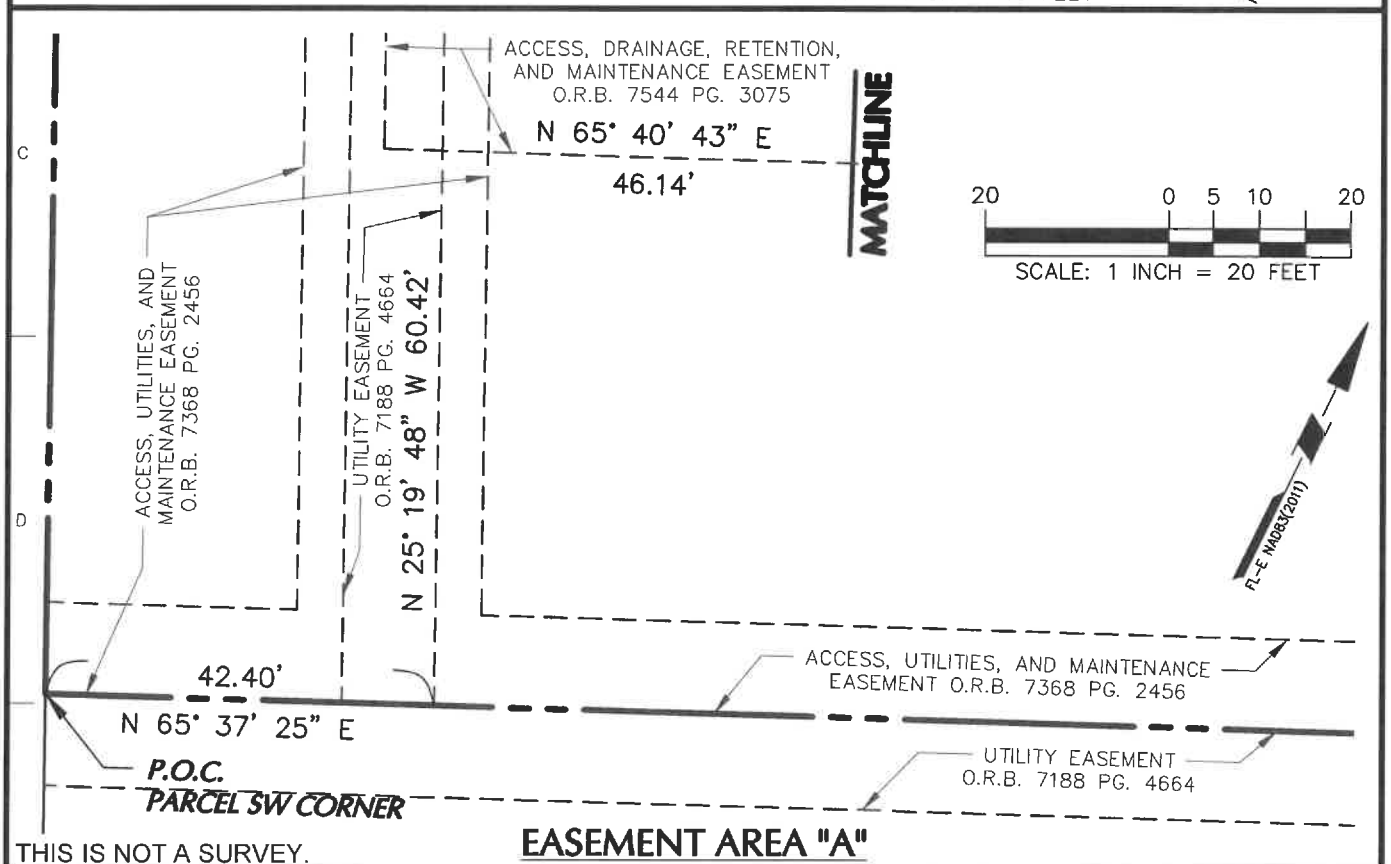
Date: 7/23/2024 Time: 19:01 User: gmcdaniel Style Table: Langan.stb Layout: 03 DESCRIPTION Document Code: 342016601-0302-VB101-0103



OVERALL VIEW



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EASEMENT AREA "A"

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Project	DRIVEN BRANDS TAKE 5 CW PORTION OF EASEMENT FOR RELEASE PORT ORANGE VOLUSIA COUNTY FLORIDA
Drawing Title	SKETCH
Project No.	342016601
Date	7/23/2024
Drawn By	GM
Checked By	BAM
Drawing No.	VB101
Sheet	4 of 5

