



REGULAR CITY COUNCIL MEETING

6:30 PM – COUNCIL CHAMBERS – CITY HALL

FEBRUARY 18, 2025

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
4. Public Comments on Consent Agenda Items Only

B. RECOGNITION AND PROCLAMATIONS

5. World Encephalitis Day February 22 - Ken and Kat Atwood

C. CONSENT AGENDA

6. Approval of Minutes
 - a. February 4, 2025 - Regular City Council Meeting
7. Bid Awards and Contract Items
 - a. Approval of Amendment No. 1 to the License Agreement with ArtHaus
 - b. Ratification of the Emergency Work to Repair the 12-inch Force Main on Samms Avenue and the associated Purchase Order # 20250070
 - c. Ratification of the Emergency Work for Manhole Repairs on Victoria Gardens Boulevard near Dunlawton Avenue and the associated Purchase Order- 20250069
 - d. Approval of Change Order No. 2 to the AIA Agreement with A.G. Pifer Construction Co., Inc. for Spruce Creek Road Park Concession & Restroom Replacement
8. Memorial Park Piers

- a. Approval of Change Order and Amendment No. 1 to the EJCDC Contract with Rush Marine, LLC for the Rehabilitation of the Memorial Park Piers
- b. Resolution No. 25-11 - Budget Appropriation for additional work on the Memorial Park Piers

9. Approval of Major Special Event Request for Bike Week 2025 for The Turn at 5236, 5218, 5204 & 5164 South Ridgewood Avenue

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

E. COMMENTS AND ADDITIONAL ITEMS

10. Council Members
11. City Attorney
12. City Manager

F. BOARD APPOINTMENTS, INTERVIEWS, AND REPORTS

13. Citizen Advisory Committee for TPO
14. Fire Pension Board Member Appointment

G. PUBLIC HEARING

15. Second Reading - Ordinance No. 2025-06 - Designating Registered Agent for Service of Process on the City
16. First Reading - Ordinance No. 2025-07 - Amending Chapter 74 - Utilities, Article VIII. Cross Connection Control of the City of Port Orange Code of Ordinances
17. First Reading - Ordinance No. 2025-08 - First Amendment to the Madeline Commons PUD Master Development Agreement (Case No. PRZA-24-0009)

H. REGULAR AGENDA

18. Approval of Major Special Event Request for Bike Week 2025 for The Doghouse Bar and Grill at 3400 S. Nova Road

I. COUNCIL COMMITTEE REPORTS

19. City Council Committee Reports
 - a. First Step Shelter - Councilman Shawn Geopfert
 - b. Port Orange/South Daytona Chamber of Commerce - Councilman Shawn Geopfert

J. ADJOURNMENT

Regular City Council Meeting

2/18/2025

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



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



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

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

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

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

REGULAR CITY COUNCIL MEETING MINUTES
COUNCIL CHAMBERS – CITY HALL
1000 CITY CENTER CIRCLE
PORT ORANGE, FLORIDA
FEBRUARY 4, 2025

THE REGULAR CITY COUNCIL MEETING of the City of Port Orange was called to order by Mayor Scott Stiltner at 6:30 p.m.

Invocation by Pastor Mike Swingle of First Baptist Church of Harbor Oaks

Pledge of Allegiance

Roll Call	Present:	Councilman Jonathan Foley Councilman Shawn Goepfert Councilman Lance Green Vice Mayor Tracy Grubbs Mayor Scott Stiltner
	Also Present:	City Manager Wayne Clark City Attorney Matthew Jones Deputy City Clerk Amanda Bonin

4. Public Comments on Consent Agenda Items Only

There were none.

CONSENT AGENDA

5. Approval of Minutes
 - a. January 21, 2025 - Regular City Council Meeting
6. Bid Awards and Contract Items
 - a. Award of RFP #24-16 to Top Line Recreation, Inc. for the City Center Playground Project
 - b. Approval of Task Authorization No. 2 to DJ Design, Inc. for design of the All Children's Park Restroom Replacement
7. Resolution No. 25-04 - Approval of Local Agency Program (LAP) Agreement 446285-2-58-01 for construction of the Willow Run Blvd Sidewalk Project from Harms Way to Clyde Morris Blvd
8. Resolution No. 25-05 - Approval of Local Agency Program (LAP) Agreement 448772 for the Williamson Blvd./Willow Run Blvd. Sidewalk from south of Town Park Dr. to Chardonnay Dr.
9. Resolution No. 25-07 - Approval of FDOT Locally Funded Agreement 446285-1-62-02 Construction Engineering Inspection (CEI) for the Willow Run Blvd Sidewalk from Harms Way to Clyde Morris Blvd
10. Resolution No. 25-08 - Approval of FDOT Locally Funded Agreement 448772-1-62-02 Construction Engineering Inspection (CEI) for Williamson Blvd / Willow Run Blvd Sidewalk from south of Town Park Dr to Chardonnay Dr

11. Resolution No. 25-10 - Ratification of Emergency Powers Taken During Hurricane Milton and Temporarily Extending the Waiver of Certain Permit Fees

12. Removal of a Storm Damaged Historic Tree at 940 N Lakewood Terrace in HOA Common Area

Motion to approve the Consent Agenda as presented was made by Councilman Jonathan Foley and Seconded by Vice Mayor Tracy Grubbs. Motion carried unanimously by roll call vote.

PUBLIC PARTICIPATION (Non-Agenda – 20 minutes)

Robert Reinhagan, resident, spoke about building on wetlands.

Chuck Helman, resident, spoke on the hoarder situation in Sugar Forest and finished Heather's story from the previous Council meeting.

Kathleen Tarnow, resident, spoke on stormwater management, City projects, and the FEMA 50% rule.

Mayor Scott Stiltner mentioned the remaining people signed up to speak were here to speak on fluoride and indicated Council continues to look into the fluoride topic. This will be an item on the City Council Agenda on March 18, 2025.

Several residents and non-residents spoke on fluoride in the City's water system, the concerns with the effects from fluoridation, and thanked the Mayor for having this as an item on an upcoming agenda.

COMMENTS AND ADDITIONAL ITEMS

13. Council Members

Councilman Lance Green looked at the hoarding property in Sugar Forest and mentioned it is a priority. Councilman Green also met with some property owners who flooded, and mentioned he understands the 50% rule is scary.

Councilman Shawn Goepfert also talked about the hoarding property and agreed it is a priority. He mentioned having citizens come forward to speak about their concerns is very helpful to them.

Vice Mayor Tracy Grubbs asked the Animal Control officers, Assistant Police Chief, and the K9 Officer, and Sergeant to come forward so he could recognize them. He recognized and thanked them for the job they do. Vice Mayor Grubbs mentioned the hoarding property in Sugar Forest as well, and said the Police Department and Code Enforcement did their due diligence and now the City Attorney is doing theirs. He asked the City Attorney for an update on the legal process for this property and asked the City

Manager if the four properties, where this hoarding situation is, could benefit the City for a stormwater project.

Attorney Matt Jones provided an update indicating the City has filed action to force a sale.

Mr. Clark stated the City can look at the property but understands a couple of the owners wanted to re-build. The City would have to speak with the property owners to see what route they would like to take.

Vice Mayor Grubbs also spoke on the fluoridation topic. He mentioned the Health Department and the CDC have a lot of educational material about fluoridation. He asked those on Council to look at all sources when researching this issue, as there are different views on it.

Councilman Jonathan Foley met and spoke with many citizens regarding fluoridation and has received a lot of information on the fluoridation of the City's water system. Councilman Foley mentioned there were some items on the Consent Agenda tonight that were passed. He thanked all of the citizens on the County's ECHO Grant Board and County Council for their support to get the Top Line City Center Playground Project agenda item passed. Regarding Code Enforcement, Councilman Foley apologized for the process and commented on one in his neighborhood. However, he also stated the State of Florida is pro-homeowner rights and the time it takes for the process can be lengthy.

Mayor Scott Stiltner brought up Major Terry Sanders who was a Retired Sheriff's Deputy. Major Sanders recently passed away. He was the 1st K9 officer for Port Orange in the 1970's, and always helped the residents of Port Orange. Mayor Stiltner suggested the Sugar Forest HOA get back together. This could help the maintenance of both common area properties as well as situations like the hoarding property.

On the topic of fluoride, Mayor Stiltner clarified his position with the company he works for and there is no conflict of interest. There is a lot of new information on fluoride out there, and he appreciates the comments and concerns from residents. He encouraged residents to reach out to the Council members and provided his new email.

14. City Attorney

There was nothing further.

15. City Manager

Mr. Clark brought up the budget calendar. Capital projects are typically brought forward first. This will be an item on one of the regular agendas coming soon and staff is looking to do a Council Workshop on June 24, 2025.

BOARD APPOINTMENTS, INTERVIEWS, AND REPORTS

16. Environmental Advisory Board Report - Kristine Cunningham

Kristine Cunningham, Chair, provided an update which included a dying tree in Countryside, the Adopt a Storm Drain program that includes residents helping to clear storm drains before and after a storm, and a plant give away which will take place this fall. Sign up for the plant give away starts in July for Port Orange residents.

Councilman Lance Green mentioned the tree was voted on tonight and approved. Councilman Green and Councilman Grubbs both commented on the Adopt a Storm Drain program and discussed the issue of people blowing clippings down the storm drains.

REGULAR AGENDA

17. First Reading - Ordinance No. 2025-06 - Designating Registered Agent for Service of Process on the City

Attorney Jones read Ordinance No. 2025-06.

ORDINANCE NO. 2025-06

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, AMENDING CHAPTER 2, ARTICLE I TO ESTABLISH A NEW SECTION 2-5 DESIGNATING THE CITY ATTORNEY AS THE CITY'S REGISTERED AGENT FOR PURPOSES OF ACCEPTING SERVICE OF ORIGINAL PROCESS; PROVIDING FOR CODIFICATION; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

Motion to approve Ordinance No. 2025-06 was made by John and Seconded by Tracy.

Mr. Jones explained State law changed as far as who can be served. Since the Legal Department needs to know as soon as the City has been served, it makes sense to have the City Attorney listed as the registered agent.

Motion carried unanimously by roll call vote.

18. Request for Approval of Waiver of Species of Animals

Officer Korey Fox, Port Orange Animal Control, provided a presentation regarding the property, animals, health, maintenance, and a species waiver on the limitation and species of animals.

Mayor Stiltner asked should something happen in the future that causes this to be a nuisance, can this be withdrawn.

Mr. Jones said if Council approves this request, they will need to approve it with the conditions as presented.

Vice Mayor Grubbs mentioned the code allows for a larger number of animals and asked if this permits them to bring in more or just the two.

Councilman Green asked about the zoning and if animal control will have to consistently check on the property and animals for compliance, creating regular maintenance.

Officer Fox mentioned they can set up regular inspections if that is what Council is requesting.

Sergeant William Harrison stated this will be a reactive maintenance and routine inspections will not be held. Should the owner not follow the rules as presented and approved by Council, the permission can be revoked.

Motion to approve the waiver with the conditions as presented was made by Councilman Jonathan Foley and Seconded by Vice Mayor Tracy Grubbs. Motion carried 4-1 by roll call vote with Councilman Lance Green voting no.

COUNCIL COMMITTEE REPORTS

19. City Council Committee Reports

a. Volusia Flagler TPO - Jonathan Foley

Councilman Jonathan Foley provided details from their recent meeting and thanked his TPO counterparts.

ADJOURNMENT

7:52 p.m.

Mayor Scott Stiltner

Attest:

Robin Fenwick, MMCCity Clerk



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 2/18/2025

SUBJECT: (C7a) Approval of Amendment No. 1 to the License Agreement with ArtHaus

DEPARTMENT: Parks & Recreation

GOAL: 3 - Quality of Life

RECOMMENDED MOTION: Move to approve Amendment No. 1 to the License Agreement with ArtHaus and authorize the Mayor and City Clerk to execute the associated documents.

SUMMARY: The city currently has a license agreement with ArtHaus to use the REC for community art programming. The initial term expires in 2028 and does not include a user fee, with only an annual utility fee of 12% of the REC utilities, including electric, water, sewer, and garbage. The current agreement is for five years with two 5-year renewals. At the June 18, 2024 Council Meeting, ArtHaus presented a plan to paint murals under the Dunlawton Avenue bridge in exchange for forgiveness of user fees for their portion of the REC building. Council authorized staff to bring back modifications to the current license agreement so they could formally consider the request.

The murals will be part of the Down Under revitalization efforts. The Community Development Staff has verified a value of ArtHaus' proposed scope of work at approximately \$175,000 for all the proposed murals. The murals will be done in segments with Segment One work being the column bands, which will take about three months to complete (see attached).

This amendment would provide for an additional three years of license fee forgiveness, valued at \$25,000 per year, and seven years of utility fee forgiveness, valued at \$6,000 per year. The total amount to be forgiven in exchange for the in-kind services related to the murals project proposed by ArtHaus is \$117,000.00. The initial term would now expire in April 2031 and has two 5-year renewal options.

PRESENTER: Susan Lovallo

ATTACHMENTS:

1.	First Amendment to License Agreement	First Amendment to License Agreement .pdf
2.	ArtHaus' 2024-2025 Down Under Mural	ArtHaus' 2024-2025 Down Under Mural

	Funding Plan & In-Kind Partnership Proposal	Funding Plan & In-Kind Partnership Proposal.pdf
3.	Mural Artwork (1)	Mural Artwork (1).pdf
4.	License Agreement with ArtHaus dated 9-6-2022	License Agreement with ArtHaus dated 9-6-2022.pdf

Amanda Bonin
Susan Lovallo
Linda Truitt
Matthew Jones
Wayne Clark

Created/Initiated - 1/2/2025
Approved - 1/14/2025
Approved - 1/15/2025
Approved - 2/12/2025
Final Approval - 2/13/2025

Portion of Parcel ID# 6308-00-06-0010

FIRST AMENDMENT TO LICENSE AGREEMENT

THIS FIRST AMENDMENT TO LICENSE AGREEMENT is made and entered into this ____ day of _____, 2025, by and between **CITY OF PORT ORANGE, FLORIDA**, a chartered municipal corporation with its principal business office located at: 1000 City Center Circle, Port Orange, Florida 32129-4144 (“City”); and **ARTHAUS FOUNDATION, INC.**, a Florida non-profit corporation, principal address located at 4655 City Center Circle, Port Orange, Florida 32129, having a mailing address of: Post Office Box 290232, Port Orange, FL 32129-0232 (“ArtHaus”), and hereinafter collectively referred to as the “Parties.”

WHEREAS, the Parties entered into a License Agreement for the non-exclusive use of approximately +/- 3,600 square feet of space at the property located at 4655 City Center Circle, Port Orange, Florida 32129, dated September 6, 2022 (“License”); and

WHEREAS, the Term of the License is currently five years commencing on the date the certificate of occupancy is issued for the Subject Property, more particularly described in the License, said date being April 25, 2023; and

WHEREAS, the Parties now desire to amend the License, to extend the initial term of the License by three years, provide for an additional three (3) years of rental forgiveness,

valued at approximately \$25,000 per year, and provide for seven (7) years of utilities usage forgiveness, valued at approximately \$6,000.00 annually.

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

1. The premises set forth above and true and correct, form a material part of this Fourth Amendment and are incorporated herein by reference.

2. Paragraph 2, "Term", of the License, is hereby deleted in its entirety and replaced herewith to read as follows:

"2) Term. The initial term of this License shall be eight (8) years commencing on the date the certificate of occupancy for the Subject Property, said date being April 25, 2023, and ending on April 24, 2031 ("Initial Term"), with two (2) optional five (5) year extensions thereafter. To exercise an extension, Licensee shall provide written notice to the City of Licensee's intent to extend the term no later than one hundred twenty (120) days prior to the expiration of the initial term or any extensions thereof. Any extensions shall be subject to City Council consideration and approval. Notwithstanding the foregoing, either party may terminate this License at any time by giving six (6) months' written notice to the other party. At the expiration or earlier termination of this License, Licensee shall immediately cease use of the License Area and have removed any personal property located thereon. Timeframes in this agreement are calculated using calendar days not business days unless stated otherwise."

3. Paragraph 3, "License Fee", of the License, is hereby deleted in its entirety and replaced herewith to read as follows:

"3) License Fees, Utility Fees, and In-Kind Services. The License Fees and Utility Fees shall be established, paid and forgiven as set forth hereinbelow.

3.1. License Fee. The License Fee due and owing under this License shall be at the rate of Twenty-Five Thousand and NO/100 Dollars (\$25,000.00) annually ("License Fee"). However, in exchange for In-Kind Services, defined hereinbelow, said License Fee is hereby forgiven so long as the Licensee is, at all times during the Initial Term, or any extension thereof, in compliance with their obligations as set forth herein.

3.2. Utility Fees. Utilities shall consist of electricity, water, sewage, and garbage, furnished to and/or associated with the use of the License Area. Licensee's portion of utilities' usage associated with the License Area is estimated to be approximately Six thousand and NO/100 Dollars (\$6,000.00) annually ("Utility Fees"). However, in exchange for In-Kind Services, defined hereinbelow, commencing with the Utility Fees due for 2025 and for the remainder of the Initial Term of the License, said Utility Fees shall be forgiven and Licensee shall not be required to pay said obligation during said time period, so long as the Licensee is, at all times, in compliance with their obligations as set forth herein.

Subject to approval of any extension of this License, Licensee shall be responsible to pay the Utility Fees associated with the use of the License Area

for the duration of said extension, as provided herein. Annually, within Sixty (60) days of the anniversary of the effective date, the City will provide an invoice for the Utility Fees based on the charges for actual usage for the entire REC with the Licensee paying 12 percent of said amount for the upcoming year. Said payment shall be paid directly to the City at Accounts Receivable within Thirty (30) days from receipt of invoice.

3.3. In-Kind Services. In lieu of payment of the License Fees and Utility Fees for use of the License Area as set forth in Sub-sections 3.1 and 3.2, Licensee agrees to provide an art education and cultural enrichment program to the community, which shall, at a minimum, include: 1) at least one art class a month; 2) at least four window art projects per year; 3) at least one sidewalk art project per year; and 4) the creation and completion of an ocean-life themed mural series for the Down Under Revitalization Project, subject to the approval of Florida Department of Transportation (“FDOT”) and issuance of a City of Port Orange Architectural Modification Permit, to be completed on or before April 25, 2029, unless otherwise extended as provided hereinbelow (“Murals Project”) (collectively, “In-Kind Services”).

3.3.1. It is hereby acknowledged and agreed that the amended Initial Term of the License, extending the term from five (5) years to eight (8) years, forgiveness of the License Fees during the Initial Term, and forgiveness of Utility Fees during the Initial Term, which total value is approximately \$117,000 (\$75,000 for 3 years of License Fees and \$42,000 for 7 years of Utility Fees), are hereby provided in

exchange for the portion of the In-Kind Services comprised of the Murals Project, which value is approximately \$175,420.00.

3.3.2. It is understood and agreed that the completion date of the Murals Project may be extended for up to an additional One Hundred Eighty (180) days due to City construction projects that may cause delay and prevent work on the Murals Project from being completed. If such delay and work stoppage occur, Licensee shall notify the City Manager in writing and submit details and documentation of said delay, along with a request for however many days are needed for the extension of time. Upon receipt thereof, City will consider said submission and respond in writing within five (5) business days.

3.3.3. Commencing in 2026, Licensee shall include in its annual reporting, as required in Subsection 3.4, progress reports of the Murals Project and status thereof.

3.3.4 In the event of termination for convenience by the City, the parties agree that the documented monies expended for the Murals Project portion of the In-Kind Services will be credited towards the License Fee and Utility Fees that would otherwise be due and owing at the time and prorated as to the applicable portion of the Initial Term and Utility Fees used. If the amount expended exceeds the credit applied to the License Fee and Utility Fees that would otherwise be due and owing at the time of termination, then the balance of expended monies for the Murals Project portion of the In-

Kind Services will be reimbursed to Licensee. Reimbursement for monies expended shall not exceed the amount of value for forgiveness of License Fees and Utility Fees as set forth in Sub-subsection 3.3.1, hereinabove, said amount being \$117,000.00. In addition, this sub-subsection 3.3.4 shall only apply if the City terminates for convenience and shall not apply in the case of termination for default or Licensee's termination thereof. In the event of termination for convenience by the City, Licensee is not responsible for any future and unused License Fees or Utility Fees beyond the effective date of said termination.

3.4. Reporting and Event Coordination. The Licensee shall report at least once per year to the city council on its art program, student participation, and service to the community. For event coordination for sidewalk projects and window art projects, the Licensee shall contact and coordinate with the Parks and Recreation Department.”

4. Paragraph 6, “City Use/Right of Entry”, of the License, is hereby deleted in its entirety and replaced herewith to read as follows:

“6) City Use/Right of Entry. Subject to the provisions contained herein, the City, its officers, employees, agents and contractors, shall have the right to enter in and upon the License Area at all reasonable hours for any purpose connected with inspection and preservation of the License Area, performance of maintenance or repairs, and enforcement or implementation of any covenant or provision of this License. Licensee shall provide the City with

two sets of keys for entry into the License Area. For scheduled maintenance (Ex. monthly change of HVAC filter), the City agrees to provide at least five (5) days' notice to the Licensee prior to entry. Further, the City hereby reserves the right to enter the License Area at any time for emergency purposes. In the case of an emergency situation (Ex. Fire alarm has activated), the City agrees to notify the Licensee within twenty-four hours of the City's emergency entry. In limited emergency situations (Ex. Use of License Area for emergency shelter), the City may request removal of any and all personal property of the Licensee. If the Licensee's personal property is not removed within the time specified by the City or in cases where emergency work by the City does not allow time for notification, the City may remove or cause to be removed the Licensee's personal property without any liability to the City. The Licensee shall be responsible for any and all expenses for the storage of Licensee's personal property. Licensee acknowledges that during City special events parking may be limited or non-existent."

6) All other terms and conditions of the License, as amended, shall remain in full force and effect.

7) This First Amendment to License 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 complete instrument. The delivery by facsimile or email of an executed copy of this First Amendment to License Agreement shall be deemed valid as if an original signature was delivered.

Witnesses:

CITY OF PORT ORANGE

Printed Name: _____ By: _____
Scott Stiltner, Mayor

Printed Name: _____ Date: _____
(Witnesses as to both)

ATTEST:

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

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of [XX] physical presence or [] online notarization this _____ day of _____, 2025, by Scott Stiltner, as Mayor and Robin L. Fenwick, as City Clerk, both of the City of Port Orange, a Florida municipal corporation, on behalf of the city, and who personally appeared before me and who is personally known to me.

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

Witnesses:

ARTHAUS FOUNDATION, INC.
A Florida Non-Profit Corporation

Christine Clowes
Signature

Printed Name: Christine Clowes

Christine Clowes
Signature

Printed Name: Christine Clowes

(Witnesses as to Both)

By: Laurie Gomon Ring
Print: LAURIE GOMON RING
Title: President

Attest:

By: Cameron Vintson
Print: CAMERON VINTSON
Title: Executive Director

Dated: FEB. 11, 2025

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me before me by means of [XX] physical presence or [] online notarization this 11th day of February, 2025, by Laurie Gomon Ring and Cameron Vintson, the President and Executive Director, respectively, who personally appeared before me and are duly authorized to execute the foregoing instrument in their representative capacity on behalf of ArtHaus Foundation, Inc., a Florida non-profit corporation, and who [] are personally known to me, or [X] have produced governmental agency issued identification.

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



CHRISTINE A. CLOWES
Commission # HH 599390
Expires October 2, 2028



Arthaus Mural Contribution to the City of Port Orange Down Under Revitalization Project Funding Plan & In-Kind Partnership

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- 5. In-Kind Partnership**



ARTHAUS FOUNDATION, INC
CAMERON VINTSON, EXECUTIVE DIRECTOR
cameron@arthaus.org
386.767.0076
www.arthaus.org

1. Overview

ARTHAUS WILL DEEPEN ITS PARTNERSHIP WITH THE CITY OF PORT ORANGE TO CREATE A SERIES OF MURALS FOR THE DOWN UNDER REVITALIZATION PROJECT. THIS PLAN WILL SAVE THE CITY OF PORT ORANGE THE AMOUNT OF \$175,420, AS QUOTED UNDER THE OPINION OF COST HEADING IN THE ZEV COHEN PROPOSAL.

NOT ONLY WILL THIS PARTNERSHIP SAVE THE CITY OF PORT ORANGE VALUABLE RESOURCES DURING THE DOWN UNDER REVITALIZATION PROJECT, BUT IT WILL ALLOW THE CITY TO CREATE A LEGACY IN OUR COMMUNITY IN SUPPORTING THE ARTS OUR RESIDENTS CHERISH.

THROUGHOUT THE PROCESS, ARTHAUS IS EXCITED TO INCLUDE CHILDREN, FAMILIES, AND OTHER COMMUNITY MEMBERS IN THE MURAL PROCESS. THIS PROJECT WILL INSTILL PRIDE AND APPRECIATION IN OUR COMMUNITY FOR YEARS TO COME.

ARTHAUS WILL INDEPENDENTLY RECRUIT THE ARTISTS, VOLUNTEERS, & STAFF NEEDED FOR THE PROJECT AS WELL AS RAISE THE FUNDS REQUIRED TO EXECUTE THE SUCCESSFUL COMPLETION OF THE MURALS OUTLINED IN THIS PROPOSAL.

ARTHAUS WILL PROVIDE \$3 MILLION IN LIABILITY INSURANCE, ALL SUPPLIES, EQUIPMENT, AND PROMOTION FOR THE EXECUTION OF THE MURAL SERIES.

THIS PLAN WOULD INCLUDE AN OCEAN LIFE MURAL THEME THROUGHOUT THE SIDE-WALLS AND UNDERSIDE OF THE BRIDGE ON THE DOWN UNDER SIDE, INCLUDING MATCHING COLUMN MURALS.

THE PROJECT WILL TAKE THREE-FOUR YEARS AND BE COMPLETED IN SEGMENTS.
FUNDING CAMPAIGN GOAL: \$175,000.

2. Call to Sponsors

IN JANUARY OF 2025, ARTHAUS WILL BEGIN ITS CAMPAIGN FOR SPONSOR FUNDING. THERE WILL BE THREE TIERS OF SPONSORSHIP OPPORTUNITIES FOR LOCAL BUSINESSES & INDIVIDUALS. CAMPAIGN GOAL SET AT \$120,000.

GRAND PATRON OF THE ARTS: \$25,000

THERE WILL BE THREE AVAILABLE SPONSORSHIPS FOR THIS LEVEL. BENEFITS WILL INCLUDE ON-SITE ACCESS, PR, AND PRINT MEDIA & SOCIAL MEDIA RECOGNITION THROUGHOUT THE YEAR. THIS LEVEL OF SPONSORSHIP ALSO INCLUDES PROMINENT LOGO PLACEMENT & NAME PLACEMENT ON THE MURAL PLAQUE, CO-SPONSOR BENEFITS OF ARTHAUS' CLASSROOMS & FUNDRAISERS FOR 2024-2030.

ARTS AMBASSADOR: \$10,000

THERE WILL BE FOUR AVAILABLE SPONSORSHIPS FOR THIS LEVEL. BENEFITS WILL INCLUDE ON-SITE ACCESS, PR, AND PRINT MEDIA & SOCIAL MEDIA RECOGNITION THROUGHOUT THE YEAR. THIS LEVEL OF SPONSORSHIP ALSO INCLUDES PROMINENT LOGO PLACEMENT ON THE MURAL PLAQUE, SUB-SPONSOR BENEFITS OF ARTHAUS' CLASSROOMS & FUNDRAISERS FOR 2024-2026.

STEWARD OF THE ARTS: \$5,000

THERE WILL BE FOUR AVAILABLE SPONSORSHIPS FOR THIS LEVEL. BENEFITS WILL INCLUDE ON-SITE ACCESS, PR, AND PRINT MEDIA & SOCIAL MEDIA RECOGNITION THROUGHOUT THE YEAR. THIS LEVEL OF SPONSORSHIP ALSO INCLUDES NAME PLACEMENT ON THE MURAL PLAQUE, SUB-SPONSOR BENEFITS OF ARTHAUS' CLASSROOMS & FUNDRAISERS FOR 2024-2026.

3. Community

DONATIONS GENERATED FROM THE COMMUNITY IN RETURN FOR INVOLVEMENT IN THE MURAL PROCESS. COMMUNITY MEMBERS WILL BE WELCOMED TO REGISTER TO BE PART OF THE MURAL PAINTING PROCESS ON THE SOUTH WALL SIDE OF THE MURAL. CAMPAIGN GOAL: \$2,000-\$5,000.

COMMUNITY MEMBERS WHO LIKE & SHARE SOCIAL MEDIA POSTS FEATURING DONATION REQUESTS FOR THE MURAL WILL BE ENTERED INTO A DRAWING. 4 WINNERS PER WEEK WILL BE DRAWN TO AID IN THE MURAL PROCESS AND LEARN THE ART OF OUTDOOR MURAL CREATION.

4. Grants

ARTHAUS HAS BEGUN LAYING THE GROUNDWORK FOR GRANT FUNDING FOR THE D.U.R. MURALS. GRANT APPLICATION PRELIMINARY STAGES HAVE BEGUN FOR THE FOLLOWING GRANTS. CAMPAIGN GOAL: \$55,000

- FLORIDA DIVISION OF ARTS & CULTURE; ARTS PARTNERSHIP, 2025-2026 : \$5,000-\$10,000
- VOLUSIA COUNTY TOURISM DEVELOPMENT GRANT, 2025-2027 : \$2,500-\$10,000
- VOLUSIA ECHO GRANT; 2025-2026 : \$25,000
- FLORIDA WILDLIFE CORRIDOR FOUNDATION; 2025/2026 : \$5,000-\$15,000
- NATIONAL ENDOWMENT OF THE ARTS, GAP, 2025, 2026 : \$10,000-\$50,000
- ASPHALT ART INITIATIVE GRANT, 2025-2026 : \$10,000-\$100,000
- HOME DEPOT COMMUNITY PROJECT GRANT, 2025-2026 : \$50,000
- WALMART COMMUNITY GIVING GRANT: \$5,000

3. In-Kind Partnership

In that ArtHaus, by providing the mural series outlined in the Down Under Revitalization Project, will be assuming the cost of \$175,420 previously quoted to the City of Port Orange by the now adopted Zev Cohen & Associates Down Under Master Plan of 5.1.23, requests the following for In-Kind:

1.) ArtHaus requests that the current License Agreement held with the City of Port Orange regarding its use of facility at 4655 City Center Cir, Suite A in Port Orange be rewritten as a Lease Agreement for the following reasons:

A.) ArtHaus will assume the venture of generating the funds outside of The City of Port Orange's funding budget to provide the mural series required in the adopted Down Under Master Plan. In this respect, ArtHaus is taking on partial cost of the Down Under Master Plan.