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Project No. 342016601

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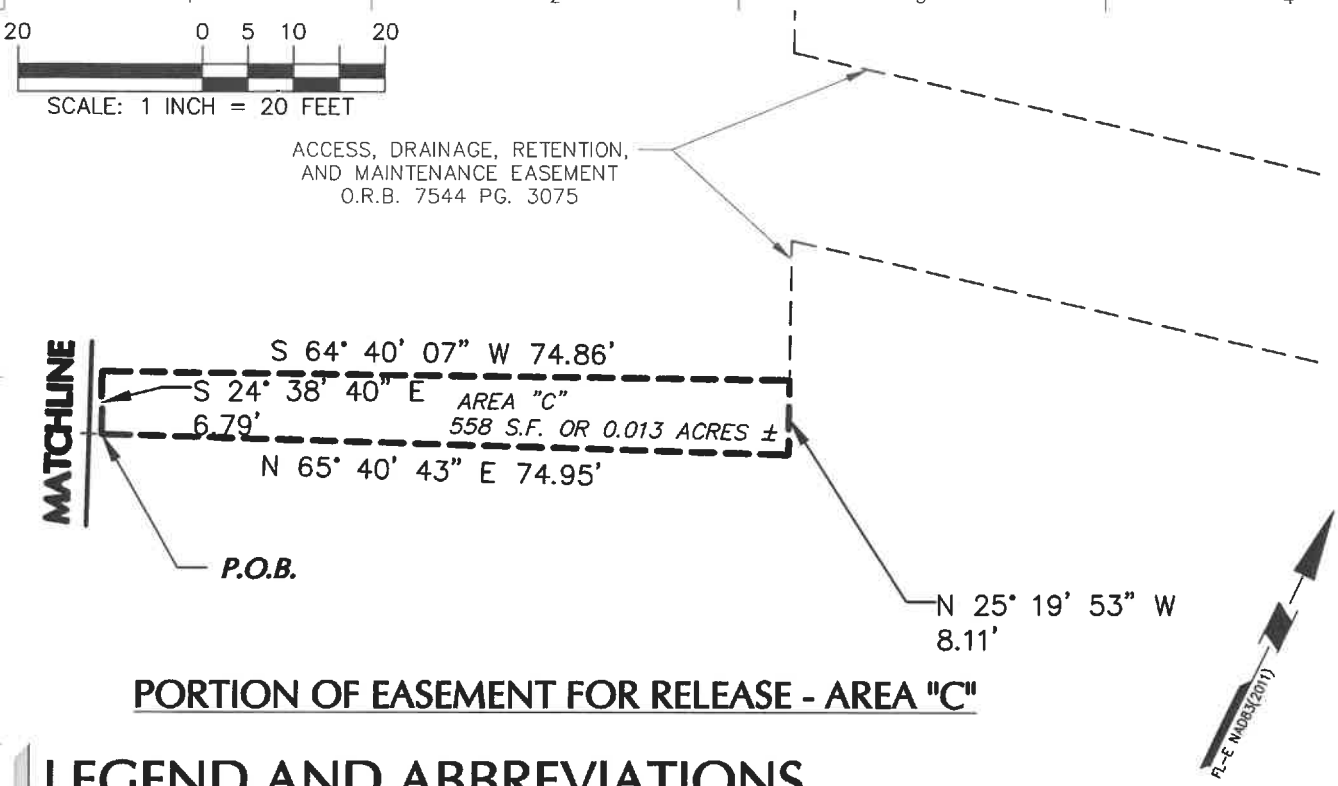
Date: 7/23/2024 Time: 19:01 User: gmcdaniel Style Table: Langan.stb Layout: 04 SKETCH Document Code: 342016601-0302-VB101-0103



PORTION OF EASEMENT FOR RELEASE - AREA "C"

LEGEND AND ABBREVIATIONS (NOT SHOWN TO SCALE)

- - - - - -	—	PROPOSED EASEMENT BOUNDARY
- - - - - -	—	EXISTING EASEMENT BOUNDARY
——·——	—	PROPERTY BOUNDARY
——··——	—	ADJOINING PROPERTY BOUNDARY
——·——	—	RIGHT-OF-WAY LINE
ENG.	—	ENGINEERING
FBPE	—	FLORIDA BOARD OF PROFESSIONAL ENGINEERS
F.D.O.T.	—	FLORIDA DEPARTMENT OF TRANSPORTATION
NAD83	—	NORTH AMERICAN DATUM OF 1983
F.A.C.	—	FLORIDA ADMINISTRATIVE CODE
No.	—	NUMBER
LB	—	LICENSED BUSINESS
PID	—	TAX PARCEL IDENTIFICATION NUMBER
S.F.	—	SQUARE FEET
R/W	—	RIGHT OF WAY
S.R.	—	STATE ROUTE
P.O.B.	—	POINT OF BEGINNING
P.O.C.	—	POINT OF COMMENCEMENT
O.R.B.	—	OFFICIAL RECORD BOOK
PG.	—	PAGE

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Project	DRIVEN BRANDS TAKE 5 CW PORTION OF EASEMENT FOR RELEASE PORT ORANGE VOLUSIA COUNTY FLORIDA
Drawing Title	SKETCH
Project No.	342016601
Date	7/23/2024
Drawn By	GM
Checked By	BAM
Drawing No.	VB101
Sheet	5 of 5

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Project No. 342016601

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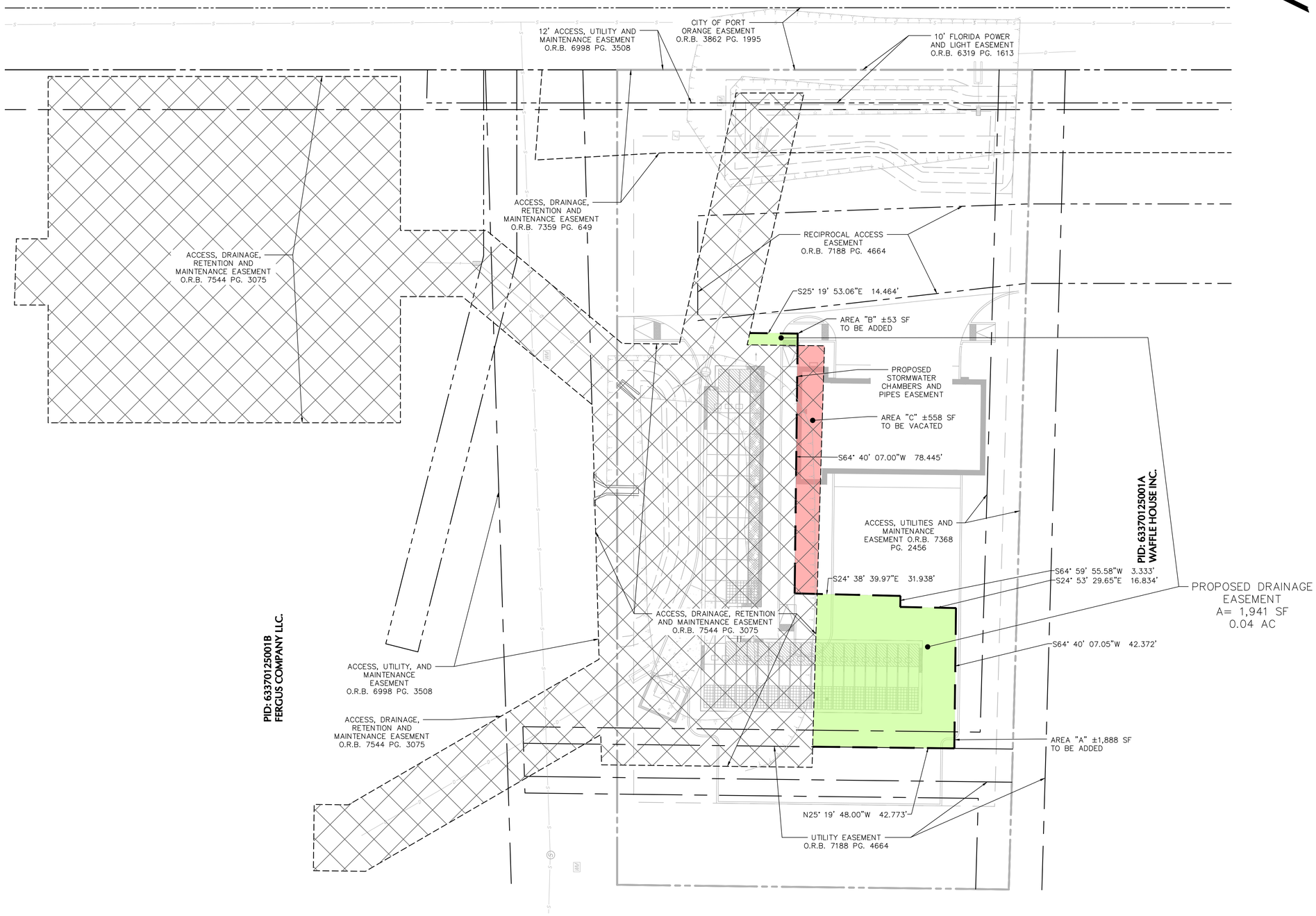
LEGEND

- CITY OF PORT ORANGE EASEMENT
- UTILITY EASEMENT
- ACCESS EASEMENT
- POWER AND LIGHT EASEMENT
- DRAINAGE AND RETENTION POND EASEMENT
- PROPOSED DRAINAGE EASEMENT
- EXISTING DRAINAGE EASEMENT AREA
- ADDED DRAINAGE EASEMENT AREA (1,941 SF)
- REMOVED DRAINAGE EASEMENT AREA (558 SF)



Date	Description	No.
07/16/2024	REVISED PER WMD COMMENTS	4
07/11/2024	REVISED PER CITY COMMENTS	3
06/12/2024	REVISED PER CITY COMMENTS	2
04/05/2024	REVISED PER CITY COMMENTS	1

Revisions

Signature Date
MATT KORTE
PROFESSIONAL ENGINEER FL Lic. No. 88322

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Project
DRIVEN BRANDS-TAKE 5 OC PORT ORANGE, FL
PORT ORANGE
VOLUSIA COUNTY FLORIDA

Drawing Title
EASEMENT PLAN

Project No. 342016601
Date 13 MARCH 2024
Drawn By VE
Checked By AR

Drawing No. C-03
Sheet 3 of 26

Project No. 342016601

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Date: 7/23/2024 Time: 13:38 User: vespinosa Style Table: Langan,stb Layout: C-03 Document Code: 342016601-0301-CB103-0101

STORMWATER EASEMENT AREA "A"

PROJECT LOCATION MAP

SCALE: NOT TO SCALE

SOURCE:
Microsoft Corportation, HERE

SURVEYOR'S CERTIFICATION

I HEREBY CERTIFY THAT THE SKETCH AND DESCRIPTION SHOWN HEREON IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. ALSO, THIS SKETCH AND DESCRIPTION COMPLIES WITH THE STANDARDS OF PRACTICE, AS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL LAND SURVEYORS IN RULE 5J-17, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO CHAPTER 472.027, FLORIDA STATUTES.

GARY M. McDANIEL
PROFESSIONAL SURVEYOR AND MAPPER
LICENSE NUMBER LS7254
LANGAN ENGINEERING AND ENVIRONMENTAL SERVICES, LLC
LICENSED BUSINESS NUMBER LB8172, STATE OF FLORIDA.

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Professional Surveyor and Mapper

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Project	Drawing Title	Project No.	Drawing No.
DRIVEN BRANDS TAKE 5 CW STORMWATER EASEMENT - AREA "A" PORT ORANGE VOLUSIA COUNTY FLORIDA	SKETCH & DESCRIPTION	342016601 Date 7/23/2024 Drawn By GM Checked By BAM	VB101 Sheet 1 of 4

Project No. 342016601

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Project	Drawing Title	Project No.	Drawing No.
DRIVEN BRANDS TAKE 5 CW STORMWATER EASEMENT - AREA "A" PORT ORANGE VOLUSIA COUNTY FLORIDA	SURVEYOR'S NOTES	342016601 Date 7/23/2024 Drawn By GM Checked By BAM	VB101 Sheet 2 of 4

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Project No. 342016601
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LEGAL DESCRIPTION

STORMWATER EASEMENT AREA "A"