B.) Due to the potential length of time the mural series will require for its completion and because ArtHaus is providing a cash-valued service to the City of Port Orange in this endeavor, ArtHaus wishes to obtain the rights and security a formal lease agreement will provide.

C.) In ArtHaus' 23 years at 3840 Ridgewood Ave. in Port Orange, the property usage of the original ArtHaus facility was facilitated through a lease agreement, renewed every 1-3 years by Port Orange Council Vote.

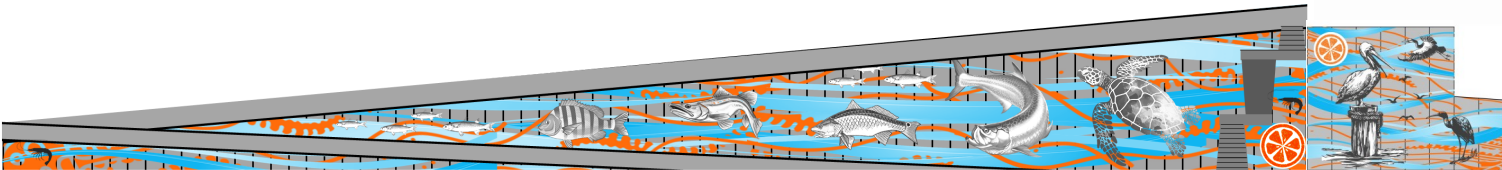
2.) ArtHaus requested Lease Agreement terms based on the non-profit rental value and utilities share set forth by the City at roughly \$25,000 per year in rent & \$6,000 per year in utilities:

A.) An additional three years of forgiven rent at then end of the 2028 cycle.
Valued at \$75,000.

B.) Seven years of forgiven utilities, beginning for 2024 and ending in 2031.
Valued at \$42,000.

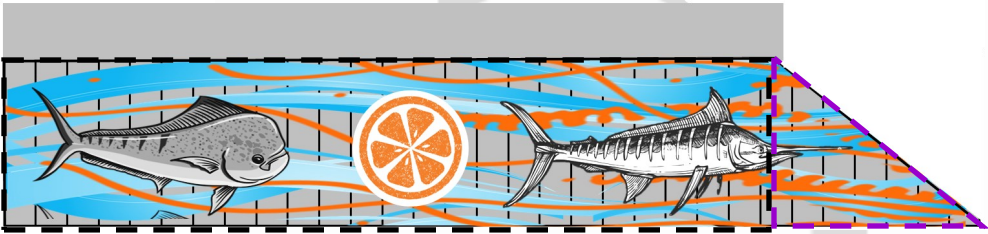
Total In-Kin Allowances: \$117,000 over seven years.

Side Wall / Walking Access



3,780 sq. ft.
(315 ft. Base x 24ft Height)

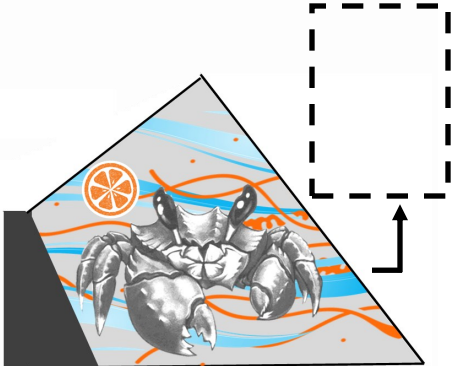
Bridge Support Wall [under]



1,970 sq. ft.

1,808 sq. ft.
(113 ft. L x 16ft. H)

162 sq. ft.
(27 ft. Base x 13ft Height)



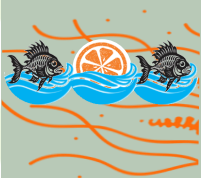
792 sq. ft.
(22ft. W x 36ft. H)

Columns



COLUMN SET A

912 sq. ft.
(456 sq. ft. x 2 Columns)
Face: 15ft W x 12ft H
Side: 4ft. W x 12ft H



1,368 sq. ft.
(684 sq. ft. x 2 Columns)
Face: 15ft W x 18ft H
Side: 4ft. W x 18ft H



COLUMN SET C

1,520 sq. ft.
(760 sq. ft. x 2 Columns)
Face: 15ft W x 20ft H
Side: 4ft. W x 20ft H



COLUMN SET D

1,064 sq. ft.
(532 sq. ft. x 2 Columns)
Face: 15ft W x 14ft H
Side: 4ft. W x 14ft H



COLUMN SET B



This Document Prepared by:

Carly R. Meek
Assistant City Attorney
1000 City Center Circle
Port Orange, FL 32129

Portion of Parcel No.: 630800060010

LICENSE AGREEMENT

THIS **LICENSE AGREEMENT** is made and entered into this 6th day of September, 2022, by and between the City of Port Orange, Florida, a chartered municipal corporation, 1000 City Center Circle, Port Orange, FL 32129, ("City" or "Licensor"), and ArtHaus Foundation, Inc, a Florida non-profit corporation, principal address located at 3840 S. Ridgewood Ave, Port Orange, FL 32129, having a mailing address of: Post Office Box 290232, Port Orange, FL 32129-0232 ("ArtHaus" or "Licensee").

PREMISES

WHEREAS, the Licensee provides visual arts education programs and activities for children and adults, supports art programming in all Volusia County schools including displaying student art in its gallery, and promotes the cultural enrichment of the community; and

WHEREAS, the City finds that the Licensee's activities serve a significant public purpose; and

WHEREAS, the Licensor is the owner of real property located at 4655 City Center Cir., Port Orange, Florida 32129, commonly known as the REC, hereinafter referred to as the "Subject Property", and graphically depicted on **Exhibit "A"**; and

WHEREAS, the Licensor has agreed to provide space at the Subject Property which includes +/- 3,600 sq. ft., for Licensee's use hereinafter referred to as the "License Area", as depicted on the attached **Exhibit "B"**; and

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

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

1) Use. The City hereby grants to the Licensee a license for the non-exclusive use of the License Area, as shown on Exhibit "B", subject to the terms and conditions herein contained, for the purpose of the operation of fine arts education, instruction and exhibition programs and activities, and for other purposes necessary and incidental to such programs and activities ("License"). The Licensee shall not use or occupy the License Area, or permit the License Area to be used or occupied, for any other purpose without prior written approval of the City.

2) Term. Once executed, this License shall commence on the date the certificate of occupancy for the Subject Property is issued and shall continue for a period of five (5) years, with two (2) optional five (5) year extensions thereafter. Notwithstanding the foregoing, either party may terminate this License at any time by giving six (6) months' written notice to the other party. At the expiration or earlier termination of this License, Licensee shall immediately cease use of the License Area and remove any personal property located thereon. Timeframes in this agreement are calculated using total days not business days unless stated otherwise.

3) License Fee. The Licensee shall pay all bills, fees and charges for electricity, gas, water, sewage, garbage, telephone and other utilities furnished to and/or to be used by the License Area during the initial term of this License Agreement and throughout the duration of any extensions of terms hereof. Licensee shall pay directly to the City at Accounts Payable the sum of \$2,400 for water, sewer and electric for the first year. At the end of each year, the City will provide the charges for actual usage for the entire REC and Licensee shall pay 12 percent of said amount for the next year. The City may terminate this agreement for failure to pay. Licensee shall provide an art education and cultural enrichment program to the community with at least one art class a month, at least four window art projects a year, and a sidewalk art project every year. The Licensee shall report at least once per year to the city council on its art program, student participation and service to the community. The Licensee shall contact the Parks and Recreation Department to coordinate events.

4) Taxes.

- a) In the event that taxes are legally imposed, Licensee is solely responsible for all taxes, if any, imposed under Section 212.031, Florida Statutes, or as that provision may be amended, by the Florida Department of Revenue or locally imposed through a surtax, accruing during the term of the License Agreement or any renewal thereof. In the event that taxes are legally imposed, Licensee is solely responsible for Licensee's pro rata share of ad valorem and non-ad valorem taxes, impact fees, and assessments levied, if any, against the Subject Property and/or License Area as more particularly described in Exhibit "B" to this License Agreement, accruing during the term of the License Agreement or any renewal thereof. Licensee shall pay all such legally imposed taxes imposed under Section 212.031, Florida Statutes, directly to the respective taxing authority.
- (b) All ad valorem and non-ad valorem taxes that are legally imposed and not paid by Licensee directly shall be advanced and paid by Licensors on behalf of Licensee directly to the Volusia County Tax Collector's Office and reimbursed by Licensee to Licensors within thirty (30) days of delivery of an invoice therefor to Licensee.
- (c) Licensee acknowledges that any taxes legally imposed on the License under Section 212.031, Florida Statutes, or as that provision may be amended, by the Florida Department of Revenue or locally imposed through a surtax, if any, are imposed on Licensee, and not on Licensors. Licensee acknowledges that any ad valorem taxes legally imposed on the License Area under Section 196.199, Florida Statutes, any non-ad valorem taxes, impact fees and assessments, if any, are imposed on Licensee, and that Licensors, as a governmental entity, is immune or exempt from such imposition.
- (d) The Licensee shall promptly pay and discharge all taxes, assessments, duties, levies, fees and charges imposed or assessed by any governmental agency or authority during the initial term and any extension terms of this License Agreement for any reason whatsoever connected with this License or the License Area, including, but not limited to, the following:
- i) Rent paid under this License;
 - ii) Utilities furnished to the License Area;
 - iii) Use or occupancy of the License Area;

- iv) Real or personal property located at the License Area or Subject Property if connected with the License Area;
- v) Alterations, structures, additions or improvements made to or installed on the License Area or Subject Property if connected with the License Area;
- vi) Public works or facilities constructed for or upon the License Area;
- vii) Permits, licenses or franchises issued to the Licensee or for the License area; and
- viii) Any other interest of the Licensee in the License Area.

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

6) City Use/Right of Entry. The City, its officers, employees, agents and contractors, shall have the right to enter in and upon the License Area at all reasonable hours for any purpose connected with inspection of the License Area, maintenance, performance of work or other acts necessary to or on the License Area, or enforcement or implementation of any covenant or provision of this License. Further, the City reserves the right to use the License Area at any time for emergency purposes. Licensee shall give the City two sets of keys to use for entry. Licensor may request removal of any and all personal property of the Licensee located at or on the License Area in the event that the City needs to utilize for City purposes. The City shall endeavor to give at least ten (10) days prior notice to the Licensee. If the Licensee's personal property is not removed within the time specified by the City or in cases where emergency work by the City becomes necessary, the City may remove or cause to be removed the Licensee's personal property without any liability to the City. The Licensee shall be responsible for any and all expenses for the storage of Licensee's personal property. Licensee acknowledges that during City special events parking may be limited or non-existent.

7) No Waste. The Licensee shall not commit any waste, allow any waste to be committed, create any nuisance or allow any nuisance to exist on the License Area and/or Subject Property. The Licensee shall not use or occupy the License Area and/or Subject Property, or permit the License Area/Subject Property to be used or occupied, for any illegal or unlawful purpose or in any manner that violates any law, rule, regulation, code or ordinance, certificate of occupancy, or the Americans with Disabilities Act.

Maintenance. The Licensee shall be responsible for maintenance of the License Area.

- a) Such maintenance shall include, but not be limited to, the following:
 - i) Provision of janitorial services, such as cleaning restrooms and windows, cleaning, sweeping and mopping floors, and replacing light bulbs and fixtures;
 - ii) Common maintenance and repair including clogged/leaking sinks and toilets, fixture replacements, vent dusting, repairs to interior surfaces, walls and doors, and the addition of electrical outlets, fans, cable/internet connections;
 - iii) Maintenance of all interior surfaces, such as waxing and maintaining the floors and interior painting, including painting doors, walls and ceilings;
 - iv) Maintenance of all locks and hardware;
 - v) Custodian of the grounds, including all landscaping and parking areas, and maintenance of Licensee signage;
 - vi) Removal of all garbage, trash and refuse; and
 - vii) Extermination of all vermin, rats, mice, insects and other pests.

8) Repairs. The Licensee shall, at its sole cost and expense, promptly make all repairs and/or replacements to the License Area and/or Subject Property resulting from damage or breakage caused by the Licensee, its officers, employees, agents, guests, invitees and members of the public.

9) Abatement. The Licensee shall, at its sole cost and expense, be responsible for abatement of any building or property code violations that may arise from Licensee's use of the property.

10) Repair and Restoration. If Licensee, its officers, employees, guests, invitees, members of the public, or agents, cause any damage to the License Area and/or Subject Property, or to any improvements located at or on the License Area and/or Subject Property in connection with the exercise of this License, Licensee shall repair and restore the License Area and/or Subject Property to their original condition prior to Licensee's use. Licensee shall perform the repair and

restoration required hereunder prior to the expiration of this License, or within ten days of the earlier termination of Licensee's rights hereunder. In the event that repair and restoration is performed following the termination of this License, the Licensee's indemnity and insurance obligations set forth herein shall continue until repair and restoration is completed as provided herein.

11) Alterations. No alterations, additions or improvements shall be made to the License Area or building without the prior written approval of the City. No structures, additions or improvements shall be constructed or installed without the prior written approval of the City.

Any alterations, structures, additions or improvements made to or installed on the License Area or building shall become the property of the City and remain part of the License Area or building, unless said alterations, structures, additions or improvements can be removed without damage to the License Area and building and the Licensee receives written approval from the City for such removal. In such event, the Licensee shall, at its sole cost and expense, remove only those alterations, structures, additions or improvements approved by the City and restore the License Area and building to the original condition.

12) Safety. The Licensee shall take all reasonable precautions for, and shall be responsible for initiating, maintaining and supervising all programs relating to the safety of all persons or property affected by or involved in the use of the License Area or the performance of operations under this License.

- a) The Licensee shall take all reasonable precautions to prevent damage, injury or loss to:
 - i) All persons who may be affected by the use of the License Area, Subject Property, or the performance of operations, including employees;
 - ii) All materials and equipment; and
 - iii) All property at or surrounding the License Area.
- b) In any emergency affecting the safety of persons or property, the Licensee shall act with reasonable care and discretion to prevent any threatened damage, injury or loss.
- c) Licensee shall be responsible for securing and safeguarding its equipment and other

personal property. Licensor shall not be responsible for vandalism or theft of property while located in or on the License Area and/or Subject Property.

13) Compliance with Law. Licensee shall comply with all federal state and local laws, ordinances and regulations applicable to the use of the License Area and shall promptly comply with all governmental orders and directives for the correction, prevention and abatement of nuisances and other activities in or upon, or connected with the License Area, all at Licensee's sole expense, including any expense or cost resulting from the construction or installation of fixtures and improvements or other accommodations for handicapped or disabled persons required for compliance with governmental laws and regulations, including but not limited to the Americans with Disabilities Act (the "ADA"). To the extent any interior alterations to the structures of the License Area are required by the ADA or other applicable laws or regulations for Licensee's operations, Licensee shall bear the expense of the Alterations. To the extent any exterior Alterations to areas of the property of the License Area are required by Title III of the ADA or other applicable laws or regulations (for "path of travel" requirements or otherwise), City shall bear the expense of the alterations.

14) Alcohol. Licensee shall go through the City's permitting process pursuant to City of Port Orange Ordinance 6-3 and secure a permit prior to any use, possession, sale or consumption of alcohol at the License Area. Licensee shall comply with any permit requirements. The application for a permit can be obtained by contacting the Parks and Recreation Department.

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

16) Permits and Regulations. Licensee shall be responsible for securing any required approvals, permits and authorizations from any federal, state or local agencies and shall comply with all applicable laws and regulations.

17) No Interference. Licensee shall not interfere with the normal operation and activities of Licensor, and Licensee shall conduct its activities on the License Area to minimize damage to the License Area and/or Subject Property and inconvenience to Licensor, its officers, agents, employees, guests, members of the public, and invitees.

18) Insurance. Licensee, at its sole cost and expense, shall insure its activities in

connection with this License. The Licensee shall obtain or possess the following insurance coverages, and shall provide Certificates of Insurance to the City prior to commencing operations under this License Agreement to verify such coverages:

- a) Workers' Compensation - The Licensee shall provide Workers' Compensation coverage for all employees f o r the License Area, and, in case any work is contracted, shall require contractor to produce Workers' Compensation for all its employees. The limits shall be statutory for Workers' Compensation and \$100,000 for Employer's Liability.
- b) Comprehensive General Liability - The Licensee shall provide coverage for all operations including, but not limited to, Contractual, Products and Completed Operations, Personal Injury, and Property Damage. The limits shall not be less than \$1,000,000 Combined Single Limit (CSL) or its equivalent. \$1,000,000 occurrence and \$1,000,000 aggregate.
- c) Fire and Extended Coverage - The Licensee shall maintain Fire and Extended Coverage Insurance covering any and all improvements, trade fixtures, merchandise, equipment, personal property and/or any other interest located on or in the License Area from time- to-time providing protection against all risks covered by standard form of "Fire and Extended Coverage Insurance".
- d) Such other insurance in such amounts which from time to time may be reasonably required by the Licensor.

Licensee shall maintain insurance, as required herein, during the life of this Agreement. The coverages required herein shall not limit the liability of the Licensee. The coverages shall include the City as an additional named insured. All insurance coverages of the Licensee shall be primary and non-contributory. All insurance coverages of the Licensee shall not seek contribution from any other insurance or self-insurance available to the City. For workers' compensation coverage, the Licensee'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. Policies for Workers' Compensation may be issued by companies authorized as a group self-insurer by F.S. 440.572.

Licensee shall provide to Licensor a Certificate of Insurance, endorsing the City of Port Orange as an additional named insured, annually as proof of insurance coverage in accordance

with this section. The policies herein required shall be issued by insurers licensed and/or duly authorized under Florida Law to do business in the State of Florida and all insurers are required to have a minimum rating of "A-" in the "Best Key Rating Guide" published by A.M. Best & Company, Inc. Licensee shall provide Licensor 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.

Licensee shall not access the License Area until the City has received a certificate or insurance with endorsement evidencing the required insurance. 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.

Prior to commencement of any repair, construction, alterations or service to the License Area by Licensee, Licensee shall require and ensure each of Licensee's contractors maintain, until the completion of the contractor's work, insurance of the types and to the limits set forth above. Licensee shall contact the City's Risk Management Department to determine if further insurance is required or needed prior to the commencement of Licensee's work. All insurance coverages shall be primary and non-contributory. All insurance coverages of Licensee's contractors shall not seek contribution from any other insurance or self-insurance available to the City. The Licensee is responsible for ensuring that its contractors maintain the required coverage. Failure of the Licensee to ensure the contractors maintain the required coverage, shall not relieve the Licensee of any contractual responsibility, obligation or liability.

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 Agreement and does not waive the insurance required by this Agreement.

Should at any time the Licensee not maintain the insurance coverages required herein, the City may terminate the Agreement or at its sole discretion shall be authorized to purchase such coverages and charge the Licensee 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 Agreement.

The Licensee shall, at its sole cost and expense, comply with all requirements of insurers necessary to keep in force all insurance policies covering the License Area and/or Subject Property. The Licensee shall not use or occupy the License Area, or permit the License Area to be used or occupied, for any purpose or in any manner that may invalidate, conflict with, or increase rates for any insurance policy covering the License Area and/or Subject Property.

19) Hold Harmless and Indemnification. The Licensee shall not claim any damages from the City for any injuries or damages in connection with or on account of the exercise of such rights, privileges or permission, the condition of the City's property, any means of ingress to or egress from the City's property, the performance of operations under this Agreement, or the use or occupancy of the City's property pursuant to this License. The Licensee shall indemnify and hold harmless the City, its officers, employees and agents, from and against all actions, suits, liabilities, claims, proceedings, demands, actual or alleged injuries, loss or death of any person, loss or damage to property, all damages, losses and expenses, attorneys' fees and costs at trial and on appeal, arising out of, resulting from, or in any way connected with the condition of the City's property, any means of ingress to or egress from the City's property, the performance of operations under this Agreement, the use or occupancy of the property by Licensee, its officers, employees, agents, invitees, guests, and members of the public, the exercise of the license granted by this License Agreement, the failure on the part of the Licensee to comply with any of the provisions specified herein, or otherwise permitted by this License Agreement. The City shall not be liable to the Licensee if for any reason the Licensee's use of the License Area is hindered or disturbed.

20) Licensee Liability Damage City Property. Licensee shall be liable for any loss of, or damage to, City property caused by the negligence, recklessness, or intended wrongful misconduct of Licensee, its officers, agents, invitees, guests, members of the public, servants and employees. Licensee shall submit a full written report to the Finance Director within twenty-four (24) hours following the occurrence of such damage, loss or injury.

21) Duty to Defend. To the fullest extent permitted by law, in addition to the express duty to indemnify City when there is any causal connection between Licensee's use and any injury, loss, damage, death or property damage, Licensee 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 Licensee hereby expressly includes 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 the Licensee as long as the claims made could be causally connected to Licensee as reasonable determined by City.

22) 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 Agreement to the contrary, 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 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 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 operation of law.

23) Discrimination Prohibited. The Licensee shall use the License and operate the fine arts education, instruction and exhibition programs and activities in compliance with all applicable requirements and regulations effectuating Title VI of the Civil Rights Act of 1964 (78 Stat. 241, 252), Executive Orders 11246 and 11063, and Title VIII of the Civil Rights Act of 1968, as amended (P.L. 90- 284).

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

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

Licensor: City of Port Orange
Parks and Recreation Director
1395 Dunlawton Ave.
Port Orange, FL 32129

Licensee: ArtHaus Foundation, Inc.
PO Box 290232
Port Orange, FL
32129

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

27) Parties not Partners. It is expressly understood that neither the City nor ArtHaus shall be construed or held to be a partner or associate of the other in the conduct of their respective business. The relationship between the Parties hereto is and shall remain at all times that of Licensee and Licensor.

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

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.**

31) Severability. The invalidity or unenforceability of any provision of this License

Agreement shall not affect or impair any other provision.

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

[REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY]

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

WITNESSES:

LICENSOR:


Printed Name: Matt Jones

CITY OF PORT ORANGE, FLORIDA
a chartered municipal corporation


Printed Name: Tracee Cody

By: 
Donald O. Burnette, Mayor


Printed Name: Matt Jones

Attest: 
Robin L. Fenwick, MMC, City Clerk


Printed Name: Tracee Cody

(SEAL)



STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of ☒ physical presence or online notarization, this 6th day of September, 2022, by Donald O. Burnette, as Mayor of the City of Port Orange, a Florida municipal corporation, on behalf of the city. He or she is ☒ personally known or produced _____ as identification.


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



STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me, by means of ☒ physical presence or online notarization, this 6th day of September, 2022, by Robin L. Fenwick, as City Clerk of the City of Port Orange, a Florida municipal corporation, on behalf of the city. He or she is ☒ personally known or _____ produced _____ as identification.

Tracee Cody

Notary Public, State of Florida at Large

Printed name, commission and expiration:



TRACEE CODY
Commission # HH 263672
Expires May 11, 2026

Witnesses:

Licensee:

ARTHAUS FOUNDATION, INC.

A Florida Non-Profit Corporation

Tracee Cody
Signature

By:

Ronald E. Nowviskie
Print: RONALD E. NOWVISKIE
Title: President

Tracee Cody
Printed Name

Harriet Meade Attest:
Signature

Harriet Meade
Printed Name

Cameron L. Vintson
Print: CAMERON L. VINTSON
Title: Executive Director

(Witnesses as to Both)

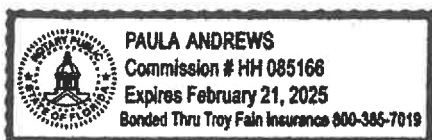
Dated Signed: Aug 26, 2022

(Corporate Seal)

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 26 day of AUGUST, 2022, by

RONALD E. NOWVISKIE and CAMERON L. VINTSON, the President and Executive Director, respectively, who personally appeared before me and are duly authorized to execute the foregoing instrument in their representative capacity on behalf of Arthaus Foundation, Inc., a Florida non-profit corporation, and who ☐ are personally known to me, or ☒ have produced governmental agency issued identification.



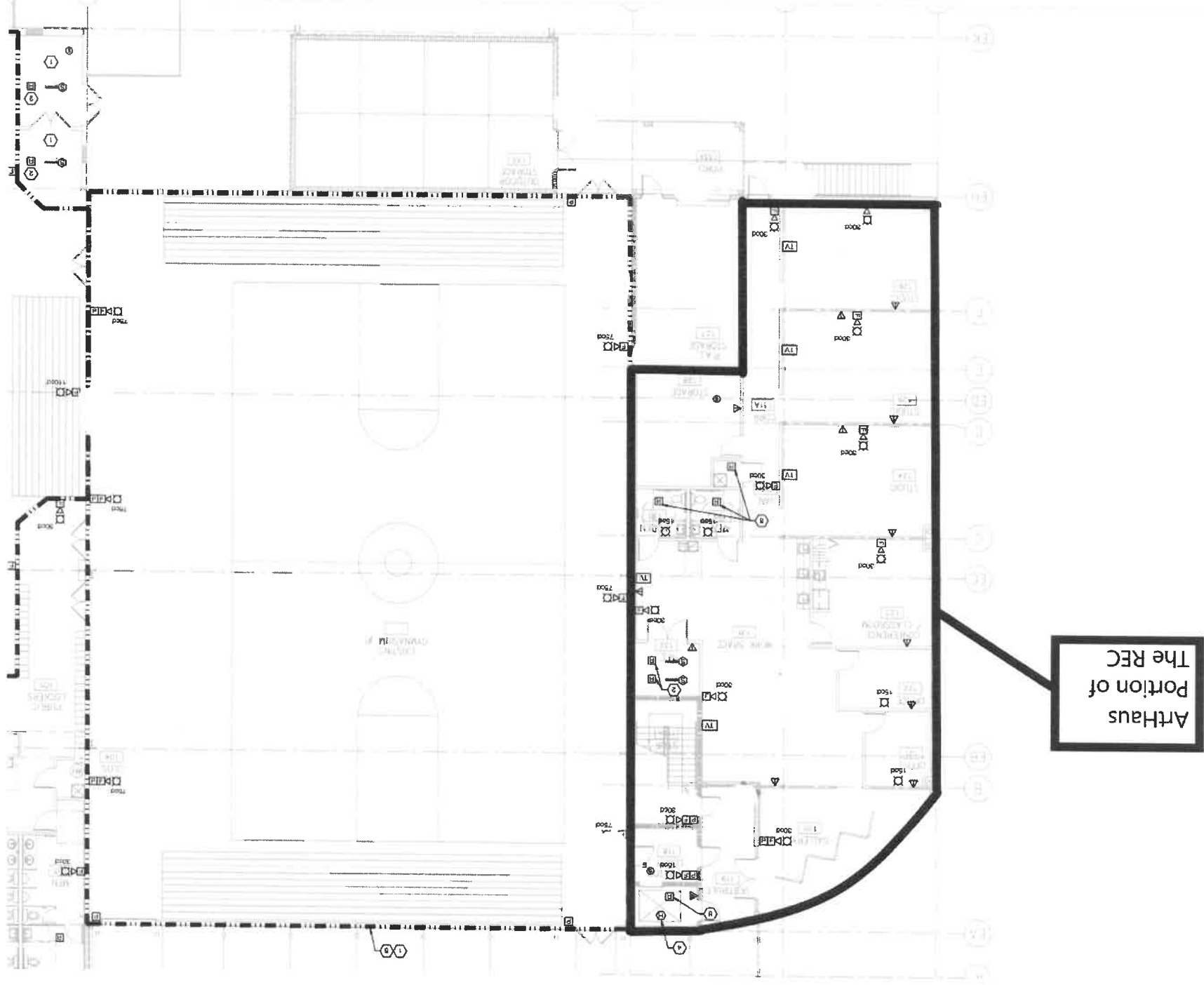
Paula Andrews

Notary Public, State of Florida at Large
Printed Name, Commission, Seal
And Commission Expiration Date:



EXHIBIT "A"

EXHIBIT "B"





CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 2/18/2025

SUBJECT: (C7b) Ratification of the Emergency Work to Repair the 12-inch Force Main on Samms Avenue and the associated Purchase Order # 20250070

DEPARTMENT: Public Utilities

GOAL: 2 - Infrastructure

RECOMMENDED MOTION: Move to ratify the emergency work for repair of the 12" Force Main on Samms Avenue and the associated Purchase Order # 20250070 in the amount of \$48,420.00 issued to JBI Contractors, LLC.

SUMMARY: The Public Utilities Department is requesting Council ratification of emergency repairs to a 12-inch Force Main located on Samms Avenue and the associated PO-20250070 issued to JBI Contractors LLC in the amount of \$48,420.00.

On October 11, 2024, a 12-inch force main ruptured on Samms Avenue. The excessive rainfall generated from Hurricane Milton contributed to the failure of the force main. This force main transmits sewage from the Herbert / Nova Master Lift Station to the Water Reclamation Facility. This station pumps over one million gallons of sewage daily.

Temporary repairs were made that day, but due to the heavy rainfall, these repairs were not expected to hold for long. To stop further damage, a permanent repair had to be completed as soon as possible.