COMMENCING AT THE SOUTHWEST CORNER OF LAND AS DESCRIBED IN OFFICIAL RECORD BOOK 7922, PAGE 1497, ALSO KNOWN AS INSTRUMENT # 2020190865 OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA AND FURTHER DESCRIBED AS FOLLOWS;

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THENCE ALONG THE EASTERLY BOUNDARY LINE OF SAID UTILITY EASEMENT, NORTH 25°19'48" WEST A DISTANCE OF 17.65 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUING ALONG THE EAST BOUNDARY OF SAID UTILITY EASEMENT, NORTH 25°19'48" WEST A DISTANCE OF 42.77 FEET TO A POINT ON THE SOUTHERLY BOUNDARY LINE OF AN ACCESS, DRAINAGE, RETENTION, AND MAINTENANCE EASEMENT AS DESCRIBED IN OFFICIAL RECORD BOOK 7544, PAGE 3075, OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA;

THENCE ALONG THE SOUTHERLY BOUNDARY LINE OF SAID ACCESS, DRAINAGE, RETENTION, AND MAINTENANCE EASEMENT, NORTH 65°40'43" EAST A DISTANCE OF 46.14 FEET TO A POINT;

THENCE DEPARTING THE SOUTH BOUNDARY LINE OF SAID ACCESS, DRAINAGE, RETENTION AND MAINTENANCE EASEMENT, SOUTH 24°38'40" EAST A DISTANCE OF 25.15 FEET TO A POINT;

THENCE SOUTH 64°59'56" WEST A DISTANCE OF 3.33 FEET TO A POINT;

THENCE SOUTH 24°53'30" EAST A DISTANCE OF 16.83 FEET TO A POINT;

THENCE SOUTH 64°40'07" WEST A DISTANCE OF 42.37 FEET TO THE POINT OF BEGINNING.

SAID EASEMENT CONTAINING 1,888 SQUARE FEET OR 0.043 ACRES OF LAND MORE OR LESS.

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DRIVEN BRANDS TAKE 5 CW STORMWATER EASEMENT - AREA "A" PORT ORANGE VOLUSIA COUNTY FLORIDA	DESCRIPTION	342016601 Date 7/23/2024 Drawn By GM Checked By BAM	VB101 Sheet 3 of 4