On October 14, 2024, the City Manager approved the emergency repairs as requested. This request was deemed and approved as an emergency consistent with the City's Purchasing Ordinance under Section 2-271 and requires ratification by Council.

Work was completed, and the invoice was processed.

PRESENTER: Steve Parnell

ATTACHMENTS:

1.	Department Justification Memo - JBI for Samms Ave	Department Justification Memo - JBI for Samms Ave.docx
2.	City Ord 2-271	City Ord 2-271.pdf
3.	City Mgr Email Approval	City Mgr Email Approval.pdf
4.	JBI Invoice 1509	JBI Invoice 1509.pdf

5.	PO20250070 and Proposal	PO20250070 and Proposal.pdf
Kelly Klausky	Created/Initiated - 1/3/2025	
Chris Wall	Approved - 1/3/2025	
Steve Parnell	Approved - 1/3/2025	
Linda Truitt	Approved - 1/6/2025	
Matthew Jones	Approved - 2/6/2025	
Wayne Clark	Final Approval - 2/11/2025	



Memo

Public Utilities Department

TO: Council

FROM: Steve Parnell, Director of Public Utilities

DATE: December 30, 2024

SUBJECT: JBI Contractors, LLC
Ratification of Emergency PO-20250070
12" Force Main on Samms Avenue

DESCRIPTION:

The Public Utilities Department is requesting Council ratification of an Emergency PO-20250070 issued to JBI Contractors LLC in the amount of \$48,420.00 for repairs to a 12" Force Main located on Samms Avenue.

On October 11, 2024, a 12" force main ruptured on Samms Avenue. This force main transmits sewage from the Herbert / Nova Master Lift Station to the Water Reclamation Facility. This station pumps over one million gallons of sewage daily.

Temporary repairs were made, but due to heavy rain fall, these repairs would not hold for very long. Staff meet with contractor on site. To stop further damage, a repair had to be completed as soon as possible.

On October 14, 2024, the City Manager approved the emergency repairs as requested. This request was deemed and approved as an emergency on the City's Purchasing Ordinance under Section 2-271 and requires ratification by Council.

Work was completed and the invoice has been processed.

FUNDING:

Fund: 403-8099-536-54623-PU213

ATTACHMENTS:

- a.) Purchase Order
- b.) Invoice
- c.) Email Approval from City Manager
- d.) Copy of City Ord Sec 2-271

A contractor or vendor may be required to provide a corporate surety bond from a surety company authorized to do business in Florida to guarantee the full and faithful performance of his contract obligations and the payment of labor and material expended pursuant to the contract whenever and in such amounts as are deemed necessary by the city manager. All such bonds shall be approved as to form by the city attorney.

(Code 1981, § 8-34)

Sec. 2-270. - Informal bid procedures.

All purchasing of supplies, equipment and contractual services of a total estimated value of \$25,000.00 or less may be made in the open market without newspaper advertisement and without observing the formal bidding procedures prescribed by this article.

(Code 1981, § 8-35; Ord. No. 1997-22, § 6, 5-6-1997; Ord. No. 2004-15, § 5, 7-20-2004)

Sec. 2-271. - Emergency purchases.

Situations may arise whereby an exception to the city's policies and procedures may be required. Emergency purchases represent one of the potential situations. "Emergency" is defined as an unplanned or unexpected event that requires immediate action in order to prevent or remedy a service outage; or to prevent or remedy a situation that presents an immediate danger to human life, health or safety or a significant loss or damage to property, and where failure to take immediate action would enhance the risk of loss or prolong the delay in restoring service to customers. Routine repairs and planned refurbishment do not constitute emergencies. Therefore, the city may dispense with requirements for competitive solicitations and the city manager may acquire or contract for non-real property, goods, or services required in contemplation of, preparation for, or during an emergency. Emergency acquisitions of non-real property, goods or services where the expenditure by the city is estimated to exceed \$25,000.00 shall be subject to ratification by the city council at the next regularly scheduled meeting or as soon as practicable. The requesting department shall state the reason for the emergency purchase, and what caused the emergency situation, including a statement of financial or operational damage or risk that will occur if needs are not satisfied immediately. Once a determination has been made, the city may procure commodities or contractual services needed. However, such an emergency purchase shall be made by obtaining pricing information from at least two prospective vendors, which must be documented with the purchase request, unless the city determines that the time required to obtain pricing information will increase the immediate danger to the public health, safety, or welfare or other substantial loss to the city.

(Code 1981, § 8-36; Ord. No. 1997-22, § 7, 5-6-1997; Ord. No. 2004-15, § 6, 7-20-2004; 2015-19, § 1, 5-19-2015)

Parnell, Steve

From: Clark, Wayne
Sent: Monday, October 14, 2024 5:16 PM
To: McKinney, Jonathan
Cc: Parnell, Steve
Subject: RE: Samms Ave Emergency Repair

Approved based on information provided below and attached.

From: McKinney, Jonathan <Jmckinney@port-orange.org>
Sent: Monday, October 14, 2024 5:02 PM
To: Clark, Wayne <wclark@port-orange.org>
Cc: Parnell, Steve <sparnell@port-orange.org>
Subject: FW: Samms Ave Emergency Repair

Wayne,

The Department has submitted a request for emergency repairs of the Samms Avenue Force Main. Based on the justification memo, this would qualify as an Emergency Purchase, Per Section 2-271 in our Code of Ordinance.

The total cost of the repairs is \$48,420

Once we receive your concurrence, we will issue a purchase order in the amount requested by the Department.

Thanks

John

From: McKinney, Jonathan
Sent: Monday, October 14, 2024 2:12 PM
To: Parnell, Steve <sparnell@port-orange.org>; Wall, Christopher <cwall@port-orange.org>
Subject: FW: Samms Ave Emergency Repair

From: Parnell, Steve <sparnell@port-orange.org>
Sent: Monday, October 14, 2024 10:47 AM
To: McKinney, Jonathan <Jmckinney@port-orange.org>
Subject: Samms Ave Emergency Repair

John,

I am requesting an emergency be declared for the 12" forcemain that ruptured on Samms Ave. Staff made a temporary repair on 10/11/24. This repair will not hold for very long. I met with a local contractor on Saturday and he provided the quote I sent over to you. We feel this price for the repair is very fair and need to mobilize him asap. The forcemain that needs repair transmits sewage from Herbert and Nova lift station. That station pumps over 1 million gals of sewage daily

and this is the only forcemain from that station, if the line was to rupture again, we would have roughly 25% of the city with sewer issues.

Please advise so I can give the contractor the go-ahead to begin work.

FYI, we just had a sewer line collapse in Kingswood subdivision that will require the repair to be outsourced since the line is over 14ft deep. We do not have the equipment to handle such a deep repair. I would like to see if the same contractor can make this repair as well. I am working to get a quote on this right now.

Thanks,
Steve

JBI Contractors LLC

647 Arnau Dr
New Smyrna Beach, FL
32168-6631 USA
+13864091396
office@jbi-contractors.com

**RECEIVED****OCT 28 2024**

City of Port Orange
Engineering Department

INVOICE

BILL TO
ATTN: Accounts Payable
P.O. Box 291759
Port Orange, FL 32129-1759

INVOICE 1509
DATE 10/25/2024
TERMS Net 30
DUE DATE 11/24/2024

DATE	ACTIVITY	DESCRIPTION	QTY	RATE	AMOUNT
	Pipe repair	PO # 20250070 - Emergency Repair - 12" Force Main on Samms Ave	1	48,420.00	48,420.00

Thank you for your business.

BALANCE DUE

\$48,420.00

APPROVED FOR PAYMENT
[Signature]
Date: 10/28/24

PROCESSED**OCT 28 2024****ENGINEERING**



City of Port Orange
PLEASE SEND INVOICE TO: ACCOUNTS PAYABLE
PO BOX 291759
PORT ORANGE, FL 32129-1759
TELEPHONE: 386-506-5700
apbilling@port-orange.org

Purchase Order

Fiscal Year 2025

Page 1 of 1

This number must appear on all packing lists, labels,
bill of lading correspondence.

Purchase Order Number	20250070
Purchase Order Date	10/24/2024
Department	ENGINEERING
Required By	10/23/2024
Payment Terms	30 Days

Bill To
ATTN: ACCOUNTS PAYABLE
P.O. BOX 291759
PORT ORANGE, FL 32129-1759

BILL TO

Ship To
Engineering
1395 Dunlawton Ave.
Port Orange, FL 32129

4400

Vendor
JBI CONTRACTORS LLC
647 ARNAU DRIVE
NEW SMYRNA BEACH, FL 32168

994

VENDOR PHONE NUMBER	VENDOR EMAIL	VENDOR NUMBER	REQUISITION NUMBER	BUYER NAME	DELIVERY REFERENCE
1 (386) 3145851		994	250331	Kent, Chip	

NOTES

EMERGENCY REPAIR - 12" FORCEMAIN ON SAMMS AVE

ITEM #	DESCRIPTION	QUANTITY	UOM	UNIT PRICE	EXTENDED PRICE
1	Emergency repair to a 12" force main on Samms Avenue	1.0000	EACH	\$48,420.0000	\$48,420.00

Declared an emergency under City Code of Ord section 2-271
Approved by the City Manager

In accordance with JBI Proposal October 14, 2024

10/24/2024
emailed to vendor
Staff

F485

Completed

IMPORTANT - TO RECEIVE PAYMENT, ALL INVOICES AND SHIPPING LABELS MUST SHOW PURCHASE ORDER
NUMBER AND DATE

VISIT THIS LINK TO VIEW THE CITY'S PURCHASE ORDER TERMS AND CONDITIONS:
<https://www.port-orange.org/DocumentCenter/View/13604/Purchase-Order-Terms--Conditions>

Authorized Signature

Total Ext. Price	\$48,420.00
Purchase Order Total	\$48,420.00

CITY OF PORT ORANGE
PUBLIC UTILITIES DEPARTMENT
INTER-DEPARTMENTAL
REQUISITION REQUEST

Date: Tuesday, October 15, 2024

Vendor: JBI Contractors
647 Arnau Drive
New Smyrna Beach, FL 32168

386 314-5851

Ship to: 817 Oak Street
Port Orange, FL 32129

Req Type: Goods

Req Number: _____

Vendor Email: jonah@jbi-contractors.com

Tyler Account Information

Fund: 019
Dept & Element: 1611-525
Expense: 56305
Project #: EM221
Amount: 48,420.00

403
8049 1611-536
54023 - Non cap Ins.
P4213

Req - 250331

Quantity	Item Description	UOM	Unit Cost	Extended Cost
1	Emergency repair of 12" forcemain on Samms Ave.	lump	\$ 48,420.00	\$ 48,420.00
Total:				\$ 48,420.00

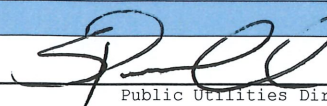
Memo to Vendors: _____

Internal Memo: Declared an emergency per CM. Meets section 2-271 in city Code of Ordinances.

Quote attached.

Vendor	**LIST UNDER INTERNAL MEMO **	Total Amount

Deputy Director - Public Utilities
PROCESSED


Public Utilities Director

Administrative Supervisor

OCT 23 2024
ENGINEERING



647 Arnau Drive
New Smyrna Beach, FL 32168
386-314-5851

Proposal:

Customer:

City of Port Orange
Attn- Steve Parnell

Project

Samms Ave 12" Forcemain Replacement

Scope of work includes:

- Mobilization
- Dewatering- Well point system to complete requested repairs discharging into adjacent pond
- 12" C900- 40 LF-Fittings to adapt from Ductile Iron to C900 provided by City of Port Orange- JBI Provides Pipe
- Base Rock Import/Repair
- Paving- Patch all disturbed paving from repair activities
- Street sweeping/Clean up/Restoration/Demobilization

TOTAL: \$48,420.00

Additional LF including additional dewatering/restoration/Paving etc-
PER LF-\$398.00

*All work to be completed in standard working hours besides pipe replacement

*Force main must be shut down entirely to repair



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 2/18/2025

SUBJECT: (C7c)

Ratification of the Emergency Work for Manhole Repairs on Victoria Gardens Boulevard near Dunlawton Avenue and the associated Purchase Order-20250069

DEPARTMENT: Public Utilities

GOAL: 2 - Infrastructure

RECOMMENDED MOTION: Move to ratify the emergency repairs for the manhole located on Victoria Gardens Boulevard near Dunlawton Avenue, and the associated Purchase Order # 20250069 in the amount of \$32,152.00 issued to Danus Utilities, Inc.

SUMMARY: The Public Utilities Department is requesting Council ratification of an Emergency PO-20250069 issued to Danus Utilities in the amount of \$32,152 for repairs to a manhole located on Victoria Gardens Boulevard near Dunlawton Avenue.

On October 17, 2024, a sanitary manhole located on Victoria Gardens Blvd. near Dunlawton Avenue failed. Staff was notified a large pothole was developing in the pavement near the sanitary manhole after excessive rainfall from Hurricane Milton. Upon further inspection, staff noticed the manhole boot had ruptured allowing groundwater and sand to enter the manhole causing the pavement to fail. Danus Utilities, Inc. was called and on site within 30 minutes. Due to the severity and location of the failure, staff instructed Danus Utilities to do the repair work immediately.

On October 23, 2024, the City Manager approved the emergency repairs as requested. This request was deemed and approved as an emergency consistent with the City's Purchasing Ordinance under Section 2-271 and requires ratification by Council.

The work was completed, and the invoice has been processed.

PRESENTER: Steve Parnell

ATTACHMENTS:

1.	Department Justification Memo - Danus - MH Victoria Gardens	Department Justification Memo - Danus - MH Victoria Gardens.docx
2.	PO20250069 and Proposal	PO20250069 and Proposal.pdf
3.	Danus Inv 1317	Danus Inv 1317.pdf
4.	Email Approval	Email Approval.pdf

5.	City Ord 2-271	City Ord 2-271.pdf
----	----------------	--------------------

Kelly Klausky	Created/Initiated - 1/3/2025
Chris Wall	Approved - 1/3/2025
Steve Parnell	Approved - 1/3/2025
Linda Truitt	Approved - 1/6/2025
Matthew Jones	Approved - 2/6/2025
Wayne Clark	Final Approval - 2/11/2025



Memo Public Utilities Department

TO: Council

FROM: Steve Parnell, Director of Public Utilities

DATE: December 30, 2024

SUBJECT: Danus Utilities, Inc
Ratification of Emergency PO-20250069
Victoria Gardens Blvd & Dunlawton Ave Manhole Repairs

DESCRIPTION:

The Public Utilities Department is requesting Council ratification of an Emergency PO-20250069 issued to Danus Utilities in the amount of \$32,152 for repairs to a manhole located on Victoria Gardens Boulevard and Dunlawton Avenue.

On October 17, 2024, a sanitary manhole located on Victoria Gardens Blvd and Dunlawton Avenue failed. Staff was notified that a vehicle had fallen through the pavement near the sanitary manhole. Staff noticed the manhole boot had ruptured allowing groundwater and sand to enter the manhole causing the pavement to fail. Danus Utilities, Inc. was called and onsite within 30 minutes. Due to the severity and location of the failure, staff instructed Danus Utilities to begin repair work immediately.

On October 23, 2024, the City Manager approved the emergency repairs as requested. This request was deemed and approved as an emergency on the City's Purchasing Ordinance under Section 2-271 and requires ratification by Council.

The work was completed, and the invoice has been processed.

FUNDING:

Fund: 403-8099-536-54623-PU213

ATTACHMENTS:

- a.) Purchase Order
- b.) Invoice
- c.) Email Approval from City Manager
- d.) Copy of City Ord Sec 2-271



City of Port Orange

PLEASE SEND INVOICE TO: ACCOUNTS PAYABLE
PO BOX 291759
PORT ORANGE, FL 32129-1759
TELEPHONE: 386-506-5700
apbilling@port-orange.org

Bill To
ATTN: ACCOUNTS PAYABLE
P.O. BOX 291759
PORT ORANGE, FL 32129-1759

BILL TO

Ship To
Engineering
1395 Dunlawton Ave.
Port Orange, FL 32129

4400

Vendor
Danus Utilities Inc.
320 BEARDALL AVE
SANFORD, FL 32771

25

Purchase Order

Fiscal Year 2025

Page 1 of 1

This number must appear on all packing lists, labels,
bill of lading correspondence.

Purchase Order Number **20250069**
Purchase Order Date **10/24/2024**
Department **ENGINEERING**
Required By **10/23/2024**
Payment Terms **30 Days**

VENDOR PHONE NUMBER	VENDOR EMAIL	VENDOR NUMBER	REQUISITION NUMBER	BUYER NAME	DELIVERY REFERENCE
1 (386) 2335588		25	250336	Kent, Chip	

NOTES

Emg PO - MH Repair for Victoria Gardens

ITEM #	DESCRIPTION	QUANTITY	UOM	UNIT PRICE	EXTENDED PRICE
1	DECLARED EMERGENCY PER CITY ORD, SECTION 2-271	1.0000	EACH	\$32,152.0000	\$32,152.00

Emergency repair of the Victoria Gardens Manhole as outlined under Contractor's Proposal.
In accordance with CA8139 and Proposal RAV102124-2A

10/24

emailed to vendor

je

F425

Complete

IMPORTANT - TO RECEIVE PAYMENT, ALL INVOICES AND SHIPPING LABELS MUST SHOW PURCHASE ORDER
NUMBER AND DATE

VISIT THIS LINK TO VIEW THE CITY'S PURCHASE ORDER TERMS AND CONDITIONS:
<https://www.port-orange.org/DocumentCenter/View/13604/Purchase-Order-Terms--Conditions>

Authorized Signature

Total Ext. Price \$32,152.00
Purchase Order Total \$32,152.00

PROCESSED
OCT 25 2024
ENGINEERING

EMG REPAIR

Req- 250336

Memo to Vendors: Pricing in accordance with Contractors Proposal

10/23/2024



PROPOSAL

Remit To:

Danus Utilities, Inc.
P.O. Box 291671
Port Orange, FL 32129

Phone: 386-566-8805
danusutilities.com
andy@danusutilities.com
Fax: 407-878-1254

PROPOSAL NO: RAV102124-2A
PROPOSAL DATE: October 23, 2024

CUSTOMER: City of Port Orange
ADDRESS: 1000 City Center
Port Orange, Florida 32771

PHONE:
CONTACT: Graeme Gardiner
EMAIL: ggardiner@port-orange.org

Reference: City of Port Orange Standard Contract for Services / ITB #23-7 Sanitary Sewer Manhole Lining CA8193
Job Description: Victoria Gardens Emergency Manhole Repair

Item	Description	SF / Ea. / LF	Unit Price	Extended Price
A	General			
1	Mobilization	3	\$1,000.00	\$3,000.00
2	FDOT Maintenance of Traffic (Index 102-602)	2	\$450.00	\$900.00
B	Construction			
1	Lining of Manholes/Wet Wells using Raven 405 Epoxy Lining System	281	\$37.00	\$10,397.00
2	Cementious Build Back of Existing Manhole/ Wet Well Structure with Minimal Deterioration Up to 2" thick	281	\$5.00	\$1,405.00
5	Chemical Grout to Stop Ground Water Infiltration (Heavy)	8	\$475.00	\$3,800.00
11	Replacement of Manhole Ring and Cover in Pavement(using CAPP HDPE R&C)	1	\$2,650.00	\$2,650.00
18	Manholes Lacking Benches & Inverts	1	\$750.00	\$750.00
19	Up To 7' X 7' X 1.5' Thick Asphalt Patch w/ Road Base	4	\$1,750.00	\$7,000.00
20	Vactor Vacuum Truck (disposal not included)	6	\$375.00	\$2,250.00

Notes:

Sub total	\$32,152.00
Tax	

Total	\$32,152.00
--------------	--------------------

Terms Net 30 Days All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra cost will be executed only upon written orders and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. This proposal is subject to acceptance within 30 days and is void thereafter at the option of the undersigned.

Proposal Accepted By: _____ Date: _____

SIGNATURE



INVOICE

Remit To:

Danus Utilities, Inc.
P.O. Box 291671
Port Orange, FL 32129

Phone: 386-804-0068
danusutilities.com
robert@danusutilities.com
Fax - 407-878-1254

RECEIVED
NOV 22 2024
City of Port Orange
Engineering Department

INVOICE NO: 1317

INVOICE DATE: November 22, 2024

CUSTOMER PO#: 20250069

BILL TO: City of Port Orange

ADDRESS: 1000 City Center
Port Orange, Florida 32771

PHONE: 386-506-5700

CONTACT: Graeme Gardiner

EMAIL: ggardiner@port-orange.org**DANUS UTILITIES JOB NAME AND NUMBER: Victoria Gardens Emergency Manhole Repair - 1317**

Item	Description	Units	Cost Per Unit	Amount
A General				
1	Mobilization	3	\$1,000.00	\$3,000.00
2	FDOT Maintenance of Traffic (Index 102-602)	2	\$450.00	\$900.00
B Construction				
1	Lining of Manholes/Wet Wells using Raven 405 Epoxy Lining System	281	\$37.00	\$10,397.00
2	Cementious Build Back of Existing Manhole/ Wet Well Structure with Minimal Deterioration Up to 2" thick	281	\$5.00	\$1,405.00
5	Chemial Grout to Stop Ground Water Infiltration (Heavy)	8	\$475.00	\$3,800.00
11	Replacement of Manhole Ring and Cover in Pavement(using CAPP HDPE R&C)	1	\$2,650.00	\$2,650.00
18	Manholes Lacking Benches & Inverts	1	\$750.00	\$750.00
19	Up To 7' X 7' X 1.5' Thick Asphalt Patch w/ Road Base	4	\$1,750.00	\$7,000.00
20	Vactor Vacuum Truck (disposal not included)	6	\$375.00	\$2,250.00
	* Leak stopping not included. If required it will be billed as an extra.			
	* Top coat with Raven 405 Ultra High Build Epoxy at 200 mil thickness			
	* The monolithic epoxy coating of entire structure to be inspected with high voltage Holiday detection equipment.			
			INVOICE SUBTOTAL	\$32,152.00
			Invoice Total	\$32,152.00

Thank you for your business!

APPROVED FOR PAYMENT

Date: 11/24/2024

PROCESSED
RECEIVED
NOV 25 2024
City of Port Orange
Engineering Department
ENGINEERING

Wiggins, Julia

From: Parnell, Steve
Sent: Wednesday, October 23, 2024 3:20 PM
To: Wiggins, Julia
Subject: FW: Emergency Repairs - Manhole

From: Clark, Wayne <wclark@port-orange.org>
Sent: Wednesday, October 23, 2024 3:15 PM
To: McKinney, Jonathan <Jmckinney@port-orange.org>
Cc: Parnell, Steve <sparnell@port-orange.org>; Poolman, Jill <jpoolman@port-orange.org>
Subject: RE: Emergency Repairs - Manhole

No questions – thanks for the background info for justification

From: McKinney, Jonathan <Jmckinney@port-orange.org>
Sent: Wednesday, October 23, 2024 2:53 PM
To: Clark, Wayne <wclark@port-orange.org>
Cc: Parnell, Steve <sparnell@port-orange.org>; Poolman, Jill <jpoolman@port-orange.org>
Subject: Emergency Repairs - Manhole

Wayne,

The Utilities Department has submitted a request for the emergency repairs to the intersection of Victoria Gardens and Dunlawton Ave in between the Hooligan's and Applebee's restaurants and impacting the entrance into a skilled nursing facility due to a depression in the roadway that had opened up overnight.

In reviewing the justification memo and discussion with the purchasing manager and department head, this is deemed an emergency per Section 2-271. Expediting the repairs, prevents any health and safety and danger to human life as there was a sinkhole within the roadway.

The total cost of the repairs is \$32,152.

Please let me know if you have any questions.

Thanks

John

From: Parnell, Steve <sparnell@port-orange.org>
Sent: Wednesday, October 23, 2024 1:44 PM
To: McKinney, Jonathan <Jmckinney@port-orange.org>
Subject: RE: [EXT] Emg MH Repair

The work is already done. Danus was the only one to respond and due to the possibility of losing the road near Dunlawton Ave, I told him to proceed.

From: McKinney, Jonathan <Jmckinney@port-orange.org>
Sent: Wednesday, October 23, 2024 1:37 PM
To: Parnell, Steve <sparnell@port-orange.org>
Subject: RE: [EXT] Emg MH Repair

Then, if it wasn't storm related, do you still want to treat as an emergency or go for two additional quotes?

From: Parnell, Steve <sparnell@port-orange.org>
Sent: Wednesday, October 23, 2024 1:02 PM
To: McKinney, Jonathan <Jmckinney@port-orange.org>
Subject: FW: [EXT] Emg MH Repair

Victoria Garden and Dunlawton Ave manhole repair. We have deemed this was a preexisting issue that wasn't storm related.

Steve

From: Wiggins, Julia <jwiggins@port-orange.org>
Sent: Wednesday, October 23, 2024 10:38 AM
To: Parnell, Steve <sparnell@port-orange.org>; Wall, Christopher <cwall@port-orange.org>
Cc: Reed, Junos <jureed@port-orange.org>; Gardiner, Graeme <ggardiner@port-orange.org>
Subject: FW: [EXT] Emg MH Repair

Steve

The attached is the proposal for Victoria Gardens Emerg MH repair. Please get approval from CM to run as an emergency.

As a reminder, this is NOT hurricane related and will be paid out of project funds

From: Andy Darling <andy@danusutilities.com>
Sent: Wednesday, October 23, 2024 10:18 AM
To: Wiggins, Julia <jwiggins@port-orange.org>
Cc: Dan Pardus <dan@danusutilities.com>; Gardiner, Graeme <ggardiner@port-orange.org>
Subject: Re: [EXT] Emg MH Repair

Julia,

Please see attached.

Best regards,

Andy Darling



2320 Beardall Ave.
Sanford, FL 32771
Mobile: 386-566-8805
Office / Fax: 407-878-1254
andy@danusutilities.com
www.danusutilities.com

On Oct 23, 2024, at 9:56 AM, Wiggins, Julia <jwiggins@port-orange.org> wrote:

Perfect, thanks!

From: Andy Darling <andy@danusutilities.com>
Sent: Wednesday, October 23, 2024 9:56 AM
To: Wiggins, Julia <jwiggins@port-orange.org>
Cc: Dan Pardus <dan@danusutilities.com>; Robert Brown <robert@danusutilities.com>
Subject: [EXT] Re: Emg MH Repair

Julia,
It is coming to you in just a minute.

Best regards,

Andy Darling

<image001.png>

2320 Beardall Ave.
Sanford, FL 32771
Mobile: 386-566-8805
Office / Fax: 407-878-1254
andy@danusutilities.com
www.danusutilities.com

On Oct 23, 2024, at 9:54 AM, Wiggins, Julia <jwiggins@port-orange.org> wrote:

Good morning all!!

I know you guys are super busy, but I really need a quote / invoice for the emergency work you did for us on the Victoria Gardens MH. Please make sure the pricing meets your contract with us. I need you to reference that on the quote/invoice.

Thanks again for assisting our City during these emergency events!

Julia Wiggins
Engineering – Business Manager
Office (386) 506-5751
Fax (386) 756-5370

Cell: (386) 416-9174
<image001.jpg>

A contractor or vendor may be required to provide a corporate surety bond from a surety company authorized to do business in Florida to guarantee the full and faithful performance of his contract obligations and the payment of labor and material expended pursuant to the contract whenever and in such amounts as are deemed necessary by the city manager. All such bonds shall be approved as to form by the city attorney.

(Code 1981, § 8-34)

Sec. 2-270. - Informal bid procedures.

All purchasing of supplies, equipment and contractual services of a total estimated value of \$25,000.00 or less may be made in the open market without newspaper advertisement and without observing the formal bidding procedures prescribed by this article.

(Code 1981, § 8-35; Ord. No. 1997-22, § 6, 5-6-1997; Ord. No. 2004-15, § 5, 7-20-2004)

Sec. 2-271. - Emergency purchases.

Situations may arise whereby an exception to the city's policies and procedures may be required. Emergency purchases represent one of the potential situations. "Emergency" is defined as an unplanned or unexpected event that requires immediate action in order to prevent or remedy a service outage; or to prevent or remedy a situation that presents an immediate danger to human life, health or safety or a significant loss or damage to property, and where failure to take immediate action would enhance the risk of loss or prolong the delay in restoring service to customers. Routine repairs and planned refurbishment do not constitute emergencies. Therefore, the city may dispense with requirements for competitive solicitations and the city manager may acquire or contract for non-real property, goods, or services required in contemplation of, preparation for, or during an emergency. Emergency acquisitions of non-real property, goods or services where the expenditure by the city is estimated to exceed \$25,000.00 shall be subject to ratification by the city council at the next regularly scheduled meeting or as soon as practicable. The requesting department shall state the reason for the emergency purchase, and what caused the emergency situation, including a statement of financial or operational damage or risk that will occur if needs are not satisfied immediately. Once a determination has been made, the city may procure commodities or contractual services needed. However, such an emergency purchase shall be made by obtaining pricing information from at least two prospective vendors, which must be documented with the purchase request, unless the city determines that the time required to obtain pricing information will increase the immediate danger to the public health, safety, or welfare or other substantial loss to the city.

(Code 1981, § 8-36; Ord. No. 1997-22, § 7, 5-6-1997; Ord. No. 2004-15, § 6, 7-20-2004; 2015-19, § 1, 5-19-2015)



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 2/18/2025

SUBJECT: (C7d) Approval of Change Order No. 2 to the AIA Agreement with A.G. Pifer Construction Co., Inc. for Spruce Creek Road Park Concession & Restroom Replacement

DEPARTMENT: Parks & Recreation

GOAL: 3 - Quality of Life

RECOMMENDED MOTION: Move to approve Change Order No. 2 to the AIA Agreement with A.G. Pifer Construction Co., Inc. and authorize the Mayor and City Clerk to execute the associated documents.

SUMMARY: The Parks and Recreation Department requests approval of Change Order No. 2 to ITB 24-05 Spruce Creek Road Park Concession Replacement.