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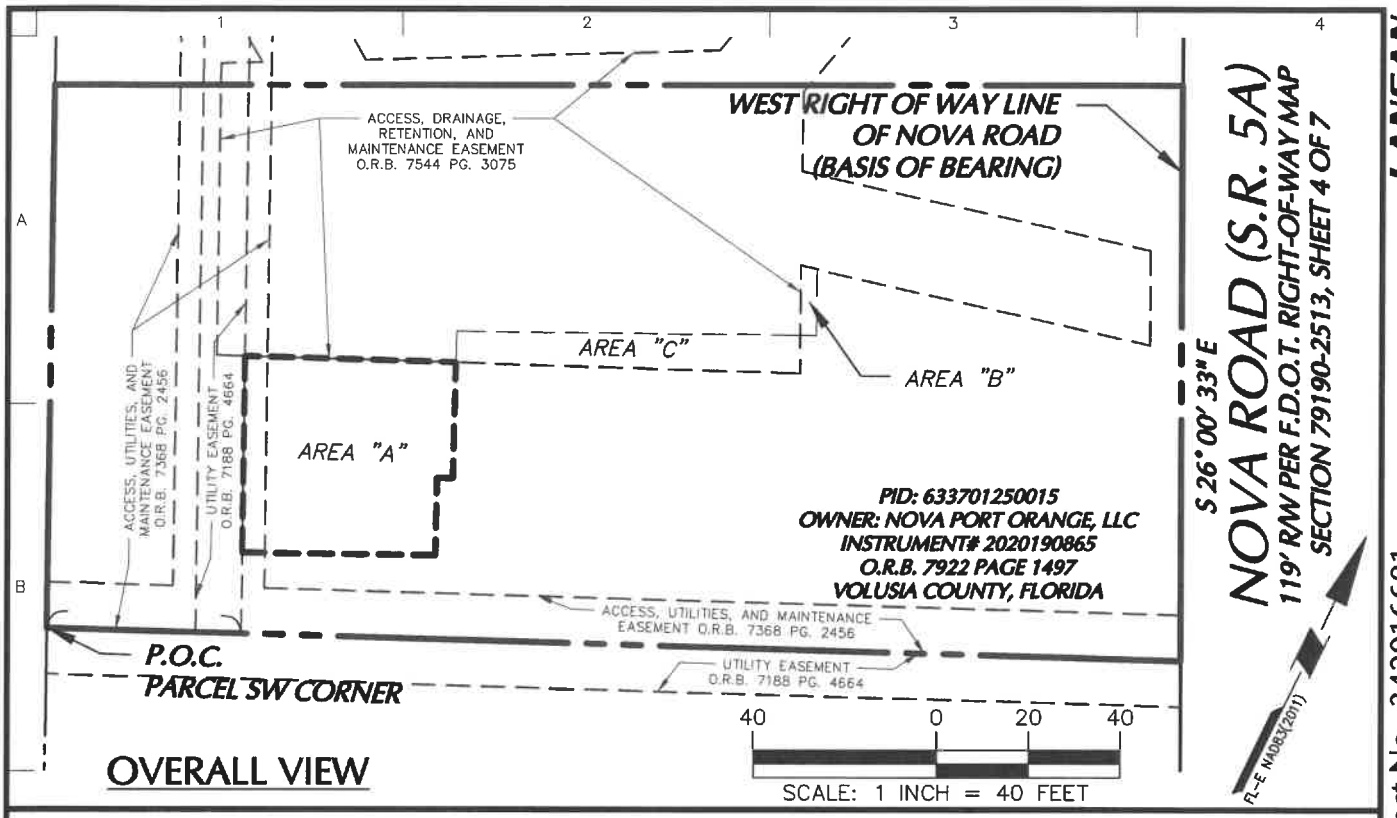
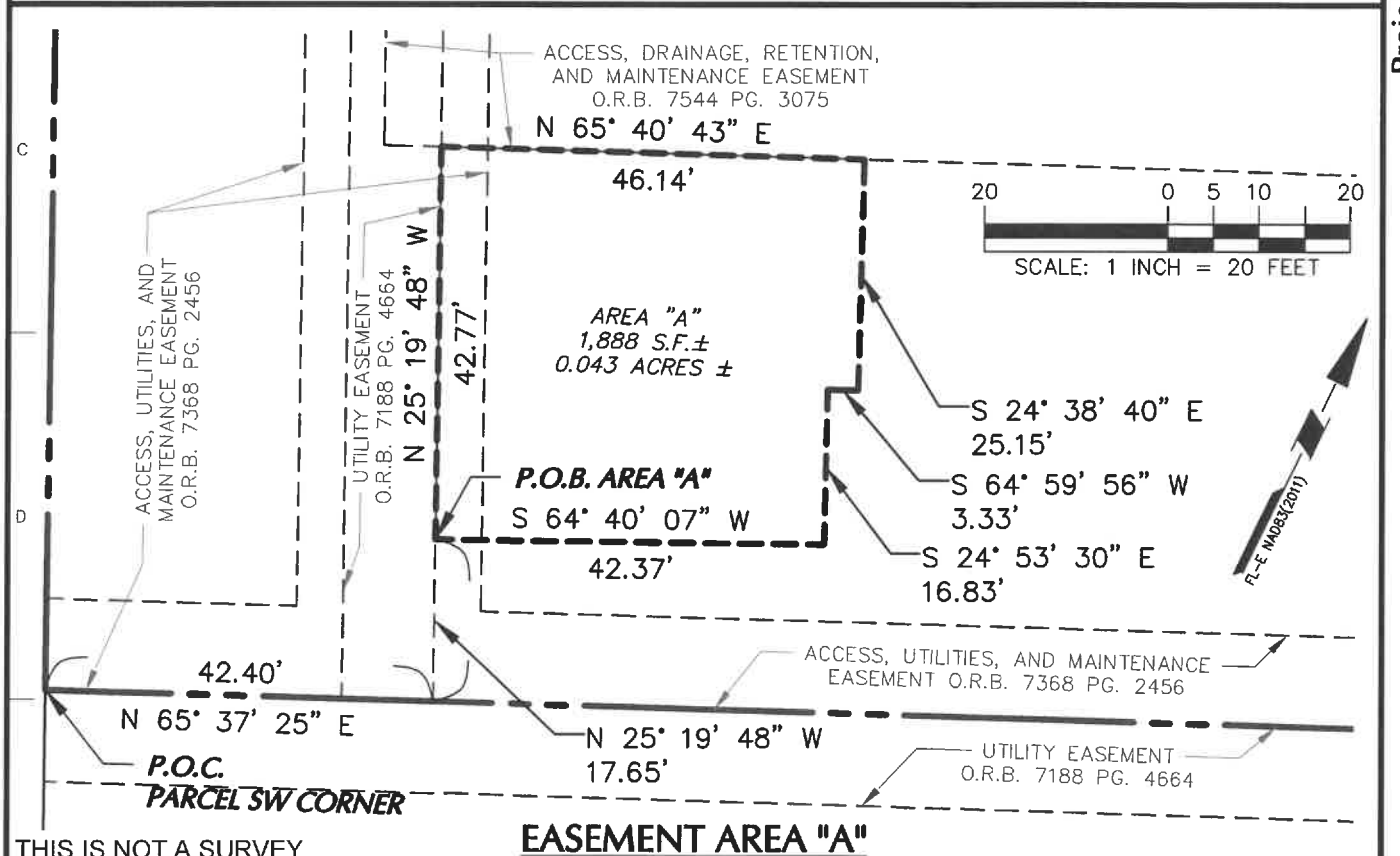


OVERALL VIEW



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EASEMENT AREA "A"

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Project	Drawing Title	Project No.	Drawing No.
DRIVEN BRANDS TAKE 5 CW STORMWATER EASEMENT - AREA "A" PORT ORANGE VOLUSIA COUNTY FLORIDA	SKETCH	342016601 Date 7/23/2024 Drawn By GM Checked By BAM	VB101 Sheet 4 of 4

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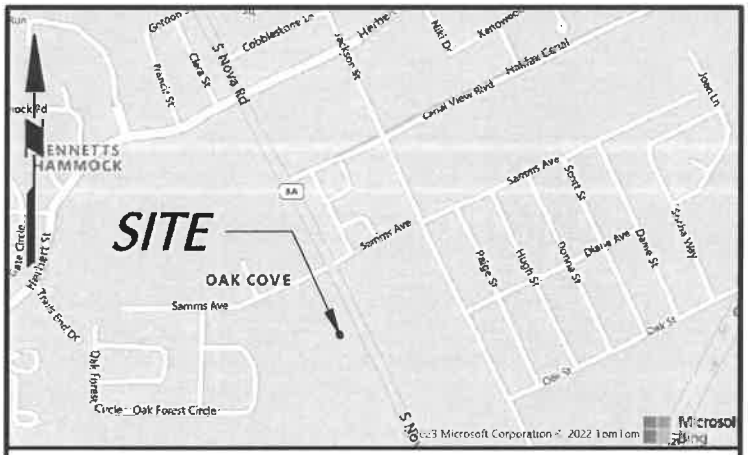
STORMWATER EASEMENT AREA "B"



PROJECT LOCATION MAP

SCALE: NOT TO SCALE

SOURCE: Microsoft Corportation, HERE

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LICENSED BUSINESS NUMBER LB8172, STATE OF FLORIDA.

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Project	Drawing Title	Project No.	Drawing No.
DRIVEN BRANDS TAKE 5 CW STORMWATER EASEMENT - AREA "B" PORT ORANGE VOLUSIA COUNTY FLORIDA	SKETCH & DESCRIPTION	342016601	VB101
		Date: 7/23/2024	
		Drawn By: GM	
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Project	Drawing Title	Project No.	Drawing No.
DRIVEN BRANDS TAKE 5 CW STORMWATER EASEMENT - AREA "B" PORT ORANGE VOLUSIA COUNTY FLORIDA	SURVEYOR'S NOTES	342016601 Date 7/23/2024 Drawn By GM Checked By BAM	VB101 Sheet 2 of 5

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LEGAL DESCRIPTION

STORMWATER EASEMENT AREA "B"

COMMENCING AT THE SOUTHWEST CORNER OF LAND AS DESCRIBED IN OFFICIAL RECORD BOOK 7922, PAGE 1497, ALSO KNOWN AS INSTRUMENT # 2020190865 OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA AND FURTHER DESCRIBED AS FOLLOWS;

THENCE ALONG THE SOUTH LINE OF SAID PARCEL, NORTH 65°37'25" EAST A DISTANCE OF 42.40 FEET TO THE POINT OF INTERSECTION OF THE SAID SOUTH LINE AND THE EASTERLY BOUNDARY LINE OF A UTILITY EASEMENT AS DESCRIBED IN OFFICIAL RECORD BOOK 7188, PAGE 4664, OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA;

THENCE ALONG THE EASTERLY BOUNDARY LINE OF SAID UTILITY EASEMENT, NORTH 25°19'48" WEST A DISTANCE OF 60.42 FEET TO A POINT ON THE SOUTHERLY BOUNDARY LINE OF AN ACCESS, DRAINAGE, RETENTION, AND MAINTENANCE EASEMENT AS DESCRIBED IN OFFICIAL RECORD BOOK 7544, PAGE 3075, OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA;

THENCE ALONG THE SOUTHERLY BOUNDARY LINE OF SAID ACCESS, DRAINAGE, RETENTION, AND MAINTENANCE EASEMENT, NORTH 65°40'43" EAST A DISTANCE OF 121.09 FEET TO A POINT;

THENCE ALONG THE EASTERLY BOUNDARY LINE OF SAID ACCESS, DRAINAGE, RETENTION AND MAINTENANCE EASEMENT NORTH 25°19'53" WEST A DISTANCE OF 8.11 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUING ALONG THE EASTERLY BOUNDARY LINE OF SAID ACCESS, DRAINAGE, RETENTION AND MAINTENANCE EASEMENT NORTH 25°19'53" WEST A DISTANCE OF 15.23 FEET TO A POINT;

THENCE ALONG THE SOUTHERLY BOUNDARY LINE OF SAID ACCESS, DRAINAGE, RETENTION, AND MAINTENANCE EASEMENT, NORTH 76°42'30" EAST A DISTANCE OF 3.67 FEET TO A POINT;

THENCE DEPARTING THE SOUTHERLY BOUNDARY LINE OF SAID ACCESS, DRAINAGE, RETENTION AND MAINTENANCE EASEMENT, SOUTH 25°19'53" EAST A DISTANCE OF 14.46 FEET TO A POINT;

THENCE SOUTH 64°40'07" WEST A DISTANCE OF 3.59 FEET TO THE POINT OF BEGINNING.

SAID EASEMENT CONTAINING 53 SQUARE FEET OF LAND MORE OR LESS.

THIS IS NOT A SURVEY.

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Project	Drawing Title	Project No.	Drawing No.
DRIVEN BRANDS TAKE 5 CW STORMWATER EASEMENT - AREA "B" PORT ORANGE VOLUSIA COUNTY FLORIDA	DESCRIPTION	342016601 Date 7/23/2024 Drawn By GM Checked By BAM	VB101 Sheet 3 of 5