This request is for an additional \$6,646.00 that is needed for minor electrical and mechanical items not included in the original plans.

Staff also requests approval of a time extension of 77 days for substantial completion. The 77 days includes a 21-day request from the contractor related to the roof and the remaining days are due to a staff error in calculating total days to substantial completion. The contractor is replacing the roof sub-contractor to complete the job. The addition of 77 days changes the substantial completion date to January 23, 2025, with a final completion of February 22, 2025.

PRESENTER: Susan Lovallo

ATTACHMENTS:

1.	AG Pifer Construction Co., Inc. Change Order No. 2 to AIA for ITB 24-05 Spruce Creek Rd Park Concession Replacement	AG Pifer Construction Co., Inc. Change Order No. 2 to AIA for ITB 24-05 Spruce Creek Rd Park Concession Replacement.pdf
2.	AIA Document	AIA Document.pdf
3.	Pifer Sunbiz	Pifer Sunbiz.pdf
4.	Notice to Proceed - Amended	Notice to Proceed - Amended.pdf
5.	Budget Transfer form for CO #2	Budget Transfer form for CO #2.pdf
6.	Executed A.G. Pifer Construction Co., Inc. Charge Order #1 dated 9-23-2024	Executed A.G. Pifer Construction Co., Inc. Charge Order #1 dated 9-23-

		2024.pdf
7.	Change order #2 quote	Change order #2 quote.pdf

Jennifer Cox	Created/Initiated - 1/28/2025
Susan Lovallo	Approved - 1/29/2025
Linda Truitt	Approved - 1/31/2025
Matthew Jones	Approved - 2/7/2025
Wayne Clark	Final Approval - 2/11/2025

CHANGE ORDER NO. 2
To the AIA Agreement dated May 7, 2024
A.G. PIFER CONSTRUCTION CO., INC., Contractor

Project: ITB 24-05 Spruce Creek Road Park Concession Replacement

The following changes are hereby made to the Contract Documents:

CHANGE IN CONTRACT PRICE: Original Contract Price: \$530,325.00	CHANGE IN CONTRACT TIMES: Original Contract Times: Substantial Completion: 150 days November 7, 2024 (NTP Issued June 7, 2024) Final Completion: 30 days December 7, 2024
Net changes from previous Change Order: No.: 1 \$48,283.44	Changes in contract time from previous Change Orders: N/A
Contract Price prior to this Change Order: \$578,608.44	Contract Completion Date prior to this Change Order: Substantial Completion: November 7, 2024 Final Completion: December 7, 2024
Net Increase (decrease) of this Change Order: No. 2 \$6,646.00	Changes in contract time requested this Change Order: No. 2 77 days
Contract Price with all approved Change Orders: \$585,254.44	Contract Times with all approved Change Orders: Substantial Completion: January 23, 2025 Final Completion: February 22, 2025

CHANGES ORDERED:

- I. GENERAL: This Change Order is necessary to cover changes in the work to be performed under the AIA document entered into by and between the parties on May 7, 2024.
- II. REQUIRED CHANGES: Change Order is necessary to add (2) 3-pole 40amp BQD (277/480V) breakers to power the existing lighting. Sawcut and remove approximately a 2' x 3' area, excavate and locate the conduit, add new conduit to extend the run into the pull box, and refill and pour concrete back. Provide and install 8' air curtain above concession countertop. Plans only showed power and a switch. The addition of 77 days, changing the substantial completion date to January 23, 2025, with a final completion of February 22, 2025. No goods shall be delivered, nor services commenced hereunder until this Change Order has been fully executed by all parties.
- III. JUSTIFICATION: In order to complete the project, an increase in pricing and contract time is required for the above specified changes. The above changes to the AIA Agreement does not require a change in scope.
- IV. PAYMENT: Payment for this Change Order No. 2 shall be made in accordance with the terms of the AIA Agreement in an amount of \$6,646.00 and not to exceed the total cost of \$585,254.44. 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:

Department Project Manager

ACCEPTED BY:

A.G. Pifer Construction Co., Inc.

By: _____
Susan Lovallo, Parks & Recreation Director

By: _____
Anthony G. Pifer, President

Date Signed: _____

Date Signed: _____

RECOMMENDED BY:

N/A

City's Representative

RECOMMENDED BY:

N/A

Engineer of Record

By: _____

Printed Name: _____

Title: _____

By: _____

Printed Name: _____

Title: _____

Date Signed: _____

Date Signed: _____

APPROVED BY:
CITY OF PORT ORANGE
Department Head

By: _____
Susan Lovallo, Parks & Recreation Director

Date Signed: _____

City Manager

By: _____
Wayne Clark, City Manager

Date Signed: _____

If Council approval is required:

Affirmed:

By: _____
Scott Stiltner, Mayor

Robin L. Fenwick, MMC, City Clerk

Date Signed: _____

Date Signed: _____

Change Order Items

Number: 2

Initiation Date: 01/06/2025

Title: Change Order # 2

Project: Spruce Creek Park Concession Building

Project #: 13-24

Num	Item	Description	Ref	Qty	Unit	Unit Price	Amount
1	Electrical	Added breakers		2.000		550.00	1,100.00
2	Electrical	Conduit connection & Concrete		1.000		2,430.00	2,430.00
3	Air Curtain	8' Air Curtain		1.000		2,100.00	2,100.00
4	General	General Conditions		1.000		1,016.00	1,016.00
						Total:	\$6,646.00

CHANGE ORDER

OWNER	☒
ARCHITECT	☒
CONTRACTOR	☐
FIELD	☐
OTHER	☐

PROJECT: Spruce Creek Park Spruce Creek Park Concession Building 1000 City Center Circle Port Orange, FL 32129	CHANGE ORDER #: 2	
	CHANGE ORDER DATE:	01/06/2025
	PROJECT #s:	13-24
TO: A.G. Pifer Construction Co. Inc. 3629 Old Deland Road Daytona Beach, FL 32124	DATE OF CONTRACT:	05/16/2024
	FOR: Concession Building	

The Contract is changed as follows:

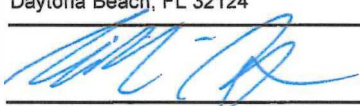
Needed to add (2) 3-pole 40amp BQD (277/480V) breakers to power the existing lighting.

One of the original conduit runs from the old building to the pull box behind the north backstop was taped off outside of the box and never connected. Had to sawcut and remove approximately a 2' x 3' area, excavate and locate the conduit, add new conduit to extend the run into the pull box, and refill and pour concrete back.

Had to provide and install 8' air curtain above concession countertop. Plans only showed power and a switch.

The original Contract Sum was	\$530,325.00
The net change by previously authorized Change Orders is	\$48,283.44
The Contract Sum prior to this Change Order was	\$578,608.44
The Contract Sum will be increased by this Change Order in the amount of	\$6,646.00
The new Contract Sum including this Change Order will be	\$585,254.44
The Contract Time will be increased by Seventy-seven	77 days.
The date of Substantial Completion as of this Change Order therefore is	1/23/2025

Not valid until signed by all parties below.

DJ Design Inc	A.G. Pifer Construction Co. Inc.	City of Port Orange
ARCHITECT	CONTRACTOR	OWNER
913 North Nova Road	3629 Old Deland Road	1000 City Center Circle
ADDRESS	ADDRESS	ADDRESS
Holly Hill, FL 32117	Daytona Beach, FL 32124	Port Orange, FL 32129
		See Page 4 of COPO Change Order No 2
BY (Signature)	BY (Signature)	BY (Signature)
Dana Smith	William DeMattia	
(Typed Name)	(Typed Name)	(Typed Name)
DATE 1-27-25	DATE 1/24/25	DATE



AIA®

Document A101® – 2017

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

AGREEMENT made as of the day of in the year 2024

BETWEEN the Owner:

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

and the Contractor:

A.G. Pifer Construction Co., Inc,
3629 Old DeLand Road
Daytona Beach, Florida 32124

for the following Project:

ITB 24-05 Spruce Creek Road Park Concession Replacement

The Architect:

DJ Design, Inc.
913 North Nova Road
Holly Hill, Florida 32117

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:

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

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

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

TABLE OF ARTICLES

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

EXHIBIT A INSURANCE AND BONDS

ARTICLE 1 THE CONTRACT DOCUMENTS

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

ARTICLE 2 THE WORK OF THIS CONTRACT

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

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

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

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

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

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

§ 3.3 Substantial Completion

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

[] Not later than () calendar days from the date of commencement of the Work.

[X] By the following date: Contractor shall achieve Substantial Completion of the work not later than 150 days from the issuance of a written Notice to Proceed issued by the Coty, with final completion 30 days thereafter.

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

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

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

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be Five Hundred Thirty Thousand Three Hundred Twenty-Five and 00/100 Dollars (\$530,325.00), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 Alternates

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

Item	Price
N/A	N/A

§ 4.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.

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

§ 4.3 Allowances, if any, included in the Contract Sum:

Item	Price
N/A	N/A

§ 4.4 Unit prices, if any:

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

§ 4.5 Liquidated damages, if any:

\$250.00 per day.

§ 4.6 Other:

(Paragraph deleted)

ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

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

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

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

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

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

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

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

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

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

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

§ 5.1.7 Retainage

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

§ 5.1.7.1.1 The following items are not subject to retainage:

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

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

§ 5.1.7.3

Deleted in its entirety.

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

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

§ 5.2 Final Payment

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

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

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

§ 5.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located. All payments shall be governed by the Local Government Prompt Payment Act as set forth in Sections 218.70 through 218.79, Florida Statutes, as amended.

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 Initial Decision Maker

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

(Paragraphs deleted)

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

§ 6.2 Binding Dispute Resolution

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

[] Arbitration pursuant to Section 15.4 of AIA Document A201–2017

[X] Litigation in a court of competent

(Paragraphs deleted)

Init.

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

ARTICLE 7 TERMINATION OR SUSPENSION

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

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

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

ARTICLE 8 MISCELLANEOUS PROVISIONS

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

§ 8.2 The Owner’s representative:

Susan Lovallo, Parks and Recreation Director
1000 City Center Circle
Port Orange, Florida 32129
slovallo@port-orange.org
(386) 506-5852

§ 8.3 The Contractor’s representative:

AG Pifer Construction Co., Inc.
3629 Old DeLand Road
Daytona Beach, Florida 32124
agpiferinc@gmail.com
(386) 257-4448

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

§ 8.5 Insurance and Bonds

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

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

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

§ 8.7 Other provisions:

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

§ 8.7.2 RECORDS

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

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

§ 8.7.3 FORCE MAJEURE

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

§ 8.7.4 CONTRACT CONSTRUCTION

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

§ 8.7.5 FINANCIAL DISCLOSURES

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

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

§ 8.7.6 WAIVER OF JURY TRIAL

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

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- .1 AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor, as modified by Owner with attached Exhibits "A" through "F," all of which are made a part hereof by this reference.
- .2 Exhibit A, Insurance and Bonds: AIA Document A101™ 2017
- .3 Exhibit B, ITB 24-05 Spruce Creek Road Park Concession Replacement
- .4 Exhibit C, Contractor's Proposal
- .5 Exhibit D, Applications for Payment
- .6 Exhibit E, Forms
- .7 Exhibit F, Contractors Completion Checklist
- .8 Addenda:

Number	Date	Pages
Addendum No. 1	March 7, 2024	Page 1
Addendum No. 2	March 26, 2024	Pages 1 - 3

(Paragraphs deleted)

(Paragraphs deleted)

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

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

(Paragraphs deleted)

(Paragraph deleted)

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

Title	Date	Pages
Attachment "A" - Specifications		1 - 172
Attachment "B" - Drawings	5/17/2023	1 - 58

(Paragraphs deleted)

(Paragraphs deleted)

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

City of Port Orange

OWNER (Signature)

Donald O. Burnette, Mayor
(Row deleted)

A.G. Pifer Construction Co., Inc.

CONTRACTOR (Signature)

Anthony B. Pifer, President

Init.

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

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 16:29:57 ET on 04/29/2024.

PAGE 1

AGREEMENT made as of the day of in the year
(In words, indicate day, month and year.)2024

...

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

...

(Name, legal status, address and other information)
A.G. Pifer Construction Co., Inc.
3629 Old DeLand Road
Daytona Beach, Florida 32124

...

(Name, location and detailed description)
ITB 24-05 Spruce Creek Road Park Concession Replacement

...

(Name, legal status, address and other information)
DJ Design, Inc.
913 North Nova Road
Holly Hill, Florida 32117

PAGE 2

(Check one of the following boxes.)

...

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

...

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

...

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

PAGE 3

- [☒] By the following date: Contractor shall achieve Substantial Completion of the work not later than 150 days from the issuance of a written Notice to Proceed issued by the Coty, with final completion 30 days thereafter.

...

N/A

N/A

...

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be (~~\$—~~), Five Hundred Thirty Thousand Three Hundred Twenty-Five and 00/100 Dollars (\$530,325.00), subject to additions and deductions as provided in the Contract Documents.

...

N/A

N/A

...

(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

...

N/A

N/A

N/A

...

(Identify each allowance.)

...

N/A

N/A

...

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

...

N/A

N/A

N/A

...

(Insert terms and conditions for liquidated damages, if any.)

\$250.00 per day.

...

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

PAGE 4

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

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

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

...

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

PAGE 5

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

...

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

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

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

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

Deleted in its entirety.

...

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

—%

...

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

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

...

(Check the appropriate box.)

...

☒ Litigation in a court of competent jurisdiction

☐ Other (Specify)

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

PAGE 6

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

...

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

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

...

(Name, address, email address, and other information)

Susan Lovallo, Parks and Recreation Director
1000 City Center Circle
Port Orange, Florida 32129
slovallo@port-orange.org
(386) 506-5852

...

(Name, address, email address, and other information)

AG Pifer Construction Co., Inc.
3629 Old DeLand Road
Daytona Beach, Florida 32124
agpiferinc@gmail.com
(386) 257-4448

PAGE 7

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

...

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

§ 8.7.2 RECORDS

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

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

§ 8.7.3 FORCE MAJEURE

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

§ 8.7.4 CONTRACT CONSTRUCTION

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

§ 8.7.5 FINANCIAL DISCLOSURES

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

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

§ 8.7.6 WAIVER OF JURY TRIAL

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

PAGE 8

1. AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor, as modified by Owner with attached Exhibits "A' through "F," all of which are made a part hereof by this reference.
2. AIA Document A101™-2017, Exhibit A, Insurance and Bonds-Bonds: AIA Document A101™ 2017
3. AIA Document A201™-2017, General Conditions of the Contract for Construction Exhibit B, ITB 24-05 Spruce Dreek Road Park Concession Replacement

~~.4~~ AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below: Exhibit C, Contractor's Proposal

(Insert the date of the E203-2013 incorporated into this Agreement.) ~~.5~~ Exhibit D, Applications for Payment

~~.6~~ Exhibit E, Forms

~~.7~~ Exhibit F, Contractors Completion Checklist

~~.5~~ Drawings, ~~.8~~ Addenda:

Number	Title	Date	Pages
<u>Addendum No. 1</u>		<u>March 7, 2024</u>	<u>Page 1</u>
<u>Addendum No. 2</u>		<u>March 26, 2024</u>	<u>Pages 1 - 3</u>

~~.6~~ Specifications *(Paragraphs deleted)*

Section	Title	Date	Pages
---------	-------	------	-------

~~.7~~ Addenda, if any:

Number	Date	Pages
--------	------	-------

~~.8~~ Other Exhibits:

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

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

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

...

<u>Attachment "A" - Specifications</u>		<u>1 - 172</u>
<u>Attachment "B" - Drawings</u>	<u>5/17/2023</u>	<u>1 - 58</u>

☐ ~~Supplementary and other Conditions of the Contract:~~

Document	Title	Date	Pages
----------	-------	------	-------

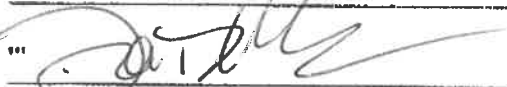
~~.9~~ Other documents, if any, listed below:

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

(Paragraphs deleted)

..

City of Port Orange

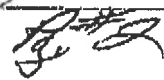


Donald O. Burnette, Mayor
(Printed name and title)

A.G. Pifer Construction Co., Inc.



Andrew G. Pifer, President
(Printed name and title)



...

City of Port Orange

A.G. Pifer Construction Co., Inc.

...

Donald O. Burnett, Mayor

(Printed name and title)

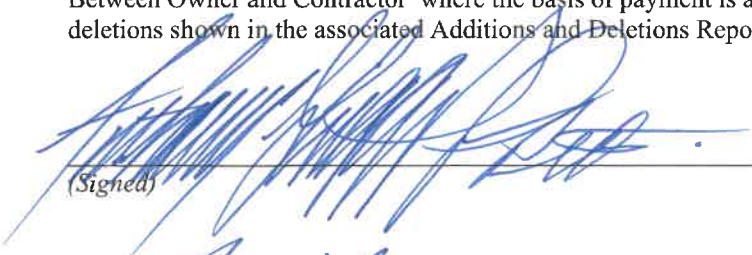
Anthony G. Pifer, President

(Printed name and title)

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 16:29:57 ET on 04/29/2024 under Order No. 2114457573 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A101™ – 2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, other than those additions and deletions shown in the associated Additions and Deletions Report.


(Signed)


(Title)

(Dated)



[Department of State](#) / [Division of Corporations](#) / [Search Records](#) / [Search by Entity Name](#) /

Detail by Entity Name

Florida Profit Corporation

A.G. PIFER CONSTRUCTION CO., INC.

Filing Information

Document Number	L39256
FEI/EIN Number	59-2986219
Date Filed	12/22/1989
State	FL
Status	ACTIVE

Principal Address

3629 OLD DELAND RD
DAYTONA BEACH, FL 32124

Changed: 04/17/2000

Mailing Address

3629 OLD DELAND RD
DAYTONA BEACH, FL 32124

Changed: 04/17/2000

Registered Agent Name & Address

PIFER, ANTHONY G.
1771 FOELKER RD.
DELAND, FL 32724

Address Changed: 01/05/2006

Officer/Director Detail

Name & Address

Title PRES

PIFER, ANTHONY G.
1771 FOELKER RD
DELAND, FL 32724

Title VP

Demattia, William Patrick
1922 Donald Place
South Daytona, FL 32119

Title SC

PIFER, ANTHONY G
3629 OLD DELAND RD.
DAYTONA BEACH, FL 32124

Title Vice president

Pifer, Joanne Lynn
3629 OLD DELAND RD
DAYTONA BEACH, FL 32124

Annual Reports

Report Year	Filed Date
2023	04/13/2023
2023	07/13/2023
2024	02/12/2024

Document Images

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[06/13/1995 -- ANNUAL REPORT](#)

[View image in PDF format](#)

2024 FLORIDA PROFIT CORPORATION ANNUAL REPORT

DOCUMENT# L39256

Entity Name: A.G. PIFER CONSTRUCTION CO., INC.

Current Principal Place of Business:

3629 OLD DELAND RD
DAYTONA BEACH, FL 32124

Current Mailing Address:

3629 OLD DELAND RD
DAYTONA BEACH, FL 32124 US

FEI Number: 59-2986219

Certificate of Status Desired: Yes

Name and Address of Current Registered Agent:

PIFER, ANTHONY G.
1771 FOELKER RD.
DELAND, FL 32724 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
Name PIFER, ANTHONY G.
Address 1771 FOELKER RD
City-State-Zip: DELAND FL 32724

Title VP
Name DEMATTIA, WILLIAM PATRICK
Address 1922 DONALD PLACE
City-State-Zip: SOUTH DAYTONA FL 32119

Title SC
Name PIFER, ANTHONY G
Address 3629 OLD DELAND RD.
City-State-Zip: DAYTONA BEACH FL 32124

Title VICE PRESIDENT
Name PIFER, JOANNE LYNN
Address 3629 OLD DELAND RD
City-State-Zip: DAYTONA BEACH FL 32124

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: ANTHONY GREGG PIFER

**PRESIDENT/SECRETARY/ 02/12/2024
TREASURER**

Electronic Signature of Signing Officer/Director Detail

Date



CITY OF PORT ORANGE
NOTICE TO PROCEED

Issued By: Susan Lovallo **Issue To:** Anthony G. Pifer
Parks & Recreation Director A.G. Pifer Construction, Inc.
1395 Dunlawton Ave 3629 Old Deland Rd.
Port Orange, FL 32129 Daytona Beach, FL 32124

Project Title: Replacement of Concession Stand Building at Spruce Creek Road Park

Bid No. ITB #2405 **Contract No.** AIA

This Notice to Proceed to your company is for the above referenced project and in accordance with the Scope of Work proposal submitted and all terms and conditions of the Standard Contract for Services between the City of Port Orange and A.G. Pifer Construction Company.

Effective date of this Notice to Proceed: 6/10/24, with substantial completion date of 10/21/24.

Please sign acknowledging and agreeing to the contents of this Notice to Proceed and return this form by email to: jcox@port-orange.org. We look forward to working with your company.

City Project Manager: Susan Lovallo
Parks & Recreation Director
slovallo@port-orange.org

All future correspondence or requests for changes to the contract must be addressed to the City's Project Manager.

ISSUED BY:

Susan L. Lovallo

06/07/24

Signature

Date

Susan Lovallo, Parks & Recreation Director
Name, Title

Receipt of the foregoing Notice to Proceed is hereby acknowledged and agreed by:

Anthony G. Pifer

6/7/24

Signature

Date

William DeMatta, VP

Name, Title



Finance Department Budget Adjustment Request Form

To: Budget Team

From: Parks and Recreation

Date: 1/28/25

Reason for Request: To add money to SCRP concession stand project, CO#2 to A.G. Pifer puts the project over budget. The department has submitted a change order for the balance of the project.

Amount \$ 4145.32

Source of Funding:

Appropriated Fund Balance ☐

Other Revenue Source ☐

Other ☒

If using **Other Revenue Sources** or **Other**, please list the source.

PK244 Amphitheater Seating Replacement 317-5102-572-56254-PK244

If request is approved, the budget is to be placed

Fund	Cost Center	Ledger Account	Spend Category	Program	Project	Amount
317	5102	572	56200	PK224	Parks	4145.32

Justification: The Amphitheater project is complete and we would like to use the remaining budget to fund the rest of the project for SCRP concession which is over budget.

Please email completed form to budgetteam@port-orange.org.

Susan L. Lorrillo

Department Head

1/28/25

Date

For Finance Use Only

Approved

Denied

City Manager

Date

CHANGE ORDER NO. 1
To the AIA Agreement dated May 7, 2024
A.G. PIFER CONSTRUCTION Co., Inc., Contractor

Project: ITB 24-05 Spruce Creek Road Park Concession Replacement

The following changes are hereby made to the Contract Documents:

CHANGE IN CONTRACT PRICE:	CHANGE IN CONTRACT TIMES:
Original Contract Price: \$530,325.00	Original Contract Times: Substantial Completion: 150 days November 7, 2024 (NTP Issued June 10, 2024) Final Completion: 30 days December 7, 2024
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: \$530,325.00	Contract Completion Date prior to this Change Order: N/A
Net Increase (decrease) of this Change Order: No. 1 \$48,283.44	Changes in contract time requested this Change Order: N/A
Contract Price with all approved Change Orders: \$578,608.44	Contract Times with all approved Change Orders: Final Completion: December 7, 2024

CHANGES ORDERED:

- I. **GENERAL:** This Change Order is necessary to cover changes in the work to be performed under the AIA Agreement entered into by and between the parties on May 7, 2024.
- II. **REQUIRED CHANGES:** Change Order No. 1 is necessary for cost to form, place, and finish 680 square feet of 6" thick concrete sidewalk for driving vehicles around the building. Remove and remove and replace 2,000 square feet of 4" thick concrete sidewalk at the perimeter of the building in areas as needed to achieve ADA slopes. New concrete to be 6" in thickness to tolerate vehicle traffic. Provide and install approximately 85 lineal feet of 4" PVC sewer line to connect to existing sanitary tap by road. Cost difference for 3" thick solid glass blocks in lieu of 4" thick hollow glass block. Addition of 40 lineal feet of 5 ¾ wide Spee-D channel drain with galvanized grates with drain piping to discharge water to the west wooded area. Drain set in concrete per manufacturer's installation instructions. Includes sodded swale. No good sale be delivered, nor services commenced hereunder until this Change Oder has been fully executed by all parties. Contract times and extensions thereto, may be as determined by the Contract Administrator.
- III. **JUSTIFICATION:** In order to complete the project, an increase in pricing is required for the above specified changes in the amount of \$48,283.44. The above changes to the AIA Agreement does not require a change in scope and is within the contingency amount approved by City Council on May 7, 2024.
- IV. **PAYMENT:** Payment for this Change Order shall be made in accordance with the terms of the AIA Agreement subject to a limit not to exceed a total project price of \$578,608.44. 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:
SUSAN LOVALLO
Department Project Manager

By: Susan L. Lovallo
Susan Lovallo, Parks & Recreation Director

Date Signed: 09/23/24

RECOMMENDED BY:
N/A
City's Representative

By: _____
Printed Name: _____
Title: _____
Date Signed: _____

ACCEPTED BY:
A.G. PIFER CONSTRUCTION CO., INC.

By: [Signature]
Anthony G. Pifer, President

Date Signed: 9/23/24

RECOMMENDED BY:
N/A
Engineer of Record

By: _____
Printed Name: _____
Title: _____

Date Signed: _____

APPROVED BY:
CITY OF PORT ORANGE
Department Head

By: Susan L. Livallo
Susan Livallo, Parks & Recreation Director

Date Signed: 09/23/24

City Manager

By: Wayne Clark
Wayne Clark, City Manager

Date Signed: 9/23/2024

City Council approval is not required:

By: N/A
Donald O. Burnette, Mayor

Date Signed: N/A

Affirmed:

Robin L. Fenwick
Robin L. Fenwick, MMC, City Clerk

Date Signed: 9/23/2024



CHANGE ORDER

OWNER	☒
ARCHITECT	☒
CONTRACTOR	☐
FIELD	☐
OTHER	☐

PROJECT: Spruce Creek Park Spruce Creek Park Concession Building 1000 City Center Circle Port Orange, FL 32129	CHANGE ORDER #: 2	
	CHANGE ORDER DATE:	01/06/2025
	PROJECT #s:	13-24
TO: A.G. Pifer Construction Co. Inc. 3629 Old Deland Road Daytona Beach, FL 32124	DATE OF CONTRACT:	05/16/2024
	FOR: Concession Building	

The Contract is changed as follows:

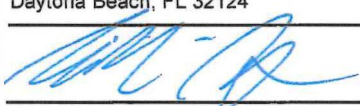
Needed to add (2) 3-pole 40amp BQD (277/480V) breakers to power the existing lighting.

One of the original conduit runs from the old building to the pull box behind the north backstop was taped off outside of the box and never connected. Had to sawcut and remove approximately a 2' x 3' area, excavate and locate the conduit, add new conduit to extend the run into the pull box, and refill and pour concrete back.

Had to provide and install 8' air curtain above concession countertop. Plans only showed power and a switch.

The original Contract Sum was	\$530,325.00
The net change by previously authorized Change Orders is	\$48,283.44
The Contract Sum prior to this Change Order was	\$578,608.44
The Contract Sum will be increased by this Change Order in the amount of	\$6,646.00
The new Contract Sum including this Change Order will be	\$585,254.44
The Contract Time will be increased by Seventy-seven	77 days.
The date of Substantial Completion as of this Change Order therefore is	1/23/2025

Not valid until signed by all parties below.

DJ Design Inc	A.G. Pifer Construction Co. Inc.	City of Port Orange
ARCHITECT	CONTRACTOR	OWNER
913 North Nova Road	3629 Old Deland Road	1000 City Center Circle
ADDRESS	ADDRESS	ADDRESS
Holly Hill, FL 32117	Daytona Beach, FL 32124	Port Orange, FL 32129
		
BY (Signature)	BY (Signature)	BY (Signature)
Dana Smith	William DeMattia	Susan Lovallo
(Typed Name)	(Typed Name)	(Typed Name)
DATE 1-27-25	DATE 1/24/25	DATE

Change Order Items

Number: 2

Initiation Date: 01/06/2025

Title: Change Order # 2

Project: Spruce Creek Park Concession Building

Project #: 13-24

Num	Item	Description	Ref	Qty	Unit	Unit Price	Amount
1	Electrical	Added breakers		2.000		550.00	1,100.00
2	Electrical	Conduit connection & Concrete		1.000		2,430.00	2,430.00
3	Air Curtain	8' Air Curtain		1.000		2,100.00	2,100.00
4	General	General Conditions		1.000		1,016.00	1,016.00
Total:							\$6,646.00



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 2/18/2025

SUBJECT: (C8a) Approval of Change Order and Amendment No. 1 to the EJCDC Contract with Rush Marine, LLC for the Rehabilitation of the Memorial Park Piers

DEPARTMENT: Parks & Recreation

GOAL: 2 - Infrastructure

RECOMMENDED MOTION: Move to approve Change Order and Amendment No. 1 to the EJCDC Contract with Rush Marine, LLC authorizing a new total project amount not to exceed \$874,923.79, authorizing additional contingency in an amount not to exceed \$35,000, subject to City Manager approval, and authorizing the Mayor and City Clerk to execute the associated documents, subject to approval of resolution 25-11.

SUMMARY: This Change Order and Amendment is for EJCDC Contract with Rush Marine, LLC for the Memorial Park Piers Rehabilitation project (ITB 24-09). This request is for the replacement of cross bracing under the bents on the piers. Some cross bracings are missing while others are rotten and in need of replacement. The recommendation by the contractor and engineer is to replace all cross bracing for 114 bents. The cross bracings were not in the original bid and the need for new bracing was not discovered until removal of the planks on the piers. This work was not evaluated prior to bidding as water levels were high, and the engineer did not have access under the piers. The total amount to replace all of the cross bracings is not to exceed \$84,029.79. The additional funding is eligible for FEMA reimbursement funds due to the damage being caused by Hurricane Ian. In addition, Council had previously authorized contingency for an amount not to exceed 8% (\$63,271.52). However, with the approval of this Change Order and Amendment No. 1, the contingency will have been exhausted. Therefore, staff is requesting additional contingency of an amount not to exceed \$35,000.00 (subject to the City Manager's approval) for future unforeseen conditions to allow for completion of the project.