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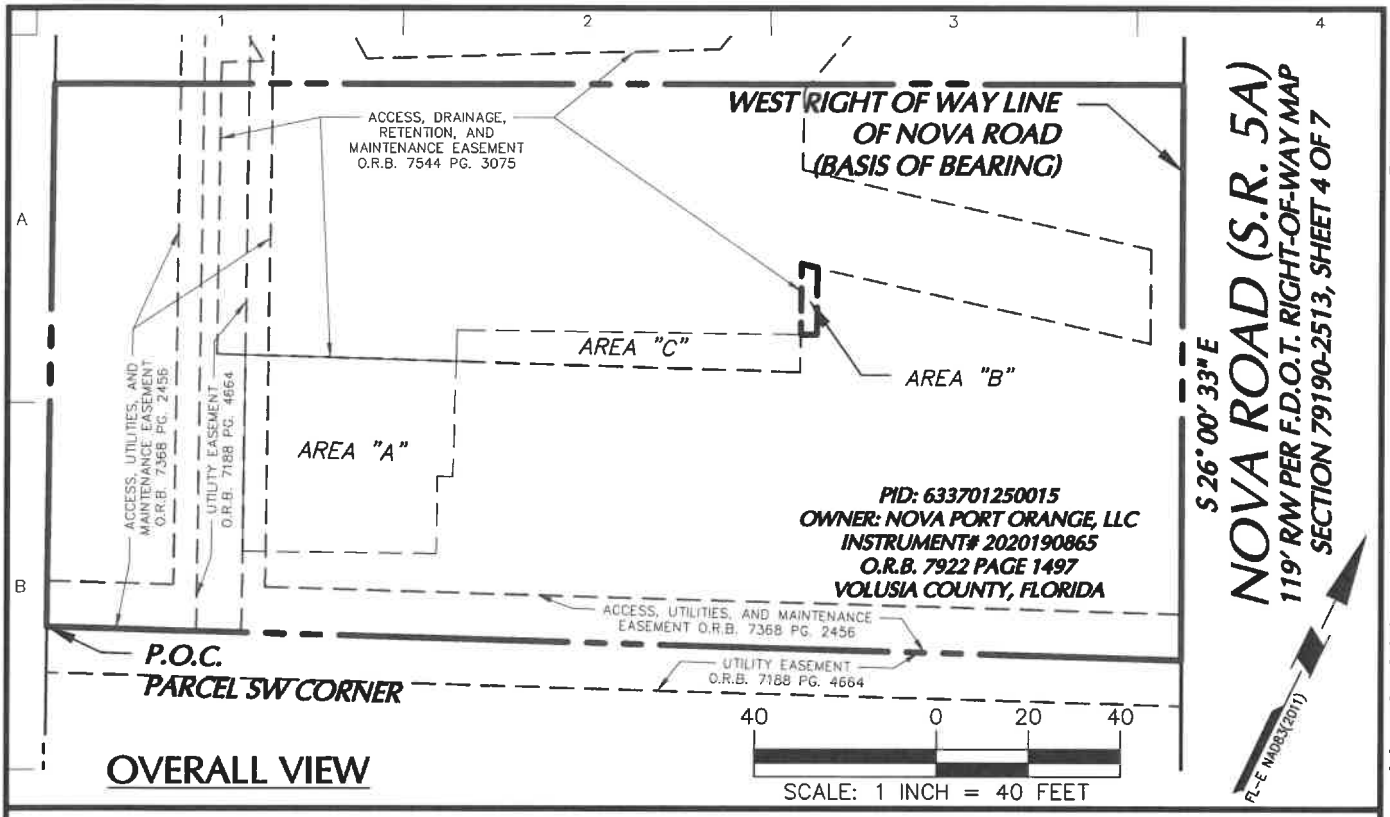
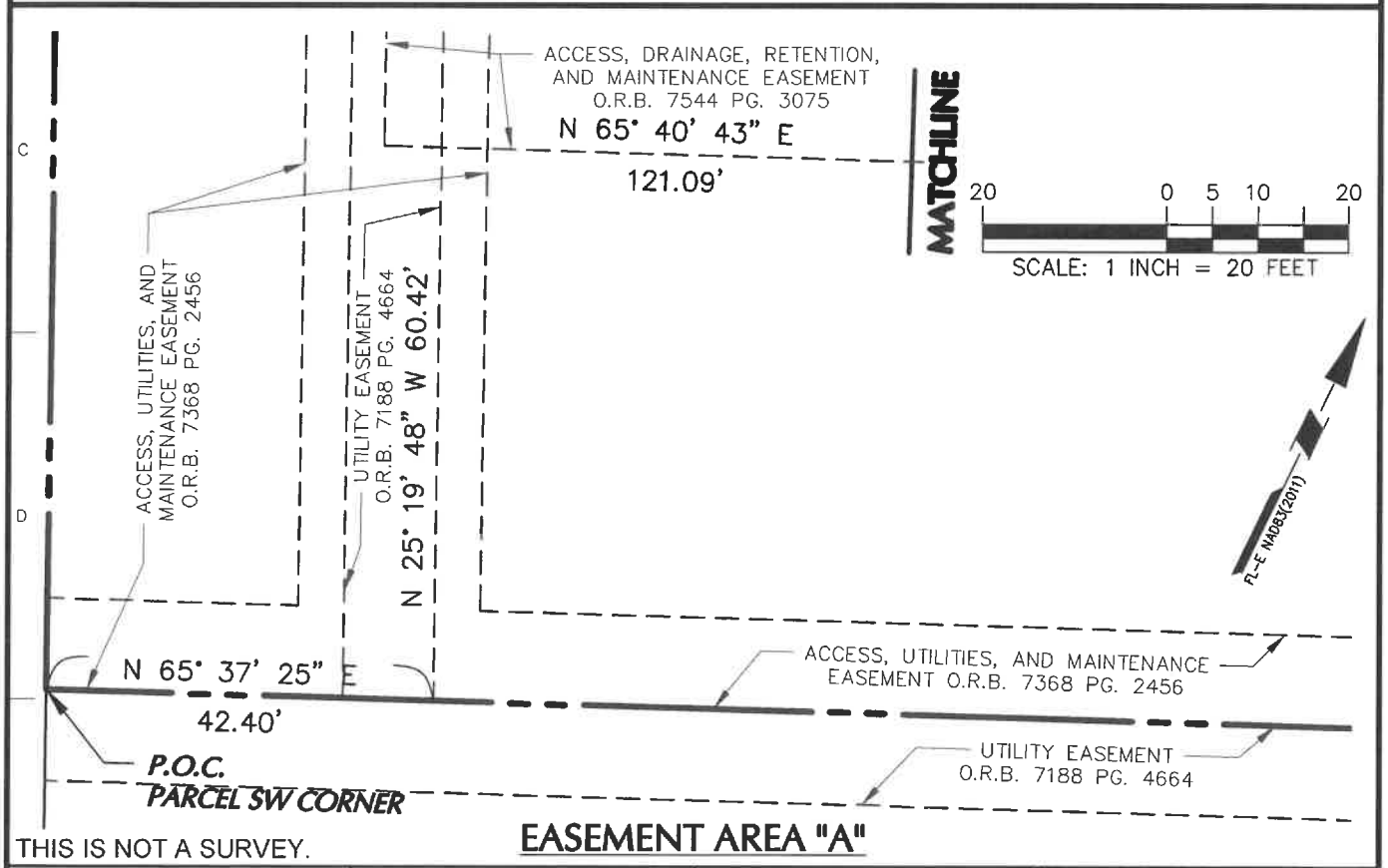