PRESENTER: Susan Lovallo

ATTACHMENTS:

1.	Rush Marine, LLC Change Order No. 1 - ITB 24-09 Rehabilitation of Memorial Park Piers	Rush Marine, LLC Change Order No. 1 - ITB 24-09 Rehabilitation of Memorial Park Piers.pdf
2.	Rush Marine LLC - Owner and Contractor Construction Contract dated 8-21-2024	Rush Marine LLC - Owner and Contractor Construction Contract dated 8-21-2024.pdf
3.	Rush Marine Sunbiz	Rush Marine Sunbiz.pdf
4.	Port Orange Complete Cross Bracing Replacement (114) Bents CO Pricing	Port Orange Complete Cross Bracing Replacement (114) Bents CO Pricing.pdf
5.	Notice to Proceed - Memorial Piers	Notice to Proceed - Memorial Piers.pdf

Jennifer Cox
Susan Lovallo
Linda Truitt
Matthew Jones
Wayne Clark

Created/Initiated - 1/28/2025
Approved - 1/29/2025
Approved - 1/31/2025
Approved - 2/6/2025
Final Approval - 2/11/2025

CHANGE ORDER AND AMENDMENT NO. 1
EJCDC C-520 dated August 21, 2024
RUSH MARINE LLC, Contractor

Project: ITB 24-09 Memorial Park Piers Rehabilitation

The following changes are hereby made to the Contract Documents:

CHANGE IN CONTRACT PRICE: Original Contract Price: \$790,894.00	CHANGE IN CONTRACT TIMES: Original Contract Times: Substantial Completion: 210 days May 26, 2025 (NTP Issued October 28, 2024)
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: \$790,894.00	Contract Completion Date prior to this Change Order: Substantial Completion: May 26, 2025
Net Increase (decrease) of this Change Order: No. 1 \$84,029.79	Changes in contract time requested this Change Order: No. 1 15 days
Contract Price with all approved Change Orders: \$874,923.79	Contract Times with all approved Change Orders: Substantial Completion: June 10, 2025

CHANGES ORDERED:

- I. GENERAL: This Change Order and Amendment is necessary to cover changes in the work to be performed under EJCDC C-520 Agreement entered into by and between the parties on August 21, 2024.
- II. REQUIRED CHANGES: Change Order and Amendment is necessary to replace cross bracing (114 bents) on Pier A and B and to increase contract time by 15 days. No goods shall be delivered, nor services commenced hereunder until this Change Order and Amendment has been fully executed by all parties.
- III. JUSTIFICATION: In order to complete the project and increase in pricing and contract time is required for the above specified changes in the amount of \$84,029.79. The above changes to the EJCDC contract does require a change in scope.
- IV. PAYMENT: Payment for this Change Order and Amendment No. 1 shall be made in accordance with the terms of the EJCDC Agreement in an amount of \$84,029.79 and not to exceed the total cost of \$874,923.79. 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. CONTINGENCY: This Change Order and Amendment, upon City Manager approval, authorizes additional contingency in an amount not to exceed \$35,000.00 for unforeseen conditions to allow for completion of the project.
- VI. This Change Order and Amendment 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 and Amendment 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 and Amendment.

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:

Department Project Manager

ACCEPTED BY:

Tony Landry, President

By: _____
Susan Lovallo, Director of Parks & Recreation

By: _____
Tony Landry, President

Date Signed: _____

Date Signed: _____

RECOMMENDED BY:

N/A

City's Representative

RECOMMENDED BY:

N/A

Engineer of Record

By: _____
Printed Name: _____
Title: _____

By: _____
Printed Name: _____
Title: _____

Date Signed: _____

Date Signed: _____

APPROVED BY:
CITY OF PORT ORANGE
Department Head

By: _____
Susan Lovallo, Parks & Recreation Department

Date Signed: _____

City Manager

By: _____
Wayne Clark, City Manager

Date Signed: _____

If Council approval is required:

Affirmed:

By: _____
Scott Stiltner, Mayor

Robin L. Fenwick, MMC, City Clerk

Date Signed: _____

Date Signed: _____



COST SUMMARY

Client : City of Port Orange
Project: Memorial Park Port Orange
Project #:
Date: 16-Jan-25
RM Job #: 5417
C.E. #:

Brief Scope of Work: Memorial Park Complete Cross Bracing Replacement (114 Bents) Pier A and B			
Does this Change affect the Contract Time?	Yes	If so, number of days (+/-):	15.00

WORK DESCRIPTION	LABOR	MATERIAL	EQUIP.	SUB	TOTALS
LABOR:					
Total - Labor Costs	33,750.00				33,750.00
MATERIAL:					
Total - Material Costs		9,273.73			9,273.73
EQUIPMENT:					
Total - Other Equipment			12,900.00		12,900.00
SUBCONTRACTOR:					
Total - Subcontractor Costs				2,400.00	2,400.00
SUBTOTALS:	33,750.00	9,273.73	12,900.00	2,400.00	58,323.73
Ins., Taxes, and Fringe Benefits - 44%	14,850.00				14,850.00
Markup on Direct Labor - 15%	7,290.00				7,290.00
Markup on Materials - 15%		1,391.06			1,391.06
Markup on Equipment 15%			1,935.00		1,935.00
Markup Subcontractors - 10%				240.00	240.00
SUBTOTALS:	55,890.00	10,664.79	14,835.00	2,640.00	84,029.79

TOTAL CHANGE PROPOSAL COST:	Estimate Subtotal	84,029.79
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Project: **Memorial Park Port Orange**

Description: **Memorial Park Complete Cross Bracing Replacement (114 Bents) Pier A and B**

Item No.	Description	Unit				Labor	Material	Equipment	Subcontractor	Total
		Quantity	Unit	Price	L-M-E-S					
	Labor (3 Weeks)									
	Superintendent	150.00	HR	\$ 69.00	L	10,350.00	-	-	-	10,350.00
	Foreman	150.00	HR	\$ 48.00	L	7,200.00	-	-	-	7,200.00
	Carpenter	150.00	HR	\$ 27.00	L	4,050.00	-	-	-	4,050.00
	Carpenter	150.00	HR	\$ 27.00	L	4,050.00	-	-	-	4,050.00
	Carpenter	150.00	HR	\$ 27.00	L	4,050.00	-	-	-	4,050.00
	Carpenter	150.00	HR	\$ 27.00	L	4,050.00	-	-	-	4,050.00
	Equipment									
	Forklift	3.00	WK	\$ 750.00	E	-	-	2,250.00	-	2,250.00
	Superintendent Truck	3.00	WK	\$ 300.00	E	-	-	900.00	-	900.00
	Work Skiff	15.00	DY	\$ 300.00	E	-	-	4,500.00	-	4,500.00
	Misc Small Tools & Consumables	15.00	DY	\$ 350.00	E	-	-	5,250.00	-	5,250.00
	Materials (see attached backup)									
	316 SS Hardware	1.00	LS	\$ 6,372.92	M	-	6,372.92	-	-	6,372.92
	Timber	1.00	LS	\$ 2,900.81	M	-	2,900.81	-	-	2,900.81
	Dumpsters for Timber Removal	3.00	EA	\$ 800.00	S	-	-	-	2,400.00	2,400.00
Subtotal						33,750	9,274	12,900	2,400	58,324

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

completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions.

4.04 *Milestones* – Deleted in its entirety.

4.05 *Liquidated Damages*

A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the Contract Times, as duly modified. The parties also recognize the delays, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):

1. *Substantial Completion*: Contractor shall pay Owner \$0.00 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for Substantial Completion, until the Work is substantially complete.
2. *Completion of Remaining Work*: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner \$0.00 for each day that expires after such time until the Work is completed and ready for final payment.
3. Deleted in its entirety.

B. If Owner recovers liquidated damages for a delay in completion by Contractor, then such liquidated damages are Owner's sole and exclusive remedy for such delay, and Owner is precluded from recovering any other damages, whether actual, direct, excess, or consequential, for such delay, except for special damages (if any) specified in this Agreement.

C. Deleted in its entirety.

4.06 *Special Damages* - Deleted in its entirety.

A. Deleted in its entirety.

B. Deleted in its entirety.

C. Deleted in its entirety.

ARTICLE 5—CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents, the amounts that follow, subject to adjustment under the Contract:

A. Deleted in its entirety.

B. Deleted in its entirety.

C. Deleted in its entirety.

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

ARTICLE 6—PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

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

6.02 *Progress Payments; Retainage*

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

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

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

- 1) Deleted in its entirety.

- b. Deleted in its entirety.

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

6.03 *Final Payment*

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

6.04 *Consent of Surety*

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

6.05 *Interest Deleted in its entirety.*

- A. Deleted in its entirety.

ARTICLE 7—CONTRACT DOCUMENTS

7.01 *Contents*

- A. The Contract Documents consist of all of the following:
 - 1. This Agreement (pages 1 to 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.
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.

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

8.02 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 8.02:
 1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;

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

8.03 *Standard General Conditions*

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

ARTICLE 9—MISCELLANEOUS

9.01 *Assignment of Contract*

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

9.02 *Successors and Assigns*

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

9.03 *Severability*

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

9.04 *No-Damage-for-Delay*

Contractor shall not be entitled to any damages (including, without limitation, expenses, costs, fees, extended field overhead and general conditions, equipment costs, home office overhead, lost productivity and inefficiency damages, additional payroll and labor costs, etc.) for any delay

to its Work. Contractor's sole and exclusive remedy for a delay to its Work that is not caused by Contractor (or a person or entity performing a portion of Contractor's scope of Work) shall be an extension of time to substantially complete and finally complete the Project; provided, however, that Owner granting Contractor an extension of time is not a condition precedent to this no-damage-for-delay provision. Contractor shall also not be entitled to any damages for disruption or interference to its Work or for having to accelerate or incur additional labor or payroll costs in order to make up or overcome a delay to its Work so that it can maintain the dates for Substantial Completion and Final Completion. Contractor agrees that in determining and agreeing to the Contract Price it is considered this no-damage-for-delay provision and understands that it is not entitled to any damages whatsoever for a delay to its Work.

9.05 *No intended Third-Party Beneficiaries*

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

9.06 *Public Record Compliance*

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

9.07 *Records*

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

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

9.08 *Force Majeure*

Neither party shall be liable for any delay in performance or failure to perform any obligation hereunder if, and to the extent that, such failure or delay is caused by an event of Force Majeure. Force Majeure shall mean any act, event or condition that is beyond the party's reasonable control, that materially and adversely affects the party's ability to perform its

obligations hereunder, and that is not the result of the party's willful neglect, error, omission or failure to exercise reasonable due diligence.

9.09 *Contract construction*

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

9.10 *Financial Disclosures*

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

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

9.11 *Waiver of Jury Trial*

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

9.12 *E-Verify*

Contractor shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Contractor during the term of this Contract and shall expressly require any sub-contractors performing services pursuant to this Contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the sub-contractor during the term of this Contract.

9.13 *Compliance with Other Federal Standards*

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

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

(c) 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.

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

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

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

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

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

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

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, that if the applicant so participating is a state or local

government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the Contract.

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

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

(d) Davis-Bacon Act: If applicable to this Contract, the Contractor agrees to comply with all provisions of the Davis Bacon Act as amended (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29C.F.R. pt. 5 as may be applicable. Contractor is required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, Contractor must be required to pay wages not less than once a week. This Contract is conditioned upon the acceptance of the Department of Labor Wage Determination. The Davis-Bacon Act only applies to the Emergency Management Performance Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, Transit Security Grant Program, Intercity Passenger Rail Program, and Rehabilitation of High Hazard Potential Dams Program. In situations where the Davis-Bacon Act does not apply, neither does the Copeland "Anti-Kickback" Act.

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

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

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

(1) Minimum wages.

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

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

(ii)

(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to

be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

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

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

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

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

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

(iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-

Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding.

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

(3) Payrolls and basic records.

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

(ii)

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

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

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

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

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

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

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

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

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

(4) Apprentices and trainees.

(i) Apprentices.

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the

registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees.

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

(iii) Equal employment opportunity.

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

(5) Compliance with Copeland Act requirements.

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

(6) Subcontracts.

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

(7) Contract termination: debarment.

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

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

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

(9) Disputes concerning labor standards.

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

(10) Certification of eligibility.

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

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

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

(ii) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clause above, and also a clause requiring the subcontractors to include the clause in any

lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor the contract clause.

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

(f) Contract Work Hours and Safety Standards Act:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Clean Air Act

- (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- (2) The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal awarding agency and the Regional Office of the Environmental Protection Agency.
- (3) The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by 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 or employee of Congress, or an employee of a Member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the federal awarding agency.

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

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

- (1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired.
 - (i) Competitively within a timeframe providing for compliance with the contract performance schedule;
 - (ii) Meeting contract performance requirements; or
 - (iii) At a reasonable price.
- (2) Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines website, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- (3) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

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

If applicable to the Federal awarding agency requirements:

- (1) *Definitions.* As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on

Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause.

(2) Prohibitions.

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

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

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

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

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

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

(3) Exceptions.

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

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

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

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

a. Covered telecommunications equipment or services that:

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

2. Are *not used* as critical technology of any system.

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

(4) *Reporting requirement.*

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

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

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

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

(5) *Subcontracts.* The Contractor shall insert the substance of this clause, including this paragraph (5), in all subcontracts and other contractual instruments.

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

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

Manufactured products mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such

as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

(n) Access to Records and Reports:

(1) The Contractor agrees to provide City, any pass-through entity, the State of Florida and the Recipient (if applicable), 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.

(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

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).

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 RUSH MARINE, LLC
(typed or printed name of organization)

By: Anthony Landry
(individual's signature)

Date: 8/16/2024
(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: [Signature]
(individual's signature)

Title: Daniel Dapone - Secretary
(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

Owner:

City of Port Orange

(typed or printed name of organization)

By:

(individual's signature)

Date:

August 21, 2024

(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

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].~~

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~~

~~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.

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.

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.

10. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
11. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

8.02 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 8.02:
1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

8.03 *Standard General Conditions*

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

ARTICLE 9—MISCELLANEOUS

9.01 *Assignment of Contract*

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

assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

9.02 Successors and Assigns

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

9.03 Severability

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

9.04 No-Damage-for-Delay

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

9.05 No Intended Third-Party Beneficiaries

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

9.06 Public Record Compliance

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

9.07 Records

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

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

9.08 Force Majeure

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

9.09 Contract construction

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

9.10 Financial Disclosures

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

In the event that Contractor becomes insolvent and/or fails to pay its obligations when they become due, Contractor hereby authorized its sureties, lenders, financial institutions and other

third parties to release Owner financial information requested by Owner, including, but not limited to, the financial information described in the preceding paragraph.

9.11 Waiver of Jury Trial

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

9.12 E-Verify

Contractor shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Contractor during the term of this Contract and shall expressly require any sub-contractors performing services pursuant to this Contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the sub-contractor during the term of this Contract.

9.13 Compliance with Other Federal Standards

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

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

(c) 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.

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

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

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

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

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

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

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

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

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

(d) Davis-Bacon Act: If applicable to this Contract, the Contractor agrees to comply with all provisions of the Davis Bacon Act as amended (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29C.F.R. pt. 5 as may be applicable. Contractor is required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, Contractor must be required to pay wages not less than once a week. This Contract is conditioned upon the acceptance of the Department of Labor Wage Determination. The Davis-Bacon Act only applies to the Emergency Management Performance Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, Transit Security Grant Program, Intercity Passenger Rail Program, and Rehabilitation of High Hazard Potential Dams Program. In situations where the Davis-Bacon Act does not apply, neither does the Copeland "Anti-Kickback" Act.

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

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

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

(1) Minimum wages.

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

constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein:

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

(ii)

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

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

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

(C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within

30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

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

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

(2) Withholding.

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

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct

classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a) (1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)

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

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or

supervises the payment of the persons employed under the contract and shall certify the following:

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

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

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

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

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

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

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

(4) Apprentices and trainees.

(i) Apprentices.

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

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

(ii) Trainees.

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

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

(iii) Equal employment opportunity.

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

(5) Compliance with Copeland Act requirements.

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

(6) Subcontracts.

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

(7) Contract termination: debarment.

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

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

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

(9) Disputes concerning labor standards.

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

(10) Certification of eligibility.

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

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

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

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

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

(f) Contract Work Hours and Safety Standards Act:

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

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

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

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

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

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

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

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

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

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

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

Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

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

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

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

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

Clean Air Act

- (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- (2) The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal awarding agency and the Regional Office of the Environmental Protection Agency.
- (3) The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by 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 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.

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

If applicable to the Federal awarding agency requirements:

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

(2) Prohibitions.

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

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

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

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

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

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

(3) Exceptions.

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

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

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

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

(4) Reporting requirement.

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

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

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

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

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

paragraph (5), in all subcontracts and other contractual instruments.

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

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

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

(n) Access to Records and Reports:

(1) The Contractor agrees to provide City, any pass-through entity, the State of Florida and the Recipient (if applicable), 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.

(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 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).

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

Owner:

City of Port Orange

(typed or printed name of organization)

Formatted: Font color: Dark Red

By:

(individual's signature)

Date:

(date signed)

Name:

Donald O. Burnette

(typed or printed)

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Title:

Mayor

(typed or printed)

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Attest:

Robin L. Fenwick, MMC

(individual's signature)

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Title:

City Clerk

(typed or printed)

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Address for giving notices:

1000 City Center Circle

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Port Orange, Florida 32129

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(386) 506-5500

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Designated Representative:

Name:

(typed or printed)

Title:

(typed or printed)

Address:

1000 City Center Circle

Port Orange, Florida 32129

Phone:

()

Email:

Certification of Document's Authenticity

EJCDC Document EJCDC C-520 – 2018

I, Shannon K. Balmer, hereby certify, to the best of my knowledge, information and belief, that the creation of this attached final document with its associated Additions and Deletions Report on Wednesday, August 14, 2024, in accordance with the EJCDC C-520 – 2018 Software Template, and in preparation of the attached final document, no changes were made to the original text of the EJCDC Document C-520 – 2018 Agreement, between the Owner and Contractor for Construction Contract (Stipulated Price), other than those additions and deletions shown in the associated Additions and Deletions Report.

Signed: Shannon K. Balmer
Titled: Sr. Assistant City Attorney
Dated: 8/20/2024



[Department of State](#) / [Division of Corporations](#) / [Search Records](#) / [Search by Entity Name](#) /

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

02/01/2024 -- ANNUAL REPORT	View image in PDF format
03/10/2023 -- ANNUAL REPORT	View image in PDF format
03/16/2022 -- ANNUAL REPORT	View image in PDF format
02/24/2021 -- ANNUAL REPORT	View image in PDF format
03/25/2020 -- ANNUAL REPORT	View image in PDF format
02/22/2019 -- ANNUAL REPORT	View image in PDF format
01/31/2018 -- LC Amendment	View image in PDF format
01/18/2018 -- Florida Limited Liability	View image in PDF format

2024 FLORIDA LIMITED LIABILITY COMPANY ANNUAL REPORT

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
Name RUSH CONSTRUCTION, INC.
Address 6285 RIVERFRONT CENTER BLVD.
City-State-Zip: TITUSVILLE FL 32780

Title P
Name LANDRY, ANTHONY
Address 6285 RIVERFRONT CENTER BLVD.
City-State-Zip: TITUSVILLE FL 32780

Title VP
Name CHIVERS, WILLIAM
Address 6285 RIVERFRONT CENTER BLVD.
City-State-Zip: TITUSVILLE FL 32780

Title S
Name DAPORE, DAVID
Address 6285 RIVERFRONT CENTER BLVD.
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



COST SUMMARY

Client : City of Port Orange
 Project: Memorial Park Port Orange
 Project #:
 Date: 16-Jan-25
 RM Job #: 5417
 C.E. #:

Brief Scope of Work: Memorial Park Complete Cross Bracing Replacement (114 Bents) Pier A and B			
Does this Change affect the Contract Time?	Yes	If so, number of days (+/-):	15.00

WORK DESCRIPTION	LABOR	MATERIAL	EQUIP.	SUB	TOTALS
LABOR:					
Total - Labor Costs	33,750.00				33,750.00
MATERIAL:					
Total - Material Costs		9,273.73			9,273.73
EQUIPMENT:					
Total - Other Equipment			12,900.00		12,900.00
SUBCONTRACTOR:					
Total - Subcontractor Costs				2,400.00	2,400.00
SUBTOTALS:	33,750.00	9,273.73	12,900.00	2,400.00	58,323.73
Ins., Taxes, and Fringe Benefits - 44%	14,850.00				14,850.00
Markup on Direct Labor - 15%	7,290.00				7,290.00
Markup on Materials - 15%		1,391.06			1,391.06
Markup on Equipment 15%			1,935.00		1,935.00
Markup Subcontractors - 10%				240.00	240.00
SUBTOTALS:	55,890.00	10,664.79	14,835.00	2,640.00	84,029.79

TOTAL CHANGE PROPOSAL COST:	Estimate Subtotal	84,029.79
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Project: **Memorial Park Port Orange**

Description: **Memorial Park Complete Cross Bracing Replacement (114 Bents) Pier A and B**

Item No.	Description	Unit				Labor	Material	Equipment	Subcontractor	Total
		Quantity	Unit	Price	L-M-E-S					
	Labor (3 Weeks)									
	Superintendent	150.00	HR	\$ 69.00	L	10,350.00	-	-	-	10,350.00
	Foreman	150.00	HR	\$ 48.00	L	7,200.00	-	-	-	7,200.00
	Carpenter	150.00	HR	\$ 27.00	L	4,050.00	-	-	-	4,050.00
	Carpenter	150.00	HR	\$ 27.00	L	4,050.00	-	-	-	4,050.00
	Carpenter	150.00	HR	\$ 27.00	L	4,050.00	-	-	-	4,050.00
	Carpenter	150.00	HR	\$ 27.00	L	4,050.00	-	-	-	4,050.00
	Equipment									
	Forklift	3.00	WK	\$ 750.00	E	-	-	2,250.00	-	2,250.00
	Superintendent Truck	3.00	WK	\$ 300.00	E	-	-	900.00	-	900.00
	Work Skiff	15.00	DY	\$ 300.00	E	-	-	4,500.00	-	4,500.00
	Misc Small Tools & Consumables	15.00	DY	\$ 350.00	E	-	-	5,250.00	-	5,250.00
	Materials (see attached backup)									
	316 SS Hardware	1.00	LS	\$ 6,372.92	M	-	6,372.92	-	-	6,372.92
	Timber	1.00	LS	\$ 2,900.81	M	-	2,900.81	-	-	2,900.81
	Dumpsters for Timber Removal	3.00	EA	\$ 800.00	S	-	-	-	2,400.00	2,400.00
Subtotal						33,750	9,274	12,900	2,400	58,324

Matt Tate
Rush Construction
6285 Riverfront Center Blvd
Titusville, FL 32780

31048 CM /CM2 Quote #2 Port Orange A / QUOTATION

(321) 267-8100 0.0 Lbs 0

VISIT US AT WWW.MARSHFASTENERS.COM FOR ALL YOUR STAINLESS STEEL NEEDS!

1026	FTST5/8-11 X14.00	5/8-11 x 14 Stud Bolts Full Thread 316 Stainless	4.5000	--	4617.00
2060	NHST5/8-11	5/8-11 Finish Hex Nut 316 Stainless	0.4500	--	927.00
2060	WFTS5/8	5/8 Flat Washer 316 Stainless	0.2000	--	412.00
MERCHANDISE QUOTATION TOTAL \$					5956.00
STATE SALES TAX \$					357.36
COUNTY SALES TAX \$					59.56
QUOTATION TOTAL \$					6372.92

SPL - Rockledge
2135 South US 1
Rockledge, FL 32955
321-632-5566
Fax: 321-632-5171

* QUOTATION *

Sales Invoice:
Ordered by: Dean/Email
Order Number: 20481500
P.O. Number: Port Orange 2

Invoice Date: 01/10/25 02:52 PM
Terms: NET 15 DAYS
Due Date: 01/25/25
Ship VIA: PICKUP

Bill To: 000643
RUSH MARINE, LLC
6285 Riverfront Center Blvd
Titusville FL 32780

Ship To:

SHIP	BK0	DESCRIPTION	BRD FT	UNIT PRICE	EXTENSION
114		2x8x16 #1C .60 cca (For use with AWP A UC4B)	2,432	21.60	2,462.40
12		4x4x12 #1 GC CA-C	192	20.72	248.64

ALL SALES FINAL, NO RETURNS		Subtotal	2,711.04
\$50.00 Fee will apply on Returned Checks	6.00%	Sales Tax	162.66
Above prices are discounted for cash or check	1.00%	Surtax	27.11
Picked by: _____ Driver: _____ Date: _____			
Total Brd/Ft: 2624 Total Weight: 7,910		Total	2,900.81



CITY OF PORT ORANGE NOTICE TO PROCEED

Issued By: Susan Lovallo **Issue To:** Tony Landry
Parks & Recreation Director President
1395 Dunlawton Ave 6285 Riverfront Center Blvd.
Port Orange, FL 32129 Titusville, FL 32780

Project Title: Memorial Park Piers Rehabilitation

Bid No. 24-09 **Contract No.** E/CDC C-520

This Notice to Proceed to your company is for the above referenced project and in accordance with the Scope of Work proposal submitted and all terms and conditions of the Standard Contract for Services between the City of Port Orange and Rush Marine LLC.

Effective date of this Notice to Proceed: 10/28/24, with final completion date of 5/26/25.

Please sign acknowledging and agreeing to the contents of this Notice to Proceed and return this form by email to: jcox@port-orange.org. We look forward to working with your company.

City Project Manager: Susan Lovallo
Parks & Recreation Director
slovallo@port-orange.org

All future correspondence or requests for changes to the contract must be addressed to the City's Project Manager.

ISSUED BY:

Signature

Date

Susan Lovallo, Parks & Recreation Director

Name, Title

Receipt of the foregoing Notice to Proceed is hereby acknowledged and agreed by:

Signature

Date

Tony Landry, President

Name, Title



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 2/18/2025

SUBJECT: (C8b) Resolution No. 25-11 - Budget Appropriation for additional work on the Memorial Park Piers

DEPARTMENT: Finance

GOAL: 3 - Quality of Life

RECOMMENDED MOTION: Move to approve Resolution No. 25-11.

SUMMARY: This Budget Resolution is related to the Change Order and Amendment No.1 for the Memorial Park Piers Rehabilitation project (ITB 24-09). The additional funds are for the replacement of cross bracing under the bents on the piers. Some cross bracings are missing while others are rotten and in need of replacement. The recommendation by the contractor and engineer is to replace all cross bracing for 114 bents. The cross bracings were not in the original bid and the need for new bracing was not discovered until removal of the planks on the piers. This work was not evaluated prior to bidding as water levels were high, and the engineer did not have access under the piers. The total amount to replace all of the cross bracings is not to exceed \$84,029.79. The additional funding is eligible for FEMA reimbursement funds due to the damage being caused by Hurricane Ian. In addition, Council had previously authorized contingency for an amount not to exceed 8% (\$63,271.52). However, with Change Order and Amendment No. 1, the contingency will have been exhausted. This Budget Resolution will supplement funding the change order and amendment and provide funding for additional contingency (subject to the City Manager's approval) for unforeseen conditions to allow for completion of the project.

PRESENTER: Linda Truitt

ATTACHMENTS:

1.	Resolution No. 25-11 w exhibit	Resolution No. 25-11 w exhibit.pdf
2.	Budget Amendment Summary February 2025	Budget Amendment Summary February 2025.pdf

Amanda Bonin
Linda Truitt
Matthew Jones

Created/Initiated - 2/6/2025
Approved - 2/6/2025
Approved - 2/7/2025

RESOLUTION NO. 25-11

A RESOLUTION OF THE CITY OF PORT ORANGE,
VOLUSIA COUNTY, FLORIDA, APPROPRIATING
OPERATING, AND CAPITAL FUNDS FOR THE FISCAL
YEAR 2024-2025 BUDGET; TO FUND ADDITIONAL WORK
RELATED TO THE MEMORIAL PARK PIERS
REHABILITATION PROJECT; SETTING FORTH REVENUES
AND EXPENDITURES; PROVIDING FOR SCRIVENER'S
ERRORS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council desires to budget for the transfer of \$84,030 from the General Fund (001) to the General Capital Replacement Fund (317) to fund additional scope of work for the replacement of cross bracing (114 bents) on both piers as it relates to the Memorial Park Piers Rehabilitation project (ITB 24-09); and

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

Section 1. The above Recitals are incorporated by reference into the body of this Resolution.

Section 2. The funds for the City operating and capital items are hereby appropriated as set forth in Composite Exhibit A, attached hereto, which reflects revenues and corresponding expenditures for the designated project.

Section 2. The budget item adopted in the preceding section shall govern the expenditures relating to such items for the City during the ensuing fiscal year effective October 1, 2024, through September 30, 2025.

Section 3. Supplemental appropriations, reductions of appropriations, emergency appropriations, and interdepartmental transfers of appropriations may be affected by the City Council and the City Manager as deemed necessary in strict compliance with the procedures specified in Chapter 2, Article VI, Division 3, Code of Ordinances, City of Port Orange, Florida.

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

Section 5. This resolution shall become effective immediately upon adoption.

MAYOR SCOTT STILTNER

ATTEST:

Robin Fenwick, MMC, City Clerk

Adopted on the _____ day of _____

Reviewed and Approved: _____
Matthew J. Jones, City Attorney

Exhibit "A" DETAIL FOR RES. 25-11
FY25 BUDGET ADJUSTMENT REQUEST

FUND	ACCOUNT DESCRIPTION	ADJUSTMENT REQUEST	DESCRIPTION
GENERAL FUND - 001			
	APPROPRIATED FUND BALANCE	84,030	APPROPRIATED FUND BALANCE - REIMBURSEMENT REQUESTED FROM FEMA FOR THE CHANGE ORDER
	REVENUES	84,030	
	TRANSFER OUT - FUND 317	84,030	PK241 MEMORIAL PARK PIERS REHABILITATION
	EXPENDITURES	84,030	
GENERAL CAPITAL REPLACEMENT - 317			
	TRANSFER IN - FUND 001	84,030	TRANSFER IN FROM FUND 001
	REVENUES	84,030	
	CAPITAL OUTLAY/CIP - PARKS	84,030	PK241 MEMORIAL PARK PIERS REHABILITATION
	EXPENDITURES	84,030	
		REVENUES	
		168,060	
		EXPENDITURES	
		168,060	
		VARIANCE	-
		-	



Exhibit "A"

AMENDED BUDGET FISCAL YEAR 2024-25

Fund	Description	Adopted Resolution 24-38	Resolution 24-47	Resolution 25-03	Resolution 25-11	Amended Budget
001	General Fund	\$ 61,190,570	4,061,756	\$1,671,610	\$ 84,030	\$ 67,007,966
010	National Opioid Litigation	44,687	83,445			128,132
011	Recreation Scholarship	22,450	-			22,450
019	Federal Disaster Fund	135,895	3,061,737			3,197,632
102	Tax Increment - Eastport	633,196	-			633,196
103	Tax Increment - Town Center	431,297	-			431,297
106	Recreational Facilities	246,700	32,363			279,063
109	Building & Inspections	2,649,016	-			2,649,016
111	Police Impact Fee	109,785	-			109,785
112	Fire Impact Fee	72,660	-	27,000		99,660
113	Transportation Impact Fee	273,530	-			273,530
313	Recreation Impact Fee	212,774	-			212,774
120	Police Benefit Trust	4,500	-			4,500
121	Police Forfeiture	70,000	-			70,000
122	Police Education Trust	10,000	-			10,000
123	Federal Police Forfeiture	15,000	-			15,000
199	Grant Special Revenue	5,134,124	-			5,134,124
214	Debt Services GO	901,838	-			901,838
217	Debt Services Eastport Tax Note	234,511	-			234,511
218	Debt Services Town Center Bonds	402,369	-			402,369
220	Debt Services Bonds	1,147,356	-			1,147,356
221	202X GO Bond Debt	30,000,000	-			30,000,000
301	Capital Projects	7,475,829	3,256,707			10,732,536
317	General Capital Replacement	5,827,865	8,761,063	84,414	84,030	14,757,372
321	Parks Bond Capital Projects	10,000,000	-			10,000,000
401	Water/Sewer	31,644,162	49,190,543	69,675		80,904,380
402	Wetland Mitigation	96,968	-			96,968
403	Water/Sewer R&R	5,450,000	48,053,563	69,675		53,573,238
404	SRF Debt Service	784,846	-			784,846
405	Water Impact Fee	679,627	-			679,627
406	WasteWater Impact Fee	0	-			-
409	Forestry	319,536	430,325			749,861
410	Solid Waste	10,708,138	-			10,708,138
412	Stormwater Utility	5,988,199	6,618,675	(841,571)		11,765,303
413	Stormwater Capital	9,252,488	6,954,949	880,039		17,087,476
414	Drainage Bond Sinking	699,004	-			699,004
450	Golf Course Operating	2,619,067	-	300,000		2,919,067
501	Information Technology	3,833,844	25,728			3,859,572
503	Fleet Maintenance	1,693,226	-			1,693,226
504	Risk Management	2,238,409	-			2,238,409
505	Lease & Replacement	2,466,256	2,154,663	411,805		5,032,724
Grand Total:		\$ 205,719,722	\$ 132,685,517	\$2,672,647	\$ 168,060	\$ 341,245,946



Exhibit "A"

AMENDED BUDGET FISCAL YEAR 2024-25

Fund	Description	Adopted Resolution 24-38	Resolution 24-47	Resolution 25-03	Resolution 25-11	Amended Budget
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010	National Opioid Litigation	44,687	83,445			128,132
011	Recreation Scholarship	22,450	-			22,450
019	Federal Disaster Fund	135,895	3,061,737			3,197,632
102	Tax Increment - Eastport	633,196	-			633,196
103	Tax Increment - Town Center	431,297	-			431,297
106	Recreational Facilities	246,700	32,363			279,063
109	Building & Inspections	2,649,016	-			2,649,016
111	Police Impact Fee	109,785	-			109,785
112	Fire Impact Fee	72,660	-	27,000		99,660
113	Transportation Impact Fee	273,530	-			273,530
313	Recreation Impact Fee	212,774	-			212,774
120	Police Benefit Trust	4,500	-			4,500
121	Police Forfeiture	70,000	-			70,000
122	Police Education Trust	10,000	-			10,000
123	Federal Police Forfeiture	15,000	-			15,000
199	Grant Special Revenue	5,134,124	-			5,134,124
214	Debt Services GO	901,838	-			901,838
217	Debt Services Eastport Tax Note	234,511	-			234,511
218	Debt Services Town Center Bonds	402,369	-			402,369
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221	202X GO Bond Debt	30,000,000	-			30,000,000
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317	General Capital Replacement	5,827,865	8,761,063	84,414	84,030	14,757,372
321	Parks Bond Capital Projects	10,000,000	-			10,000,000
401	Water/Sewer	31,644,162	49,190,543	69,675		80,904,380
402	Wetland Mitigation	96,968	-			96,968
403	Water/Sewer R&R	5,450,000	48,053,563	69,675		53,573,238
404	SRF Debt Service	784,846	-			784,846
405	Water Impact Fee	679,627	-			679,627
406	WasteWater Impact Fee	0	-			-
409	Forestry	319,536	430,325			749,861
410	Solid Waste	10,708,138	-			10,708,138
412	Stormwater Utility	5,988,199	6,618,675	(841,571)		11,765,303
413	Stormwater Capital	9,252,488	6,954,949	880,039		17,087,476
414	Drainage Bond Sinking	699,004	-			699,004
450	Golf Course Operating	2,619,067	-	300,000		2,919,067
501	Information Technology	3,833,844	25,728			3,859,572
503	Fleet Maintenance	1,693,226	-			1,693,226
504	Risk Management	2,238,409	-			2,238,409
505	Lease & Replacement	2,466,256	2,154,663	411,805		5,032,724
Grand Total:		\$ 205,719,722	\$ 132,685,517	\$2,672,647	\$ 168,060	\$ 341,245,946



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 2/18/2025

SUBJECT: (C9) Approval of Major Special Event Request for Bike Week 2025 for The Turn at 5236, 5218, 5204 & 5164 South Ridgewood Avenue

DEPARTMENT: Community Development

GOAL: 3 - Quality of Life

RECOMMENDED MOTION: Move to approve the ten (10) day Bike Week Major Special Event request for The Turn, located at 5236, 5218, 5204 & 5164 South Ridgewood Avenue, subject to attached conditions.

SUMMARY:

Zach Wulff, operator of The Turn, requests approval for a Special Event to be held during Bike Week 2025 at 5236, 5218, 5204, and 5164 South Ridgewood Avenue (see Location Map below). The Turn, formerly Daytona's Original First Turn, is under new management, and this will be their first special event in Port Orange. City staff has met with the applicant and reviewed the Special Event requirements and noise requirements in the Code of Ordinances. The proposed event is planned for Friday, February 28, to Sunday, March 9. The proposed hours for the event are 11:00 a.m. to 11:00 p.m., with outside music playing until 11:00 p.m. Normal hours of operations (11:00 am – 1:00 am Sunday - Thursday and 11:00 am – 2:00 am Friday and Saturday) for The Turn will continue for the duration of the event.

The dates of Bike Week, as recognized by the Daytona Regional Chamber of Commerce, are Friday, February 28, through Sunday, March 9, the same as the proposed special event dates. During the last Special Event at this location (Bike Week 2024), no citations for exceeding the noise ordinance were issued by the Police Department.

All noise from music during hours of operation, whether indoor or outdoor, shall not exceed the sound level limits established in the Code of Ordinances. Chapter 42, Article IV. Noise Regulations, Section 42-80. General Restrictions of the City of Port Orange Code of Ordinances describes the acceptable sound level limit dBA. It shall be the responsibility of the permit holder to monitor for noise violations. The Turn shall take care of the placement of speakers for amplified music by adjusting them away from residential areas. A warning may be issued and if not corrected or the violation recurs, the special event may be terminated. All previous noise violations will be considered before permitting future events.

Activities associated with the event are intended to attract those visiting the area for Bike Week 2025. There are no vendors for this event. The event will provide 4-6 port-o-let facilities. Setup of the event will occur 72 hours prior to the event and take down of the event will occur within 72 hours after the event. The southbound outside lane of Ridgewood Avenue will **not** be closed as part of this Special Event.

The proposed event has been reviewed by staff from Police, Fire, Public Works, Parks and

Recreation, Code Enforcement, and Community Development. According to Code Enforcement, there are no code violations existing on the subject property at this time. The applicant is not requesting assistance from the Police Department or Public Works Department.



PRESENTER: Penelope Cruz, Tim Burman

ATTACHMENTS:

1.	The Turn - Bike Week 2025 Special Event Conditions	The Turn - Bike Week 2025 Special Event Conditions.pdf
----	--	--

Penelope Cruz
Tim Burman
Manuel Marino
Joe Wulfig
Shannon Balmer
Wayne Clark

Created/Initiated - 1/21/2025
Approved - 1/29/2025
Approved - 1/31/2025
Approved - 2/3/2025
Approved - 2/6/2025
Final Approval - 2/11/2025

The following conditions apply to the Major Special Event for The Turn for Bike Week 2025.

1. The subject Major Special Event is for February 28th – March 9, 2025.
2. Applicant shall be responsible for any charges for City of Port Orange Police services related to this event and coordinate with the Police Department for all vehicular traffic patterns and pedestrian concerns. No Parking along shoulder of the roadway.
3. Applicant shall be responsible for coordination with the City of Port Orange Public Works Department for Public Works services and all charges for equipment (barricades, lights, etc.) used for this event for traffic control.
4. Rates for this event for staff time and equipment are per Resolution 19-2.
5. In accordance with the application submitted and approved by City Council, the hours for the event shall be from 11:00 a.m. to 11:00 p.m., with outside music ending at 11:00 pm. Normal operations for The Turn will continue for the duration of the event. Alcohol shall not be served indoors or outdoors past 2:00 a.m., as required by *Port Orange Code of Ordinances*.
6. Chapter 42, Article IV. Noise Regulations, Section 42-83. Noise Restrictions in an Entertainment District, of the City of Port Orange Code of Ordinances, describe the acceptable sound level limit dBA for the subject property located within the Ridgewood/Commonwealth Entertainment District. Sound or noise projecting from an entertainment district into a residential district located outside the boundary of the entertainment district shall not exceed the limits set forth for the residential district as set forth in Section 42-80. It shall be the responsibility of the permit holder to monitor for noise violations. The event coordinator shall take care of the placement of speakers for amplified music by adjusting them away from residential areas. A warning may be issued and if not corrected or the violation recurs, the Special Event may be terminated, and noise violations from this event will be taken into account before permitting future events.

	Time	Sound level limit dBA Sunday - Wednesday	Sound level limit dBA Thursday – Saturday*
Ridgewood/Commonwealth Entertainment District	7:00 a.m.—11:00 p.m.	65	75
	11:00 p.m.—7:00 a.m.	55	55
Residential District	7:00 a.m.—10:00 p.m.	60	
	10:00 p.m.—7:00 a.m.	50	
*Applies to the day before a legal holiday, legal holidays or dates of public celebration declared by City Council. For example, if the 4 th of July is on a Monday, the sound level limit (dBA) on Sunday July 3 rd and Monday, July 4 th would follow the sound level limit dBA limitations for Thursday through Saturday.			

7. Tents or canopies being used in association with this event shall comply with the requirements set forth in *NFPA 101 Chapter 11.11.1.2 (Tents)*. Tents shall be permitted only on a temporary basis.

- Tents or canopies being used in association with this event shall comply with the requirements set forth in NFPA 101 Chapter 11.11 (Tents) Standards for Special Structures and High-Rise Buildings.
 - Tents or canopies cannot be erected more than seventy-two (72) hours prior to the event and must be removed within seventy-two (72) hours after the duration of the event. All tents/canopies must maintain at least two (2) exit ways in an unobstructed fashion to allow for a continuous path of travel.
8. If any outdoor lighting or other structural features are to be installed in association with this event, the event coordinator shall obtain the proper Building Permits from the Community Development Department. Such lighting must be a minimum of twenty (20) foot candles to provide a safe environment at night.
 9. Temporary electrical wiring shall be installed by a certified electrician and shall comply with Article 590 of the current adopted *NFPA #70 National Electrical Code*. This includes (F) Lamp protection. Any temporary lamps shall be protected from accidental contact or breakage by a suitable fixture or lamp holder with a guard.
 10. Fire extinguishers shall be provided as outlined in accordance with the *NFPA #10, Standard for Portable Fire Extinguishers*.
 11. All outdoor cooking equipment involving liquefied petroleum gas and/or storage cylinders shall comply with NFPA #58 Liquefied Petroleum Gas Code and be approved by the Fire Marshal.
 12. All exits and means of egress shall remain accessible and unobstructed and it shall be the responsibility of the event coordinator to maintain access for emergency vehicles.
 13. The event coordinator will be providing 4-6 port-o-let facilities during the event. *A minimum of five percent (5%) of the portable toilets, but no less than one (1) for each sex, shall comply with Section 603 of FBCA as required per Section 213.2 FBCA for handicapped-accessible facilities.*
 14. All areas being used for this special event shall be handicapped-accessible. Handicapped parking is to remain open and accessible for this event.
 15. Tripping hazards shall be removed or isolated from pedestrian traffic. Vehicle areas, including parking, shall be physically separated from pedestrian areas.
 16. If there are calls for police service, or if security threats develop, the Police Department shall require additional officers to provide security for this event. The additional officers will be hired at the expense of the event coordinator at the rate of \$62.00 per hour with a minimum of three hours.
 17. The City's *Code of Ordinances* prohibits the exposure of any sexual organs at commercial establishments that serve alcoholic beverages. Furthermore, *Florida Statutes* prohibit any type of public nudity at such an event.
 18. A temporary sign permit shall be required for signage for this event.
 19. No trees shall be removed, and care shall be taken to protect landscaped areas.

20. The event coordinator shall schedule an inspection online at <https://www.port-orange.org/570/How-to-Schedule-an-Inspection> for any fences or tents larger than 10x10 prior to first day of the event.
21. Repair of any disturbance of public right-of-way shall be the sole responsibility of the event coordinator.
22. The event coordinator shall schedule an inspection online at <https://www.port-orange.org/570/How-to-Schedule-an-Inspection> to ensure all items associated with the event have been removed to include all debris, signs/banners and tents within 72 hours after the event ends.
23. The event coordinator shall comply with the approved maximum capacity occupancy requirements within the confines of the facility.
24. Camping on premises prohibited by code; includes, but not limited to, tents, motor homes, travel trailers, or other vehicles.

Applicant (Print Name)

Applicant Signature



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 2/18/2025

SUBJECT: (F14) Fire Pension Board Member Appointment

DEPARTMENT: City Clerk

GOAL: 6 - Organizational Excellence

RECOMMENDED MOTION: Nomination to appoint one member to the Fire Pension Board for a three-year term.

SUMMARY: Jim Reardon's term on the Fire Pension Board has expired and, after 20 years of service, Mr. Reardon is not seeking to be re-appointed.

The City Clerk has received one (1) new application from Stan Schmidt, which is attached for your review.

Chris Taylor currently serves on this Board and has expressed an interest in switching from the fifth member appointed by the other four board members to serve in the Council appointed position that Mr. Reardon has vacated.

The term is for three (3) years.

There are no additional applications for this Board.

PRESENTER: Amanda Bonin

ATTACHMENTS:

Amanda Bonin
Robin Fenwick
Wayne Clark

Created/Initiated - 2/3/2025
Approved - 2/3/2025
Final Approval - 2/11/2025



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 2/18/2025

SUBJECT: (G15) Second Reading - Ordinance No. 2025-06 - Designating Registered Agent for Service of Process on the City

DEPARTMENT: City Attorney

GOAL: 6 - Organizational Excellence

RECOMMENDED MOTION: To approve Ordinance No. 2025-06 and designate the City Attorney and the City Attorney's Office as the City's Registered Agent for purposes of service of original process.

SUMMARY: The procedure for service of process on local governments is governed by Section 48.111 of the Florida Statutes. This section was amended recently to add additional officials and/or employees that may be served on behalf of the City. This laundry list of officials and employees causes concern in two ways: 1) this requires training for multiple officials and employees on what to do when receiving service of process; and 2) we are unable to predict which official or employee will be served.

In the interest of judicial economy, by designating the City Attorney (and the City Attorney's Office) as its registered agent for purposes of accepting service of original process, the City will have a single point of contact when suits are initiated which will allow for an immediate review and response by the City's legal representative(s) within the established legal deadlines.

PRESENTER: Matthew Jones

ATTACHMENTS:

1.	Ord. No. 2025-06 - Designating CA as Registered Agent	Ord. No. 2025-06 - Designating CA as Registered Agent.docx
2.	Business Impact Estimate - Ordinance 2025-06 Service of Process on the City	Business Impact Estimate - Ordinance 2025-06 Service of Process on the City.pdf

Amanda Bonin

Created/Initiated - 1/31/2025

ORDINANCE NO. 2025-06

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, AMENDING CHAPTER 2, ARTICLE I TO ESTABLISH A NEW SECTION 2-5 DESIGNATING THE CITY ATTORNEY AS THE CITY'S REGISTERED AGENT FOR PURPOSES OF ACCEPTING SERVICE OF ORIGINAL PROCESS; PROVIDING FOR CODIFICATION; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Port Orange is a municipal corporation duly formed and existing under the Florida Constitution and the laws of the State of Florida; and

WHEREAS, the City of Port Orange has authority to exercise broad municipal home rule powers under Section 2, Article VIII, Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, as a municipal corporation and subdivision of the State of Florida, the City of Port Orange may sue and be sued; and

WHEREAS, a civil action is ordinarily commenced when a complaint or petition is filed in a court having jurisdiction over the parties and the subject matter of the dispute; and

WHEREAS, § 48.111 of the Florida Statutes prescribes the procedures and order by which service of original process (i.e. service of a summons and copy of the initial pleading or petition) shall be made on a municipal corporation; and

WHEREAS, circumstances routinely arise where it is impossible or impractical to serve original process on the city's elected officials; and

WHEREAS, in the interest of judicial economy, the city council hereby determines that the City Attorney or any employee within the City Attorney's Office should serve as its registered agent for purposes of accepting service of process; and

WHEREAS, for purposes of this Ordinance, text with underlined (underlined) type shall constitute additions to the original text and text with strike-through (~~strike-through~~) type shall constitute deletions to the original text;

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

SECTION 1. The City Council of the City of Port Orange, Florida hereby establishes Chapter 2, Article I, Section 2-5 of the Code of Ordinances to read as follows:

Sec. 2-5. – Registered agent.

In accordance with § 48.111 of the Florida Statutes related to service of process on public agencies, the city hereby designates its city attorney, and in his/her absence, any employee in the city attorney's office, as its registered agent to accept service of original process (i.e. service of a summons and copy of initial pleading or petition) in any civil action filed against the city.

SECTION 2. The provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of Port Orange, and the Sections of this Ordinance may be renumbered or re-lettered to accomplish such intention. The Code codifier is granted liberal authority to codify the provisions of this Ordinance.

SECTION 3. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

SECTION 4. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared severable.

SECTION 5. This ordinance shall become effective immediately upon final passage by the City Council.

MAYOR SCOTT STILTNER

ATTEST:

Robin L. Fenwick, MMC, City Clerk

Passed on first reading on the day of _____, 2025

Passed and adopted on second and final reading on the day of _____, 2025

Reviewed and Approved: _____
Matthew Jones, City Attorney

[CA-8591]



Business Impact Estimate

This form should be included in agenda packet for the item under which the proposed ordinance is to be considered, and must be posted on the City's website by the time notice of the proposed ordinance is published.

Proposed ordinance's title/reference:

Ordinance No. 2025-06 – Service of Process on the City

This Business Impact Estimate is provided in accordance with Section 166.041(4), Florida Statutes. If one or more boxes are checked below, this means the City is of the view that a business impact estimate is **not** required by state law¹ for the proposed ordinance, but the City is implementing the procedure required by statutory law to ensure that no inadvertent procedural issue could impact the enactment of the proposed ordinance. This Business Impact Estimate may be revised following its initial posting.

- ☐ The proposed ordinance is required for compliance with Federal or State law or regulation;
- ☐ The proposed ordinance relates to the issuance or refinancing of debt;
- ☐ The proposed ordinance relates to the adoption of budgets or budget amendments, including revenue sources necessary to fund the budget;
- ☐ The proposed ordinance is required to implement a contract or an agreement, including, but not limited to, any Federal, State, local, or private grant, or other financial assistance accepted by the municipal government;
- ☐ The proposed ordinance is an emergency ordinance;
- ☐ The ordinance relates to procurement; or
- ☐ The proposed ordinance is enacted to implement the following:
 - a. Development orders, and development permits, as those terms are defined in s. 163.3164; and development agreements as authorized by the Florida Local Government Development Agreement Act under ss. 163.3220-163.3243;
 - b. Comprehensive plan amendments and land development regulation amendments initiated by an application by a private party other than the municipality;
 - c. Sections 190.005 and 190.046, *Florida Statutes*, regarding community development districts;
 - d. Section 553.73, *Florida Statutes*, relating to the *Florida Building Code*; or
 - e. Section 633.202, *Florida Statutes*, relating to the *Florida Fire Prevention Code*.

¹ See Section 166.041(4)(c), Florida Statutes.

In accordance with the provisions of controlling law, even notwithstanding the fact that, an exemption noted above may apply, the City hereby publishes the following information:

1. Summary of the proposed ordinance (must include statement of the public purpose, such as serving the public health, safety, morals, and welfare):

The proposed amendment to the Code of Ordinances amends Chapter 2, adding a new Section 2-5, to establish the manner by which service of legal process may be effectuated on the City of Port Orange.

The proposed Ordinance 2025-06 serves the public health, safety, morals, and welfare of the municipality by promoting judicial economy and optimizing operations for the City of Port Orange and its citizens, thru streamlining the service of legal process against the City of Port Orange.

2. An estimate of the direct economic impact of the proposed ordinance on private, for-profit businesses in the City, if any:

(a) An estimate of direct compliance costs that businesses may reasonably incur:
No direct compliance costs to businesses are estimated by Ordinance 2025-06.

(b) Any new charge or fee imposed by the proposed ordinance or for which businesses will be financially responsible:
N/A

(c) An estimate of the City's regulatory costs, including estimated revenues from any new charges or fees to cover such costs:
No new regulatory costs are anticipated. No new charges or fees are anticipated to business owners.

3. Good faith estimate of the number of businesses likely to be impacted by the proposed ordinance:

No businesses are estimated to be impacted by Ordinance 2025-06.

4. Additional information the governing body deems useful² (if any):

² You may wish to include in this section the methodology or data used to prepare the Business Impact Estimate. For example: City staff solicited comments from businesses in the City as to the potential impact of the proposed ordinance by contacting the local Chamber of Commerce, social media posting, direct mail or direct email, posting on City website, public workshop, etc. You may also wish to include efforts made to reduce the potential fiscal impact on businesses. You may also wish to state here that the proposed ordinance is a generally applicable



ordinance that applies to all persons similarly situated (individuals as well as businesses) and, therefore, the proposed ordinance does not affect only businesses.



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 2/18/2025

SUBJECT: (G16) First Reading - Ordinance No. 2025-07 - Amending Chapter 74 - Utilities, Article VIII. Cross Connection Control of the City of Port Orange Code of Ordinances

DEPARTMENT: Public Utilities

GOAL: 1 - Public Safety 6 - Organizational Excellence

RECOMMENDED MOTION: Move to approve Ordinance No. 2025-07 amending Chapter 74 - Utilities, Article VIII. Cross Connection Control of the City of Port Orange Code of Ordinances.

SUMMARY: Cross connection control is the practice of preventing contaminants from entering a drinking water supply by isolating or removing connections between drinking water systems and other liquids or gases that could contaminate the water. It is also known as backflow prevention. The purpose of backflow prevention is to protect the public water system from the possibility of contamination or pollution by isolating actual or potential hazards using approved backflow prevention methods. Florida statutes require community water systems to provide this protection. The City does this through language in the Code of Ordinances, and more specifically with the Manual for Cross Connection Control. The City's current Manual for Cross Connection was last updated in 2010 and updates are required to ensure it aligns with current regulations, and best practices.

As a condition of continuing water service, all water service customers are required to provide the City access to their properties and facilities for determining compliance with the requirements of these regulations. Such access must be unobstructed, safely accessible and made available during normal business hours.

Changes to the Code of Ordinance include:

- Updated language to reference the most recently approved American Water Works Association's document "M14 Backflow Prevention and Cross-Connection Control": Recommended Practices.
- Residential backflow testing frequency reduced to every two years instead of annually in accordance with Florida Administrative Code 62-555-.360.
- Updated approved backflow devices to include double check backflow prevention assembly.
- Providing for the immediate disconnection from water service of prohibited cross connections

-
- Providing for additional circumstances that require cross connections controls for properties having an auxiliary water source, storage tank, or any other situation deemed hazardous for the potable water supply.

Changes to the Manual for Cross Connection Control include:

- Administrative clean-up of clerical errors and duplication of information within the Manual.
- Update language to reference the most recently approved M14 Backflow Prevention and Cross-Connection Control: Recommended Practices.
- Residential backflow testing frequency reduced to every two years instead of annually in accordance with Florida Administrative Code 62-555-.360.
- Updated approved backflow devices to include double check backflow prevention assembly.
- Digital reporting requirements for backflow testing companies.
- Written permission required for the City or contractor to test a device located on residential private property. This refers to a pressure vacuum breaker located on an irrigation system that is located outside the right-of-way and is owned by the resident.
- Clarification for Commercial and Residential maintenance, testing and inspection of devices.

PRESENTER: Steve Parnell

ATTACHMENTS:

1.	Ordinance No. 2025-07 - Cross Connection Control FINAL-MJ	Ordinance No. 2025-07 - Cross Connection Control FINAL-MJ.docx
2.	Business Impact Estimate - Cross Connection	Business Impact Estimate - Cross Connection.pdf
3.	Port Orange CCC Manual 2025 FINAL2.13.25	Port Orange CCC Manual 2025 FINAL2.13.25.pdf

Steve Parnell	Created/Initiated - 1/31/2025
Chris Wall	Approved - 2/3/2025
Steve Parnell	Approved - 2/3/2025
Wayne Clark	Approved - 2/6/2025
Matthew Jones	Approved - 2/13/2025
Wayne Clark	New -

ORDINANCE NO. 2025-07

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, AMENDING CHAPTER 74, ARTICLE VIII, CROSS CONNECTION CONTROL, SECTION 74-241 TO UPDATE REFERENCES TO THE REVISED CROSS CONNECTION CONTROL MANUAL; AMENDING SECTION 74-242 TO UPDATE REFERENCES TO THE FLORIDA ADMINISTRATIVE CODE AND PROVIDING FOR THE IMMEDIATE DISCONNECTION OF PROHIBITED CROSS CONNECTIONS; AMENDING SECTION 74-243 TO UPDATE REFERENCES TO THE CURRENT VERSION OF THE AMERICAN WATER WORKS ASSOCIATION MANUAL; AMENDING SECTION 74-247 ADDING TO THE LIST OF CONDITIONS THAT REQUIRE CROSS CONTROL PROTECTIONS; AMENDING SECTIONS 74-248 AND 74-249 UPDATING REFERENCES TO THE REVISED CROSS CONNECTION CONTROL MANUAL ALONG WITH ESTABLISHING THE FREQUENCY OF MAINTENANCE, TESTING AND INSPECTIONS; AMENDING SECTION 74-252 UPDATING REFERENCES TO THE CROSS CONNECTION CONTROL ORDINANCE; PROVIDING FOR CODIFICATION; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council previously approved Ordinance 2010-10 adopting the 2010 City of Port Orange Manual of Cross-Connection Control; and

WHEREAS, the City Council has determined that, in order to ensure that the Code of Ordinances of the City of Port Orange adopts and utilizes the most up-to-date regulations regarding cross connection control, it is appropriate to update said Manual and adopt a revised 2025 City of Port Orange Manual of Cross-Connection Control to replace the City's 2010 City of Port Orange Manual of Cross-Connection Control; and

WHEREAS, the City desires to update its Code of Ordinances and update other language and references related to the cross connection control; and

WHEREAS, for purposes of this Ordinance, text with underlined (underlined) type shall constitute additions to the original text and text with strike-through (~~strike-through~~) type shall constitute deletions to the original text;

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

SECTION 1. The City Council hereby amends Chapter 74, Article VIII of the Code of Ordinances, City of Port Orange, Florida to read as follows:

Sec. 74-241. Adoption of manual.

The city hereby adopts and incorporates into the Code of Ordinances the ~~2025~~⁴⁰ City of Port Orange Manual of Cross eConnection Control, attached as appendix "A" to this article. A property owner and customer shall be jointly and severally liable for compliance with this article ~~and for utilizing the forms approved by the public utilities director for the administration of this article.~~

Sec. 74-242. Cross connection prohibited; penalties.

Cross connection shall be prohibited, ~~as defined by Rule 62-550.200(22), Florida Administrative Code, as amended from time to time.~~ Cross connection shall have the same meaning as set forth in Rule 62-550.200 of the Florida Administrative Code, as may be amended. Any person making, or allowing to be made, such cross connection to the city water system shall be subject to immediate disconnection from the city water system in addition to the penalties of section 1-8 of this Code, special magistrate orders, and/or such other penalties as provided by law.