OVERALL VIEW



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EASEMENT AREA "A"

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DRIVEN BRANDS TAKE 5 CW STORMWATER EASEMENT - AREA "B" PORT ORANGE VOLUSIA COUNTY FLORIDA	SKETCH	342016601 Date 7/23/2024 Drawn By GM Checked By BAM	VB101 Sheet 4 of 5

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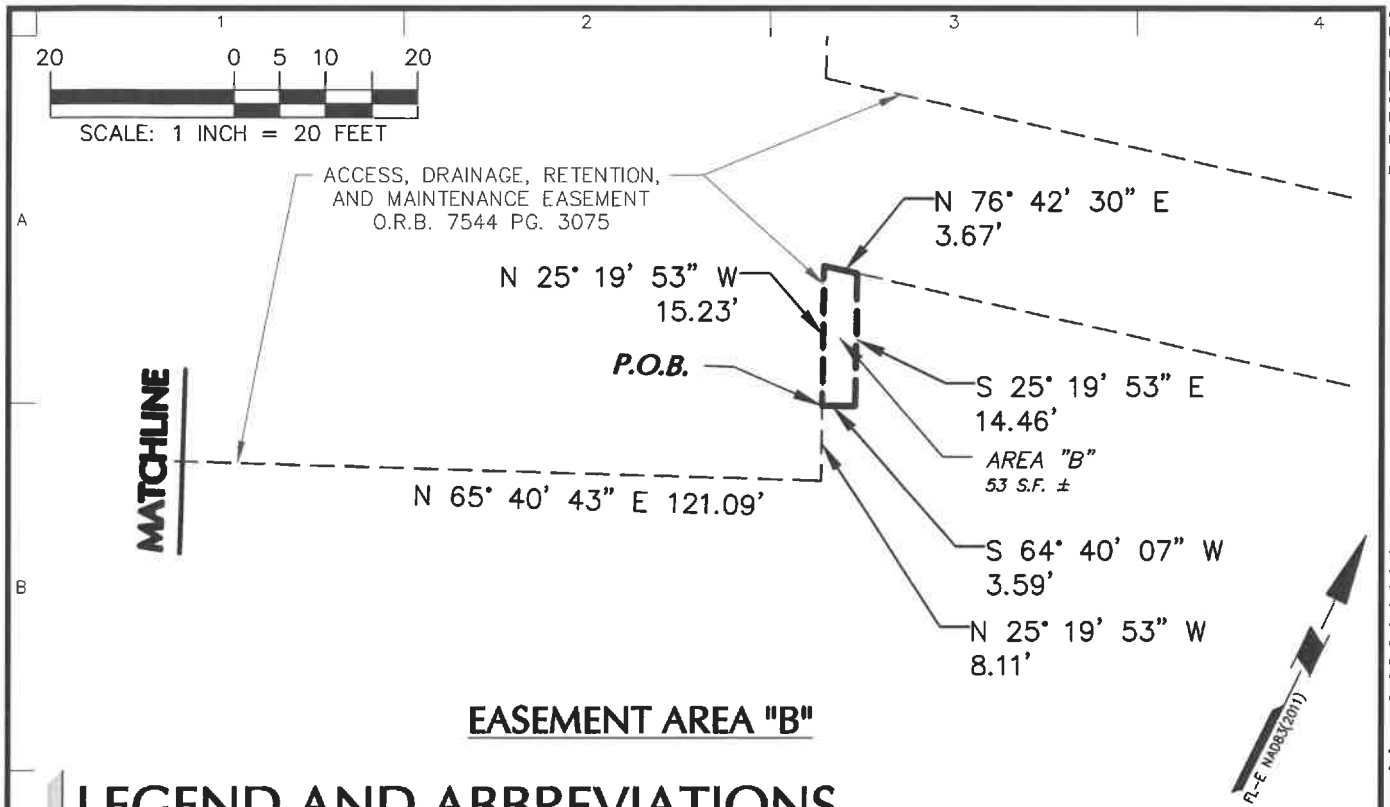

EASEMENT AREA "B"

LEGEND AND ABBREVIATIONS (NOT SHOWN TO SCALE)

- - - - - -	—	PROPOSED EASEMENT BOUNDARY
- - - - - -	—	EXISTING EASEMENT BOUNDARY
	—	PROPERTY BOUNDARY
	—	ADJOINING PROPERTY BOUNDARY
	—	RIGHT-OF-WAY LINE
ENG.	—	ENGINEERING
FBPE	—	FLORIDA BOARD OF PROFESSIONAL ENGINEERS
F.D.O.T.	—	FLORIDA DEPARTMENT OF TRANSPORTATION
NAD83	—	NORTH AMERICAN DATUM OF 1983
F.A.C.	—	FLORIDA ADMINISTRATIVE CODE
No.	—	NUMBER
LB	—	LICENSED BUSINESS
PID	—	TAX PARCEL IDENTIFICATION NUMBER
S.F.	—	SQUARE FEET
R/W	—	RIGHT OF WAY
S.R.	—	STATE ROUTE
P.O.B.	—	POINT OF BEGINNING
P.O.C.	—	POINT OF COMMENCEMENT
O.R.B.	—	OFFICIAL RECORD BOOK
PG.	—	PAGE

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