Sec. 74-243. Cross connection control program.

The city manager or his designee shall develop a ~~routine~~ cross connection control program to detect and prevent cross connections that create or may create an imminent and substantial danger to public health. The city manager or his designee shall utilize the accepted practices of ~~the~~ as set forth in the most recent edition of the American Water Works Association Manual, 2004 Edition, as amended from time to time, and as set forth in the ~~association's~~ American Water Works Association Manual M14.

[No changes to Sections 74-244, 74-245 and 74-246.]

Sec. 74-247. Existing and new residential and commercial development.

- (a) The owner and customer shall install backflow prevention devices acceptable to FDEP and in conformance with the ~~2025~~¹⁰ City of Port Orange Manual of Cross Connection Control, as follows:
- (1) On all existing and new commercial connections to the city's potable water system;
 - (2) On all existing and new residential connections to the city's potable water system, where any of the following conditions exist:
 - a. A reclaimed water system;
 - b. A fire protection system;
 - c. An internal cross connection is present and cannot be eliminated;
 - d. A multi-story building with 5 or more levels (including elevated facilities above carports/garages);
 - e. A booster pump or elevated storage tank connected to the water service or plumbing;
 - f. An irrigation system connection;
 - g. An auxiliary water supply connection;
 - ~~e-h.~~ A commercial or home-based business which is or may be a potential hazard to the potable water system;
 - ~~d-i~~ A separate source of water (e.g. private well, lake, pond or stream);
 - any condition described in Rule 62-555.360 of the Florida Administrative Code, as may be amended; or
 - ~~e-j.~~ Other hazards to the city potable water supply.
- (b) All installations shall be performed by a properly licensed plumbing contractor at the location approved by the public utilities director or his designee. After installation, all backflow prevention devices shall be tested by a certified backflow prevention tester licensed to operate within the city or within the governmental entity where the property is located, with the exception of a fire protection system. Anyone performing any work on a fire protection system, including installation, testing, maintenance or repair, must be a certified fire protection contractor I, II or IV, pursuant to F.S. § 633.521, and licensed within the governmental entity jurisdiction where the property is located. ~~Thereafter, the device shall be tested annually in accordance with section 74-249.~~

Sec. 74-248. Irrigation systems, existing and new.

- (a) Backflow prevention devices acceptable to FDEP and in conformance with the ~~2025~~¹⁰ City of Port Orange Manual of Cross Connection Control shall be installed by a licensed plumbing contractor under a plumbing permit issued for construction and connection of a new or existing irrigation system to the city's potable water system. Such device shall be installed within five feet and on the customer side of the potable water meter, or, if physically unable to be placed within five feet of the potable water meter, in a place determined by the city manager or his designee.

- ~~(b) Backflow prevention devices acceptable to FDEP and in conformance with the 2010 City of Port Orange Manual of Cross Connection Control shall be installed on existing irrigation system connections to the city's potable water system by a licensed plumbing contractor within five feet and on the customer side of the potable water meter.~~
- (cb) Upon installation of a backflow prevention device to a new or existing irrigation system, the device shall be tested by a certified backflow prevention tester licensed to operate within the city or within the governmental entity where the property is located. ~~Thereafter, the device shall be tested annually in accordance with section 74-249.~~

Sec. 74-249. Maintenance, testing and inspection of backflow prevention devices.

- (a) Each commercial property owner and customer required to have a backflow prevention device shall be responsible for having the device inspected and tested annually by a certified backflow prevention device tester, with the customer and owner jointly and severally responsible for paying the cost of inspection and testing of all backflow prevention devices installed on the property. The inspection and testing requirement shall be every two years for residential water service connections if the dwelling, or building within which the dwelling is located, is fewer than five stories in height and there is no booster pump serving, or within, the premise. Backflow prevention devices on domestic or irrigation water lines may only be inspected by a licensed plumbing contractor or a certified backflow inspector working under the direct supervision of a licensed plumbing contractor, except for inspections conducted on behalf of the city by certified backflow inspectors employed by the city. Backflow prevention devices on fire protection systems may only be inspected and tested by a certified fire protection contractor, pursuant to F.S. § 633.216.
- (b) Any such backflow device tester shall have attended and successfully completed one or more of the following certification programs: Training, Research and Education for Environmental Occupations (TREEO) certification program for backflow prevention device testers, Florida Water and Pollution Control Operators Association Backflow Tester Certification, or the Division of the State Fire Marshal Bureau of Standards and Training Certified Fire Service Backflow Testing Program, and shall keep current and keep on file with the public utilities department a copy of such certificate.
- (c) Each owner and customer shall be jointly and severally responsible for the inspection and maintenance of their own backflow prevention device(s), shall file each year with the city manager or his designee a statement or test certification from a certified tester that each device has been inspected and that it is working properly, except as otherwise provided in subsection (d) below. Such statement shall be filed no later than two~~one~~ years from the date of filing the previous statement. In the event the property owner and customer fail to comply with this section, the public utilities director shall be authorized to take remedial action pursuant to section 74-245, including, but not limited to, immediate disconnection of the premises from the city water system until such time as the required statement or test certification is provided. If a statement or test certification is not received from the owner or the customer on or before the required date, a notice will be sent to the owner and the

customer by the city allowing a reasonable time for the inspection and test certification of the device to be completed. If no inspection or service documentation has been received by the city from the owner or the customer after the time set for such inspection and testing, the city shall be authorized to take remedial action pursuant to section 74-245, including, but not limited to, immediate disconnection of service to the premises from the city water system until such time as an inspection or test certification is properly filed.

- (d) For single-family residential structures, the city or its contractor shall test those required backflow prevention devices which are located within a utility easement or public right-of-way ~~on an annual basis~~ every two years in accordance with the city's Cross Connection Control Manual, and shall repair or replace those backflow prevention devices, as needed. The city shall retain all test certifications for each device in accordance with the appropriate retention schedule for public records. A monthly charge, as established by resolution of city council, shall be imposed on each customer with a single-family residence so served to cover the costs of inspection, repair and replacement of the required backflow prevention device.

[No changes to Sections 74-250 and 74-251.]

Sec. 74-252. Enforcement for other jurisdictions.

Other jurisdictions supplied with potable water from the Port Orange Water System, including, but not limited to, Daytona Beach Shores, the Town of Ponce Inlet and Volusia County, shall adopt, implement, administer and enforce an ordinance of equal dignity with ~~Ordinance No. 2010-10~~ this article, as amended within their respective jurisdictions. In the event another jurisdiction supplied with potable water from the Port Orange Water System fails to adopt, implement, administer and enforce an ordinance of equal dignity with ~~Ordinance No. 2010-10~~ this article, as amended, the city shall be authorized to undertake remedial action as provided by law.

Secs. 74-253—74-270. Reserved.

SECTION 2. The provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of Port Orange, and the Sections of this Ordinance may be renumbered or re-lettered to accomplish such intention. The Code codifier is granted liberal authority to codify the provisions of this Ordinance. The 2025 Cross Connection Control Manual, attached hereto as Exhibit “A”, will not be codified, but will be on file in the City Clerk’s Office and available upon request.

SECTION 3. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

SECTION 4. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared severable.

SECTION 5. This ordinance shall become effective immediately upon final passage by the City Council.

MAYOR SCOTT STILTNER

ATTEST:

Robin L. Fenwick, MMC, City Clerk

Passed on first reading on the day of _____, 2025

Passed and adopted on second and final reading on the day of _____, 2025

Reviewed and Approved: _____
Matthew Jones, City Attorney

[CA-7742]



Business Impact Estimate

This form should be included in agenda packet for the item under which the proposed ordinance is to be considered, and must be posted on the City's website by the time notice of the proposed ordinance is published.

Proposed ordinance's title/reference:

Ordinance No. 2025-07 – Amending Chapter 74 - Utilities, Article VIII. Cross Connection Control of the City of Port Orange Code of Ordinances

This Business Impact Estimate is provided in accordance with Section 166.041(4), Florida Statutes. If one or more boxes are checked below, this means the City is of the view that a business impact estimate is **not** required by state law¹ for the proposed ordinance, but the City is implementing the procedure required by statutory law to ensure that no inadvertent procedural issue could impact the enactment of the proposed ordinance. This Business Impact Estimate may be revised following its initial posting.

- ☐ The proposed ordinance is required for compliance with Federal or State law or regulation;
- ☐ The proposed ordinance relates to the issuance or refinancing of debt;
- ☐ The proposed ordinance relates to the adoption of budgets or budget amendments, including revenue sources necessary to fund the budget;
- ☐ The proposed ordinance is required to implement a contract or an agreement, including, but not limited to, any Federal, State, local, or private grant, or other financial assistance accepted by the municipal government;
- ☐ The proposed ordinance is an emergency ordinance;
- ☐ The ordinance relates to procurement; or
- ☐ The proposed ordinance is enacted to implement the following:
 - a. Development orders, and development permits, as those terms are defined in s. 163.3164; and development agreements as authorized by the Florida Local Government Development Agreement Act under ss. 163.3220-163.3243;
 - b. Comprehensive plan amendments and land development regulation amendments initiated by an application by a private party other than the municipality;
 - c. Sections 190.005 and 190.046, *Florida Statutes*, regarding community development districts;
 - d. Section 553.73, *Florida Statutes*, relating to the *Florida Building Code*; or
 - e. Section 633.202, *Florida Statutes*, relating to the *Florida Fire Prevention Code*.

¹ See Section 166.041(4)(c), Florida Statutes.

In accordance with the provisions of controlling law, even notwithstanding the fact that, an exemption noted above may apply, the City hereby publishes the following information:

1. Summary of the proposed ordinance (must include statement of the public purpose, such as serving the public health, safety, morals, and welfare):

The proposed amendment to the Code of Ordinances amends Chapter 74, Sections 74-241 through 74-252, by adopting a new 2025 City of Port Orange Manual of Cross Connection Control and updating other references and language regarding the City's cross connection control.

The proposed Ordinance 2025-07 serves the public health, safety, morals, and welfare of the municipality by adopting the most up-to-date regulations regarding cross connection control which serve to protect the City's water system.

2. An estimate of the direct economic impact of the proposed ordinance on private, for-profit businesses in the City, if any:

(a) An estimate of direct compliance costs that businesses may reasonably incur:
No direct compliance costs to businesses are estimated by Ordinance 2025-07.

(b) Any new charge or fee imposed by the proposed ordinance or for which businesses will be financially responsible:
N/A

(c) An estimate of the City's regulatory costs, including estimated revenues from any new charges or fees to cover such costs:
No new regulatory costs are anticipated. No new charges or fees are anticipated to business owners.

3. Good faith estimate of the number of businesses likely to be impacted by the proposed ordinance:

No businesses are estimated to be impacted by Ordinance 2025-07.

4. Additional information the governing body deems useful² (if any):

² You may wish to include in this section the methodology or data used to prepare the Business Impact Estimate. For example: City staff solicited comments from businesses in the City as to the potential impact of the proposed ordinance by contacting the local Chamber of Commerce, social media posting, direct mail or direct email, posting on City website, public workshop, etc. You may also wish to include efforts made to reduce the potential fiscal impact on businesses. You may also wish to state here that the proposed ordinance is a generally applicable



ordinance that applies to all persons similarly situated (individuals as well as businesses) and, therefore, the proposed ordinance does not affect only businesses.



Manual of Cross-Connection Control

2025 Update

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Section 1 – General Policy

1.1 Purpose

To protect the public water system from the possibility of contamination or pollution by isolating actual or potential hazards using approved backflow prevention methods.

To promote the elimination or control of existing cross-connections, actual or potential, with a customer's water system, non-potable water system, plumbing fixtures, and industrial piping systems.

To provide for a continuing program of cross-connection control that will prevent the contamination or pollution of the public water system.

1.2 Application

These Rules and Regulations shall apply to all properties and areas served by the City of Port Orange's public water system, whether inside or outside City limits.

1.3 Water System/Point of Delivery

For the purposes of these Rules and Regulations, the water system shall consist of two parts, the public water system and the customer's water system. The public water system shall consist of all source, treatment, storage, distribution, and metering facilities under the control of the City of Port Orange. The customer's water system shall include all components and facilities downstream of the point at which the City of Port Orange's jurisdiction over the sanitary control of the public water system ends and the customer's responsibility for operation and maintenance begins. When a water meter is installed at this point, the customer's water system shall mean the components and facilities beyond the downstream side of the meter setting used to convey water from the public water system to the points of use, typically at the customer's isolation valve. The point at which the public water system ends, and the customer's water system begins, shall hereinafter be referred to as the Point of Delivery.

1.4 Responsibility

The City of Port Orange, as the purveyor of potable water, shall be responsible for the protection of the public water system from contamination or pollution due to the backflow (back-pressure or back-siphonage) of contaminants or pollutants through a customer's water system.

1.5 Authority

This Policy implements the provisions of Rule 62-555.360 of the Florida Administrative Code (FAC), promulgated under the authority of Part VI of Chapter 403, Florida Statutes by the Department of Environmental Protection, which requires public water systems to establish a cross-connection control program to detect and prevent cross-connections that create or may create an imminent and substantial danger to public health. Rule 62-555.360(2), FAC states, "Each community water system (CWS) shall establish and implement a cross-connection

control program utilizing backflow protection at or for service connection from the CWS to protect the CWS from contamination caused by cross-connections on customers' premises."

The City of Port Orange Public Utilities Director or designee to serve as an Authorized Agent(s) for the Cross-Connection Control Program. Said designee(s) shall be trained in accordance with accepted industry practices to identify hazards, actual or potential, with a customer's water system, non-potable water system, plumbing fixtures, and industrial or process piping systems and shall have the authority to require a customer to install, test, and repair or replace an approved backflow prevention assembly suitable for the customer's water system for the purpose of adequately protecting the public water system.

As a condition of continuing water service, all water service customers shall provide the City access to their properties and facilities for determining compliance with the requirements of these Rules and Regulations. Such access shall be unobstructed, safely accessible and made available during normal business hours.

[END OF SECTION 1]

Section 2 – Definitions

For purposes of these Rules and Regulations, the following definitions shall apply unless the context clearly indicates or requires a different meaning. If a word or term used in these Rules and Regulations is not contained in the following list, its definition, or other technical terms used, shall have the meanings or definitions listed in the most recent edition of the American Water Works Association Manual M14, Recommended Practice for Backflow Prevention and Cross-Connection Control.

APPROVED – Accepted by the City of Port Orange - Cross-Connection Control Program. Or, as it relates to a backflow prevention assembly, APPROVED shall mean having received full acceptance and approval in both field and laboratory testing by the Foundation for Cross-Connection Control and Hydraulic Research at the University of Southern California.

ASSEMBLY – An assembly of one or more approved body components and including approved shutoff valves.

AUTHORIZED AGENT – An employee of the City of Port Orange who has been trained in accordance with accepted industry practices to identify hazards, actual or potential, with a customer's water system, non-potable water system, plumbing fixtures, and industrial or process piping systems; whose primary job duties are to protect the public water system by eliminating existing and potential cross-connections and backflow hazards through the enforcement of these Rules and Regulations; and with the authority to require a customer install, test, and repair or replace an approved backflow prevention assembly for the purpose of adequately protecting the public water system.

AUXILIARY WATER SUPPLY – Any water supply on, or available to the premises, other than water supplied from the City of Port Orange's public water system. Auxiliary water supplies may include, but not be limited to wells or water from another purveyor's public or private potable water system. These auxiliary waters may be contaminated or polluted, or they may be objectionable and constitute an unacceptable water source over which the water purveyor does not have sanitary control.

BACKFLOW – The undesirable reversal of flow in a potable water distribution system resulting from a cross-connection with an auxiliary water supply or unacceptable water source over which the purveyor does not have sanitary control.

BACK PRESSURE – A pressure, higher than the public potable water supply pressure, caused by a pump, elevated tank, boiler, or any other means that may cause backflow.

BACK SIPHONAGE – Backflow caused by negative or reduced pressure in the public water system piping.

BACKFLOW PREVENTER (ALSO BACKFLOW PREVENTION ASSEMBLY OR BACKFLOW ASSEMBLY) – An assembly, device, or method that prohibits flow of fluid back into a potable water system. The type of backflow preventer used shall be based on the degree of hazard, either existing or potential.

Air Gap (AG) – The unobstructed vertical distance through free atmosphere between the lowest effective opening from any pipe or faucet conveying water or waste to a tank, plumbing fixture, receptor, or other assembly and the flood rim of the receptacle. These vertical, physical separations must be at least twice the effective opening of the water supply outlet and never less than 1 inch above the receiving vessel flood rim.

Double Check Valve Backflow Prevention Assembly (DC) – A complete assembly consisting of two internally spring-loaded, independently operating check valves located between two tightly closing resilient-seated shut-off valves and with four properly placed resilient-seated test cocks for testing the water tightness of each check valve. This assembly shall only be used to protect against non-health (low) hazards.

Double Check Detector Backflow Prevention Assembly (DCDA) – A specially designed backflow assembly composed of a line-sized approved double check valve assembly with a bypass connection containing a specific water meter and an approved double check valve assembly. The bypass meter shall be capable of accurately registering very low flow rates (up to 3 gpm) and shall show a registration for all flow rates. This assembly shall only be used to protect against non-health (low) hazards.

Dual Check (DuC) – A device containing two internally spring-loaded, independently acting check valves, excluding shut-off valves and test cocks which cannot be tested in-line. These devices will be replaced every 7 years per the manufacture’s recommendation.

Pressure Vacuum Breaker Assembly (PVB) – An assembly containing an independently operating check valve and an internally spring-loaded, independently operating air inlet valve located on the discharge side of the check valve, and which is equipped with properly placed resilient-seated test cocks and tightly closing resilient-seated shut-off valves located at each end of the assembly designed to be operated under pressure for prolonged periods of time to prevent back siphonage. The assembly may not be subjected to any back pressure.

Reduced Pressure Principle (Zone) Backflow Prevention Assembly (RP) – A complete assembly consisting of a mechanical, independently acting, hydraulically dependent relief valve, located between two internally spring-loaded, independently operating check valves, located between two tightly-closing resilient-seated shut-off valves and with four properly placed resilient-seated test cocks for testing the water tightness of each check valve. This assembly shall be used to protect against health (high) hazards.

Reduced Pressure Principle Detector Backflow Prevention Assembly (RPDA) – A specially designed backflow assembly composed of a line-sized approved reduced pressure principle assembly, with a bypass connection containing a specific water meter and an approved reduced pressure principle assembly. The bypass meter shall be capable of accurately registering very low flow rates (up to 3 gpm) and shall show a registration for all flow rates. This assembly shall be used to protect against both non-health (low) and health (high) hazards.

BRANCH WATER SERVICE (also BRANCH SERVICE) – Multiple water services split from a single connection to the public water system. Branch services are typically (but not exclusively) a combination of domestic water service and irrigation and/or fire service connections.

CITY – City of Port Orange.

CONTAMINATION – A change or impairment of the quality of water in the public water system by the introduction or admission of any foreign substance that degrades the water quality or creates an actual or potential health hazard.

CROSS-CONNECTION – A connection, actual or potential, between any part of the public water system and any other environment containing “other substances” in a manner that, under any circumstances, would

allow such substances to enter the public water system. “Other substances” may be gases, liquids, or solids, such as chemicals, waste products, steam, water from other sources (potable or non-potable), or any matter that may change the physical characteristics of the water. Bypass arrangements, jumper connections, removable sections, swivel or changeover assemblies through which, or because of which, backflow could occur are considered to be cross-connections.

CUSTOMER VALVE – The water service isolation valve, generally included as part of the metering assembly, that is downstream and adjacent to the water meter assembly, and that serves as the customer’s point of delivery and the termination point of the City of Port Orange’s public water system.

DOMESTIC WATER SERVICE (also DOMESTIC SERVICE) – The water system connection serving a property, facility or area conveying potable water for the purpose of human consumption and supplying common use facility plumbing fixtures (toilets, lavatories, dishwashers, clothes washers, etc.).

FIRE PROTECTION WATER SERVICE (also FIRE SERVICE) – The water system connection serving a property, facility, or area conveying potable or non-potable water for the purpose of providing fire protection or supporting fire suppression systems (fire sprinklers, standpipes, hydrants, etc.). All water supplied through a fire service is considered non-potable, regardless of the source water designation.

HAZARD, DEGREE OF – The term is derived from an evaluation of the potential risk to public health and the potential adverse effect of the hazard upon the public water system. The evaluation of the degree of hazard shall be determined by the City of Port Orange’s Authorized Agent(s).

HAZARD, HEALTH (HIGH) – A cross-connection, or potential cross-connection, involving any substance that could, if introduced in the public water system, cause death or illness, spread disease, or have a high probability of causing such effects.

HAZARD, NON-HEALTH (LOW) – A cross-connection, or potential cross-connection, involving any substance that generally would not be a health hazard but would constitute a nuisance or be aesthetically objectionable, if introduced into the public water system.

INDUSTRIAL FLUIDS SYSTEM – Any system containing fluid or solution, including all pipes, conduits, tanks, receptacles, fixtures, equipment and appurtenances to produce, convey, or store substances that may be chemically, biologically, or otherwise contaminated or polluted in a form or concentration, such as would constitute a health hazard or a non-health hazard, if introduced into a public water system. Industrial fluids may include, but not be limited to, polluted or contaminated waters; all types of processed water and “used water” originating from the public water system which may have deteriorated in sanitary quality; chemicals in fluid form; plating acids or alkalis; circulated cooling waters connected to a cooling tower that is chemically or biologically treated or stabilized; contaminated natural waters such as from wells, springs, streams, rivers, irrigation canals, or other systems; oils, gases, paraffins, caustic and acid solutions; and other liquids and gaseous fluids used in industrial processes or for fire-fighting purposes.

IRRIGATION SYSTEM – A pressurized system of piping which allows water to be applied to land or soils by means of a permanent above-ground or subsurface drip system, sprinkler, or micro-sprinkler equipment.

IRRIGATION WATER SERVICE (also IRRIGATION SERVICE) – The water system connection serving a property, facility, or area conveying potable or non-potable water for the purpose of supplying an irrigation system.

All water supplied through an irrigation water service is considered non-potable, regardless of the source water designation.

LICENSED PLUMBER (also PLUMBING CONTRACTOR) – An individual that has satisfied, and continues to maintain, the licensing requirements of the Florida Department of Professional Regulation Construction Industry Licensing Board for certification as a Plumbing Contractor.

NON-POTABLE WATER – Water that is not intended for, or not safe for, human consumption as determined by the jurisdictional regulatory authority.

NON-RESIDENTIAL SERVICE CONNECTION – Any water service connection that is greater than two inches in diameter or that supplies water to a building or premise containing commercial, industrial, or other non-dwelling units. See RESIDENTIAL definition.

POLLUTION – Any substance that generally would not be a health hazard but would constitute a nuisance or be aesthetically objectionable if introduced into the public water system.

POTABLE WATER – Water that is safe for human consumption as determined by the jurisdictional regulatory authority.

PUBLIC WATER SYSTEM (PWS) – The water source(s), pumping, and treatment facilities; potable water distribution piping network and storage facilities; and water service piping up to, and including, the metering assembly that are under the control of the City of Port Orange. Water service piping downstream of the metering assembly (customer valve), including the backflow assembly, is not part of the public water system.

REGULATED – As related to Public Water Systems (PWS), a potable water system that is permitted under the authority and jurisdiction of the Florida Department of Environmental Protection (DEP) or the Florida Department of Health (DOH) and that is routinely monitored and reported for water quality to ensure drinking water standards are met. See UNREGULATED definition.

RESIDENTIAL SERVICE CONNECTION – Any water service connection that is two inches or less in diameter and that supplies water to a building or premise containing only dwelling units. Non-residential service connection means any other service connection.

TESTER (also REGISTERED TESTER) – Any person or business (including a licensed plumber) that (1) has received proper training and certification for backflow assembly testing as required herein, (2) has filed a Backflow Assembly Tester Registration Application with the City, (3) meets the City's requirements to perform backflow testing, and (4) has not had City registration suspended or terminated for the violations cited herein.

UNACCEPTABLE WATER SOURCE – Any source of water, including any natural source(s) such as a lake, spring, stream, river, etc.; or any man-made source(s) such as a well, landscape pond, or swimming pool; or any stored source(s) such as "used waters" or "industrial fluids" for which the City of Port Orange does NOT have sanitary control. These unacceptable waters may be contaminated, polluted, or objectionable.

UNREGULATED – As related to Auxiliary Water Supplies, a water supply or system that is not permitted under the authority and jurisdiction of the Florida Department of Environmental Protection (DEP) or the

Florida Department of Health (DOH) and that is not routinely monitored and reported for water quality to ensure drinking water standards are met.

USED WATER(S) – Any water supplied by a water purveyor from a public water system to a customer’s water system after it has passed through the point of delivery and is no longer under the sanitary control of the water purveyor.

VENDOR(S) – Any registered tester or licensed plumber certified to perform backflow testing at the request of the City or on behalf of a City water customer; or any licensed plumber performing replacement, repair, or maintenance at the request of the City or on behalf of a City water customer.

WATER PURVEYOR – The owner or operator of a public or private potable water system. As used herein, the terms “water purveyor” and “City” or “City of Port Orange” may be used synonymously.

WATER SERVICE CONNECTION – Also known as the “Point of Delivery,” this is the point at which the water purveyor’s jurisdiction over the sanitary control of the public water system ends and the customer’s responsibility for operation and maintenance begins. When a water meter is installed at the water service connection, the water service connection shall mean the downstream end of the meter setting, typically at the customer’s isolation valve. Water service connections shall also include water service connections from a piped fire line system, fire hydrant, and all other temporary or emergency water service connections from the public water system.

[END OF SECTION 2]

Section 3 – Backflow Prevention Assembly Requirements

3.1 Water Service Connections

No water service connection to any premise, facility, or area shall be installed or maintained unless the public water system is protected from contamination, actual or potential, as required by State and local rules and regulations and these Rules and Regulations for Backflow Prevention and Cross-Connection Control.

3.2 Degree of Hazard

3.2.1 Health (High) Hazard – All new potable water service connections capable of creating a health (high) hazard per AWWA Manual M14, or as determined by the City, shall be installed with an approved reduced pressure principle backflow prevention assembly (RP) prior to receiving water service. Existing potable water service connections with health (high) hazard, or any change in use of an existing water service which has the potential to create a health (high) hazard, shall require the installation of an approved RP.

3.2.2 Non-Health (Low) Hazard – All new non-health (low) hazard potable water service connections shall be installed with an approved double check valve backflow prevention assembly (DC) prior to receiving water service. Existing potable water service connections with non-health (low) hazard, or any change in use of an existing water service which has the potential to create a non-health (low) hazard, shall require the installation of an approved DC.

3.3 Backflow Prevention Assembly Installation Applications

The installation of approved backflow prevention assemblies shall be in accordance with the State of Florida plumbing code (current edition) and these Rules and Regulations for Backflow Prevention and Cross-Connection Control.

3.3.1 Installation Applications – An approved backflow prevention assembly or method shall be installed at ALL water service connections if a cross-connection, actual or potential, exists. Other specific circumstances requiring the installation of an approved backflow prevention assembly shall include, but not be limited to, the following:

1. When the City determines that installation of a backflow prevention assembly is necessary due to the degree of hazard to the public water system posed by any circumstances at a service location.
2. When internal cross-connections are present and cannot be eliminated.
3. When a fire sprinkler system is installed.
4. When reclaimed water serves the facility.
5. In all multi-story buildings with 5 or more levels (including elevated facilities above carports/garages).

6. Any building with a booster pump or elevated storage tank connected to the water service or plumbing.
7. When the plumbing system makes it impractical to ascertain whether cross-connections exist.
8. When the City determines that additions or changes have been made to the plumbing system of any facility without proper permits.
9. When a facility has multiple water service connections for adequacy of supply or fire protection. In such case, each service connection shall have a backflow prevention assembly commensurate with the highest degree of hazard likely to occur at the facility.
10. When the nature and extent of any activity at a service location, or the materials or equipment used in connection with any activity at a service location, or materials stored at a service location could present a hazard upon entry into the City's system.
11. When entry to property and improvements at any service location is restricted so that inspections for cross-connections cannot be made with sufficient thoroughness or frequency to assure that cross-connections do not exist.
12. When a building is constructed on commercial property and the end use of such building is not determined or could change.
13. When any premise has an auxiliary water supply available, whether it be interconnected or not interconnected with the public water system.
14. When construction projects require access to the public water system.
15. When a person owns or operates any vehicle, including, but not limited to, storage tanks, spray rigs, or similar equipment, that uses water from the public water system. In such case, vehicles shall connect only to water service connections protected by an approved backflow prevention assembly commensurate with the highest degree of hazard likely to occur at the time of filling.
16. When a potable water service and meter is connected to an in-ground irrigation system.
17. When a separate City irrigation service and meter is connected to the public water system.

At its discretion, the City may identify or determine that other conditions, in addition to the circumstances listed above, may require installation of a backflow prevention assembly. In such cases, the City shall determine the type and location of any backflow prevention assembly to be installed based upon these Rules and Regulations and the degree of hazard posed by the situation.

3.3.2 Commercial Installation Prohibited on Rights-of-Way/Exceptions – No person shall install or maintain a backflow prevention assembly upon or within any right-of-way except as allowed by this section.

1. The City may grant an exception and allow installation of a backflow prevention assembly upon or within a City right-of-way if the person requesting permission demonstrates that there is no other feasible location for installing the assembly and that installing it in the right-of-way will not interfere with traffic, utilities, or any other public use of the right-of-way. The exception shall be approved in

writing and the location, height, enclosure, and other requirements relating to such installation shall be set forth in the terms and conditions of the approval.

2. The owner of the property, or the owner, operator, and manager of a facility served by a backflow prevention assembly installed upon or within a city right-of-way shall, at the request of the City and at the sole expense of such owner, operator, or manager, relocate the assembly when such relocation is deemed necessary for street, sidewalk, or utility construction or repairs or for purposes of public safety or for convenience in use of the right-of-way.

3. If a backflow prevention assembly is installed by a person in the City right-of-way per the above referenced exception, it is understood that the City shall have no responsibility for maintaining such assembly and, at all times, such responsibility shall remain with the entity entering into the agreement with the City for such an exception.

3.4 Backflow Prevention Assembly Installation Requirements

3.4.1 General Installation Requirements – The installation of approved backflow prevention assemblies shall be in accordance with the Standard Construction Utility Details, City plumbing code, and these Rules and Regulations for Backflow Prevention and Cross- Connection Control.

3.4.2 Installation Details - Approved backflow prevention assemblies shall be sized and installed in accordance with the following guidelines and limitations:

1. Each assembly shall be sized to provide an adequate supply of water and pressure for the facility being served.
2. The size of each assembly shall be equal to or greater than the water meter providing service. For branched services with a single meter, the assembly shall be sized to match the service pipe diameter supplying the assembly.
3. On facilities where non-interruption of water supply is critical, two assemblies of the same type shall be installed in parallel.
4. Bypass lines are prohibited. Pipefittings that could be used for connecting a bypass line shall not be installed.
5. Each assembly shall be installed on the customer side of the water meter, prior to any water take off serving the site, and located within 5 feet of the meter, unless otherwise approved in writing by the City.
6. Each assembly shall have a minimum of eighteen (18) inches clearance on the back side and eighteen (18) inches clearance on the test cock side. The relief valve opening shall be at least twelve (12) inches above the grade/floor or highest possible water level, but no higher than 36”.
7. Assemblies shall only be installed in the orientation (horizontal or vertical) for which they have received full acceptance and approval in both field and laboratory testing by the Foundation for Cross-Connection Control and Hydraulic Research at the University of Southern California.

8. Each assembly shall be readily accessible for testing and maintenance and shall be located in an area where water damage to buildings or furnishings will not occur from relief valve discharge.
9. Air gap separations shall not be altered in any way and shall be available for inspection at all reasonable times.
10. For reduced pressure principle assemblies that have been approved to be installed in interior areas within facilities, an approved air gap shall be located at the relief valve orifice.
11. For reduced pressure principle assemblies, an approved air gap funnel assembly may be used to direct minor discharges away from the assembly provided the air gap funnel assembly will not control flow in a continuous relief situation. Daylight drain ports shall be provided to accommodate full pressure discharge from the assembly.
12. No deviations from the requirements of this section shall be permitted without prior written approval of the City.
13. All residential backflow prevention assemblies shall be installed by the City and located within the right-of-way, except for residential properties with an auxiliary water supply or irrigation service requiring a backflow prevention assembly that is unable to be installed wholly within the right-of-way.

3.4.3 **Backflow Prevention Assembly/Method Type and Application** - The following are common backflow prevention assembly/method types, and their corresponding general installation applications, as acceptable to the City. Many specific facility types or installation applications may require a more protective backflow prevention assembly/method than described below. A list of facility types and each corresponding required backflow prevention assembly/method is listed in Appendix A.

Air Gap (AG) – Air gap separations provide maximum protection from backflow hazards and, as an alternate to mechanical backflow prevention assemblies, may be installed at any facility where a substance is handled that could be hazardous to health if introduced into the public water system.

Reduced Pressure Principle Backflow Prevention Assembly (RP) – Reduced pressure principle assemblies shall be installed at any facility where a substance is handled that could be hazardous to the public health if introduced into the public water system.

Reduced Pressure Principle Detector Backflow Prevention Assembly (RPDA) – Reduced pressure principle detector assemblies shall be installed on fire protection systems for which a main-line meter is not used but the need to determine leaks or unwanted usage is desired and where a substance is handled that could be hazardous to the public health if introduced into the public water system.

Double Check Valve Backflow Prevention Assembly (DC) – Double check valve assemblies shall be installed at a facility where a substance is handled that could be objectionable, but not hazardous to health, if the substance is introduced into the public water system.

Double Check Detector Backflow Prevention Assembly (DCDA) – Double check detector assemblies shall be installed on fire protection systems for which a main-line meter is not used but the need to determine leaks or unwanted usage is desired and where a substance is handled that could be objectionable, but not hazardous to health, if the substance is introduced into the public water system.

Dual Check (DuC) – Dual check valves may be installed to reduce risks from backflow at residential properties

for internal protection only and are not acceptable for protection of the public water system. Installations shall be in accordance with the Code of Ordinances, the current adopted plumbing code by the City and applicable State of Florida requirements, as determined by the City of Port Orange Growth Management Department, Building Inspection.

3.5 Water Service and Premise Plumbing Inspections

An inspection of the customer's water service and premise plumbing for determining adequate protection of the public water system and the need for cross-connection control shall be required by the City prior to establishing or continuing water service under the following circumstances:

1. Prior to providing potable water service to a newly constructed facility.
2. After any alterations or improvements to the water service connection or customer's water system of a facility served by the public water system.
3. Upon installation of an irrigation system, non-potable irrigation system, or fire suppression system at a facility served by the public water system.
4. As part of the City's Backflow Prevention and Cross-Connection Control Program, or when the City has cause to believe that an existing service location, commercial or residential, contains an actual or potential cross-connection.

At the discretion of the City, continuation or provision of permanent water service to any facility or customer location can be made contingent upon completion of such inspections and installation of all approved backflow prevention assemblies required by the City's Authorized Agent.

For all new construction or modifications that require a permit, Certificates of Occupancy and permits shall not be issued by the City until final inspection of required approved backflow prevention assemblies by the City's Authorized Agent has been performed, and that satisfactory test results by a registered, cross-connection tester have been received and recorded.

3.6 Backflow Prevention Assembly Registration, Reporting and Recordkeeping

To ensure the continued protection of the public water system, all approved backflow prevention assemblies required shall be registered with the City and field-tested to verify the assembly is properly functioning.

3.6.1 Reporting & Recordkeeping - Any registered tester who performs an operational test on any backflow assembly installed to protect the City's public water system shall report the results of that test electronically to: backflowreports@port-orange.org.

Registered testers shall supply all testing information as required by the electronic reporting system and the Backflow Prevention Assembly Test and Maintenance Report (TMR). All applicable fields of the TMR forms shall be filled out completely. Reporting information shall be provided no later than 15 days from the day the test was performed.

Web-service fees and account setup for using the electronic reporting system may be required by the web-service company or the City and shall be the responsibility of the certified tester.

3.7 Backflow Prevention Assembly Testing

3.7.1 Responsibility for Commercial Testing – It is the responsibility of the Commercial water service customer, as listed on the water utility account, for compliance with the testing requirements for the backflow prevention assembly, as well as the reporting required by these Rules and Regulations, as a condition of establishing or continued water service provided by the City. Failure to comply with these Rules and Regulations may warrant a cessation of the water service customer’s water service pursuant to Section 4. Assignment of testing responsibilities between a water service customer and a third party (property owner, property manager, lessor, etc.) shall be the sole responsibility of the water service customer.

3.7.2

Responsibility for Residential Testing - City-contracted licensed plumbers will test the domestic water service backflow prevention assembly on the residential customer’s behalf if located within the right-of-way. Residential customers who have a pressure vacuum breaker assembly, on private property, will be required to obtain their own backflow assembly test and submit the passing test. A passing report must be submitted every other year to the City. Failure to provide a passing report will result in remedial action as provided in Sec. 74-245 of the Code of Ordinances. The residential customer can also opt to have the city test the device as stated test their pressure vacuum breaker assembly. Prior to the City entering the property for testing purposes, the owner will be required to complete an authorization to enter form as provided by the City. The City will use a licensed plumber to perform the test and the cost of testing the assembly will be charged to the customer on their utility bill.

3.7.3 Testing Frequency – Each approved assembly shall be tested according to the following schedule:

1. At the time of installation, but no later than 10 calendar days after installation of a new backflow prevention assembly;
2. After the date of installation:
 - (a) Annually for all non-residential and fire protection water service connections, and for residential water service connections that do not meet the conditions for every other yeartesting in (b) below;
 - (b) Every other year for residential water service connections if all the following conditions are met:
 - (i) The dwelling, or building within which the dwelling is located, is fewer than five stories in height;
 - (ii) There is no booster pump serving, or within, the premise
3. Immediately after the repair or replacement of the assembly;
4. Immediately after the assembly has been relocated; and
5. At the request and discretion of the City’s Authorized Agent.

3.7.4 **Testing Procedures** – All testing of approved backflow prevention assemblies shall be in accordance with each assembly manufacturer’s recommended procedures and the following:

1. The American Backflow Prevention Association Tester Certification Program, Florida Section; or
2. The University of Florida TREEO Center – Backflow Prevention: Theory and Practice; or
3. Florida Section – American Water Works Association (FS-AWWA).
4. **Registered Testers/Testing Companies** – All required testing of approved backflow prevention assemblies shall be performed by a certified backflow assembly tester or licensed plumber registered with the City. Companies that provide backflow prevention assembly testing must have each tester approved for registration accordingly. For a tester or licensed plumber to be registered by the City to do testing on backflow prevention assemblies, a person must meet the following minimum requirements:
 1. Complete, sign and submit a Backflow Assembly Tester Registration Application with the City;
 2. Furnish evidence satisfactory to the City that each individual applicant has attended and successfully completed a comprehensive backflow assembly testing training and certification program provided by the University of Florida TREEO Center, the Florida Water Pollution Control Operators Association (FWPCOA), or other City-approved backflow certification training school;
 3. Demonstrate that the applicant has available the necessary tools and equipment to properly test backflow prevention assemblies; and
 4. Provide evidence that all test kits to be used to test backflow prevention assemblies have been calibrated and tested for accuracy (+/- 2.0%) in accordance with the equipment manufacturer’s recommendations.

The City shall provide written notification to each applicant within 30 calendar days following receipt of a registration application. The City's notification will either inform the applicant that the application is complete (including all support documentation and information) and that the applicant's registration is now active, or, in the alternative, if the application is incomplete, provide a list of the information needed to complete registration and provide the applicant 15 days from the date of the notification to supplement the application for consideration. Failure to supplement an incomplete registration application in the 15-day timeframe will result in the registration being deemed incomplete and the applicant will not be registered. Once the applicant is notified the submitted application is complete, the applicant may provide testing services for City water service customers, provided they maintain their registered status in good standing with the City.

3.1.2 **Maintaining Registered Status** – In order to maintain registered status, registered backflow assembly testers/testing companies are required to comply with the following conditions:

1. The tester or licensed plumber is not subject to disciplinary action in accordance with Section 5 – Registered Tester and Plumber Violations and Enforcement.
2. Every two years, attend and successfully complete a re-certification training course provided by the University of Florida TREEO Center, the Florida Water Pollution Control Operators Association (FWPCOA), or other City-approved backflow certification/re-certification training school or organization. Documentation of re-certification shall be provided to the City.
3. Annually, have each test kit calibrated and tested for accuracy (+/- 2.0%).

Documentation of calibration testing shall be provided to the City.

4. Have routinely performed competent and accurate certifications of each backflow prevention assembly tested. Documentation of inspection reports with test results shall be made available to the City, if requested, for each assembly tested for a period of three years.
5. Have made no changes to the design or operating characteristics of any backflow prevention assembly tested.

3.2 Backflow Prevention Assembly Maintenance, Repair, and Replacement

It is the responsibility of the water service customer, as listed on the water utility account, for compliance with the maintenance, repair, or replacement of the backflow prevention assembly, as well as the reporting required by these Rules and Regulations, as a condition of establishing or continued water service provided by the City. Failure to comply with these Rules and Regulations may warrant a cessation of the water service customer's water service pursuant to Section 4. Assignment of maintenance, repair, or replacement responsibilities between a water service customer and a third party (property owner, property manager, lessor, etc.) shall be the sole responsibility of the water service customer.

Maintenance, repair and replacement of a backflow prevention assembly must be made by a licensed plumber or by a property owner if in strict accordance with the limited contractor exemption set forth in Section 489.103(7)(a), Florida Statutes.

If the City discovers that maintenance, repair, or replacement of a backflow prevention assembly is made by an unauthorized party, the City may require the water service customer to have the work re-done or reviewed by a person authorized to conduct such activities at the customer's expense. All maintenance, repair and replacement activities shall be done in accordance with the manufacturer's recommended procedures, using manufacturer's approved parts, and in accordance with these Rules and Regulations, City Code of Ordinances, applicable plumbing code, and State law.

When maintenance or repairs to a backflow prevention assembly cannot be made to comply with the requirements of these Rules and Regulations, the customer shall replace the backflow assembly himself or herself or have the backflow prevention assembly replaced by a licensed plumber, with a proper approved backflow prevention assembly, suitable for the degree of hazard, in accordance with these Rules and Regulations. The new assembly shall be tested upon installation and the passing test results shall be submitted to the City as required.

The City shall not be liable for any damages, financial or otherwise, resulting from the required maintenance, repair or replacement of the approved backflow prevention assembly.

3.2.1 City of Port Orange-Coordinated Maintenance, Repair, or Replacement Commercial and Residential– If a water service customer fails to properly maintain, repair, or replace a backflow prevention assembly, has received previous notices of non-compliance from the City requesting action to correct such noncompliance, and has failed to correct the violation within fourteen (14) days of receiving the final notification, the City will immediately disconnect the water service. The City will then coordinate the services necessary on behalf of the water customer to contract with a licensed plumber to perform the needed maintenance, repairs or replacement and submit passing test results for the backflow prevention assembly on the customer's behalf. The customer will be charged the cost for coordinating and performing the needed maintenance, repairs, or replacement on their utility bill and will be required to pay these

charges in full. The City will ensure that the plumber that performs the maintenance, repair, or replacement is not associated with the plumber that performed the initial test. The plumber that performs the repair will be responsible for re-testing the assembly and submitting passing test results to the City.

Ownership and/or maintenance responsibility for a repaired or replaced backflow prevention assembly shall remain the sole responsibility of the water service customer. Failure of the customer to allow the City-contracted plumber to perform the needed maintenance, repairs, or replacement of the backflow prevention assembly may result in the suspension, discontinuation, or denial of water service until the customer has eliminated the actual or potential backflow hazard or cross-connection in accordance with these Rules and Regulations and to the satisfaction of the City.

[END OF SECTION 3]

Section 4 – Water Customer Violations, Threat Levels, and Extensions

4.1 Violations

These Rules and Regulations are established to ensure the availability of clean, safe drinking water and to protect the health, welfare and safety of the City's water customers. Pursuant to Rule 62-555.360(3), FAC, the water purveyor has the authority and responsibility to ensure that a cross-connection is eliminated, ensure that appropriate backflow protection is installed, and/or discontinue water service to any customer who refuses to install or properly test and maintain a cross-connection control assembly where an actual and/or potential cross-connection may exist. A water customer's non-compliance with these Rules and Regulations may result in suspension, discontinuation, or denial of water service until the customer has eliminated the actual or potential backflow hazard or cross-connection in accordance with these Rules and Regulations and to the satisfaction of the City.

4.2 Serious and Immediate Threats

When a backflow hazard or uncontrolled cross-connection, actual or potential, has been identified within a customer's water system and is judged to be a serious and immediate threat to the health or welfare of any person, public water system, or to the environment, the City may, without prior notice, disconnect or suspend potable water service to any customer, facility, or area when such disconnect or suspension is necessary to temporarily eliminate the threat.

Upon the disconnection of service, the City shall attempt to notify the water service customer of such suspension of service in person or by certified mail, return receipt requested, and shall order the water service customer to permanently eliminate the threat.

The affected potable water service, once disconnected, shall be restored only when the affected customer presents satisfactory proof to the City that the backflow hazard or cross-connection has been eliminated and its cause has been determined and corrected. The customer is responsible for all fees, costs, and damages incurred due to actual or potential backflow incidents.

4.3 Less Serious but Ongoing Threats

When a backflow hazard or uncontrolled cross-connection, actual or potential, has been identified within a customer's water system and is judged not to be a serious and immediate threat to the health or welfare of any person, public water system, or to the environment, as to constitute an emergency requiring an immediate service interruption, the customer shall be allowed 30 calendar days from receipt of written notification from the City to eliminate the threat. Such threats include the absence of an approved backflow prevention assembly or the failure on behalf of the water service customer to properly test or maintain an existing backflow prevention assembly in accordance with these Rules and Regulations.

4.3.1. **No Existing Backflow Prevention Assembly** - If a backflow prevention assembly is required and has not been installed, the water service customer shall install an approved backflow prevention assembly. If, after 30 calendar days of receipt of the City notice, the water service customer has not corrected the backflow hazard or uncontrolled cross-connection, the City shall issue a final notification by

certified mail-return receipt requested. The final notification shall instruct the water service customer to permanently eliminate the threat within 14 calendar days and notify the water service customer that failure to do so within 14 calendar days will result in the immediate interruption of water service. After the 14 calendar days, the City shall disconnect or suspend water service if the water service customer has not complied or been granted an extension.

4.3.2. **Improper Testing of Existing Backflow Prevention Assembly** - If a water service customer has installed a backflow prevention assembly, but the assembly has not been properly tested per Section 3.5 of this Manual, the water service customer shall have the backflow prevention assembly tested within 30 calendar days of written notification by the City about such testing requirement. If the water service customer fails to provide the City with a test report complying with Section 3.5 within 30 calendar days of the City's written notification, the City shall take action to reduce or eliminate the threat as indicated below or disconnect or suspend water service for the water service customer if the City, or its contractor, is not allowed site access to complete such test. All such costs for testing will be billed to customer on its water service bill over either a 12 month or 24 month period, depending on the appropriate time frame for testing the water service customer's backflow prevention assembly as set forth in Section 3.7.4 of this Manual.

4.4 Requests for Extension

If, for any reason, a water service customer cannot comply within the time requirements for eliminating a backflow hazard or uncontrolled cross-connection, the customer may request a time extension in writing for consideration and possible approval by the City. Each request shall be accompanied by a compliance plan - clearly identifying the actions or steps to be taken by the water service customer in order to make the necessary corrections to eliminate the threat. The compliance plan must include a time schedule for implementing the proposed actions or steps. Requests for extensions without a compliance plan will not be considered. Requests for an extension of time to avoid mandatory enrollment in the City's Testing Program which is the result of a failure to address testing or maintenance of a backflow prevention assembly, shall also not be considered. Requests for an extension of time will not be considered if such request is made after the expiration of the time frame for testing or repair.

4.5 City-Coordinated Testing

Only water service customers with a pressure vacuum breaker (PVB) may voluntarily participate in the City's Program for Backflow Assembly Testing, described in Section 3.7.4, for which the City will hire a licensed plumber to perform the required testing. Additionally, when a water service customer fails to properly test or fails to properly maintain, repair, or replace a backflow assembly that has failed a test, the City may hire a licensed plumber to perform the necessary services. All costs associated with testing and maintenance, repairs or replacement of the assembly will be charged to the customers water utility account, which may be amortized as determined by the City.

[END OF SECTION 4]

Section 5 – Violations and Enforcement for a Registered Tester or Licensed Plumber

5.1 General

These Rules and Regulations are established to ensure the availability of clean, safe drinking water and to protect the health, welfare and safety of the City's water customers. The City reserves the right to cancel tester and licensed plumber registration for testing, maintenance, repair and replacement of backflow assemblies if there is a violation of Section 5 of this manual, for reasons relating to the public health, safety, or general welfare, or for other good and sufficient cause as determined by the City in its sole discretion. Actions of registered testers and licensed plumbers can potentially threaten the quality of water in the Community Water System and, as a result, threaten the health, safety, and welfare of the City's water customers. Therefore, the City has established parameters for quality assurance inspection, violations, and enforcement procedures to protect the public water system.

5.2 Quality Assurance/Quality Control Inspections and Testing

City-Authorized Agents may, on occasion, perform quality assurance/quality control inspections and testing of customer backflow assemblies to verify testing and results submitted by a registered tester or licensed plumber. City-Authorized Agents may also perform quality assurance/quality control inspections and testing for verification and quality of replacement, repairs, and maintenance of backflow assemblies reported by licensed plumbers. If the Authorized Agent discovers a violation during the quality assurance/quality control inspection, the Authorized Agent will notify the registered tester or licensed plumber in writing by a Warning Letter and provide ten (10) business days for the registered tester or licensed plumber to correct the violation or provide information proving the violation did not occur. Failure to correct any violation within the specified time frame will result in the matter being referred to the Code Enforcement Board for hearing as set forth in Section 5.5.

5.3 Violations

If a vendor commits any of the violations listed in this Section 5.3, the vendor will be subject to the disciplinary actions set forth in Section 5.4, which will result in a warning letter or a suspension or revocation of a vendor's registered status with the City to provide backflow assembly testing, replacement, repair, or maintenance. Additionally, civil penalties, fines, and costs may be pursued if the quality of the public water system is impacted as a direct result of the activities of a registered tester or licensed plumber as they relate to backflow assembly testing, replacement, repair, or maintenance, as specified in the violations listed below.

5.3.1 **Noncompliant Activities** – Noncompliant activities associated with inspections, reports, repairs, replacements, or maintenance activities include, but are not limited to:

1. Any backflow assembly test, replacement, repair, or maintenance that is falsely represented as being performed on a report but is not actually performed;
2. Any backflow assembly test not performed by a City registered tester or licensed plumber;

3. Any backflow assembly test that is not properly executed by a registered tester or licensed plumber (Examples of improperly executed tests include, but are not limited to, tests performed using expired or uncalibrated test equipment, tests reported as completed but not actually completed, and tests reporting false test results); and
4. Any testing, repair, replacement, or maintenance activity the City determines noncompliant with the Cross-Connection rules and regulations, including this Manual, completed with the intention to deceive and which results in financial gain for the person completing the activity.

5.3.2 **Failure to Maintain Certification or License** – Testers that fail to maintain or renew their backflow assembly tester certification with an approved tester training school or organization, and licensed plumbers that fail to maintain their license with, or have had their license revoked by, the Florida Department of Business Regulation shall be considered noncompliant with the Cross Connection rules and regulations, including this Manual, and in violation of this Section.

5.3.3 **Contracting Without a License** – Maintenance, repair and replacement of a backflow prevention assembly must be made by a licensed plumber or property owner, as allowed under Section 489.103(7)(a), Florida Statutes. Any City registered tester that is not a licensed plumber in the State of Florida found performing replacement, repairs, or maintenance to a water customer's backflow assembly as a service is "contracting without a license" and considered a violation of this Section.

5.3.4 **Prosecutions for Related Activities** – Testers and licensed plumbers that have been prosecuted and had a judgment or order entered against them in Federal, State, or Administrative Courts, or other relevant governing body, for (1) activities related to testing, replacement, repair, or maintenance activities for backflow assemblies, (2) issues relating to their qualifications or certifications to conduct such activities, or (3) contracting without a license for activities relating to backflow assemblies shall be considered noncompliant with the Cross-Connection rules and regulations, including this Manual, and in violation of this Section 5.3. Such noncompliance shall be considered ongoing until such time that any license suspension, penalty payment, or other such conditions arising from an order and/or judgment in the case are completed and closed out by the prosecuting authority.

5.3.5 **Other Violations** – Any failure to test, replace, repair, or maintain backflow assemblies in accordance with the manufacturer's recommended procedures, using manufacturer's approved parts, and in accordance with these Rules and Regulations, City Code of Ordinances, applicable plumbing code, and State law shall be a violation of this Section 5.3.

5.4 Disciplinary Actions

5.4.1 Violations -

For violations set forth in Section 5.3, a vendor will be issued a warning letter for a first offense and given ten (10) business days to correct the violation or provide exculpatory information illustrating that the alleged violation did not occur. If a vendor corrects the violation or provides exculpatory information acceptable to the City within the required time period, no further action will be taken. If a vendor fails to correct the violation or provide exculpatory information acceptable to the City within the required time period, the case will be forwarded to the Code Enforcement Board for disciplinary action which may include

suspension or revocation of registration, along with a request for civil penalties, fines, and costs, as appropriate.

If a repeat violation is identified and a vendor has already received a previous warning letter for a violation of Section 5.3, no warning letter will be issued. The vendor will be notified that the violation will be referred to the Code Enforcement Board for disciplinary action which may include registration suspension or revocation, along with a request for civil penalties, fines, and costs, as appropriate.

A first suspension from registration with the City shall be for six (6) months. A second violation shall result in permanent revocation of tester registration with the City.

5.4.2 **Pollution or Contamination Events** - In the event the quality of water in the public water system is impacted as a direct result of a vendor's activities as it relates to backflow assembly testing, replacement, repair or maintenance, or as a result of a violation as identified herein, the City may also pursue substantial civil penalties against the violator.

[END OF SECTION 5]

Section 6 – Construction Standards

6.1 General Construction Standards

All backflow prevention assemblies and associated piping shall be installed in accordance with the City Code of Ordinances, the current adopted plumbing code, and applicable State of Florida Law. Additionally, all backflow prevention assemblies shall be installed in accordance with the following requirements to ensure the proper operation of and accessibility to the assembly:

6.1.1. **Approved Assemblies** - Only “approved” backflow prevention assemblies shall be installed. Assemblies that have been installed or repaired shall not be altered from their Approved configuration.

6.1.2. **Test Cocks and Isolation Valves** – Each approved assembly shall be equipped with four test cocks, properly located and unobstructed to allow pressure testing across each stage of the backflow assembly. Approved assemblies shall also be equipped with resilient seat isolation (shut-off) valves. All valves 2-inches diameter and smaller shall be quarter-turn ball valves.

6.1.3. **Inlet Shut-off Valve** – Backflow prevention assemblies shall be installed so that the inlet shut-off valve of the backflow assembly is the next piped fitting (including piping) after the water meter, except where a meter bypass, limited area fire system, or strainer is needed; in which case, the inlet shut-off valve shall be the next piped fitting after the bypass, fire system, or strainer. All shut off valves two (2) inches and under are to be ball valve types.

6.1.4. **Thermal Protection** – If a backflow assembly must be subjected to environmental conditions that could freeze or heat the assembly beyond its working temperatures, some means of protection shall be installed to provide the correct temperature environment for the assembly. Special precautions shall be taken to protect the assembly from external heat sources (i.e. welding or soldering equipment) that could damage the internal components and prevent proper operation of the assembly. No freeze protection equipment may be attached to the backflow prevention assembly or test cocks. If needed it shall be placed on the riser pipe located closest to the premise to allow flow through the assembly.

6.1.5. **Submergence / Flood Protection** – No part of a backflow prevention assembly shall be submerged in water or installed in a location subject to flooding. This requirement precludes installation of an assembly in a below ground vault or structure.

6.1.7. **Ground Clearance** – Minimum and maximum ground clearance is measured from the floor or ground to the lowest part of the assembly. The maximum height for any component of the assembly shall be no greater than seventy-two (72) inches above ground. If a backflow assembly is located within a swale, ditch, or other area subject to flooding, the minimum ground clearance shall be measured from the established flood elevation.

6.1.8. **Location of Assembly** – A backflow prevention assembly shall be installed within 5 feet of the point of delivery, before any branch in the customer’s water service. Any variance to this requirement must be pre-approved in writing by the City’s Cross-Connection Control Program enforcement agent.

6.1.9. **Interior Installation** – Where the backflow prevention assembly has been approved to be installed within the served building, the backflow prevention assembly inlet valve shall have a minimum clearance of eighteen (18) inches on all sides. It is recommended that a floor drain be installed as close as possible to the assembly and that the assembly be installed with a relief valve orifice. The assembly shall be readily accessible between 8:00 a.m. and 5:00 p.m., Monday through Friday. Closet minimum size is forty (40) inches by seventy-two (72) inches with a thirty (30) inch standard door.

6.1.10 **Flushing and Debris Removal** – Water service lines shall be thoroughly flushed prior to installation of the backflow assembly. A Y-Type strainer with blow-down connection may be required ahead of the assembly to protect the assembly from recurring debris.

6.1.11 **Pipe Risers** – All backflow prevention assemblies shall be installed on pipe risers made of material approved by the City. Backflow prevention assemblies three (3) inches diameter and smaller shall use hard copper or galvanized metal riser material. Above-ground PVC is not allowed in any application.

[END OF SECTION 6]

Appendix A – Typical Hazards

There are varying degrees of hazards, and the degree of protection should be commensurate with the degree of hazard. The following sections provide partial list of facilities and equipment that require protection against cross-connections. These facilities and equipment shall be served by an approved backflow prevention assembly of the type(s) designated below. Facilities and equipment not specifically identified within this section may require cross-connection control and shall be reviewed on a case-by-case basis by the City's Authorized Agent.

AG	Air Gap
DC	Double Check Valve Backflow Prevention Assembly
DCDA	Double Check Detector Backflow Prevention Assembly
RP	Reduced Pressure Principle Backflow Prevention Assembly
RPDA	Reduced Pressure Principle Detector Backflow Prevention Assembly
PVB	Pressure Vacuum Breaker Assembly

A.1 Typical Facilities Requiring Protection

The following facilities shall require an approved backflow prevention assembly as indicated in the table below. The table lists the assemblies that provide the minimum level of protection required. The customer may elect to install an assembly that will provide a greater level of protection, but the assembly shall be subject to City approval. The assembly shall be installed prior to any water connection serving the site and shall be located within five feet of the meter or service connection to the public water system.

Table A-1 – Required Backflow Protection by Facility Type

	Facility Type	Required Assembly
1.	Aircraft and Missile Plants	RP
2.	Automotive Plants	RP
3.	Auxiliary Water Supply (Interconnected; Regulated PWS)	RP
4.	Auxiliary Water Supply (Interconnected; Unregulated; Commercial or Residential)	AG
5.	Auxiliary Water Supply (Not Interconnected; Commercial or Residential)	RP
6.	Beverage Bottling Plants	DC
7.	Breweries	RP
8.	Buildings with sewer ejectors	RP
9.	Canneries, Packing Houses and Reduction Plants	RP
10.	Car Wash and water reclamation systems	RP
11.	Centralized Heating and Air Conditioning Plants	RP
12.	Chemical Plants	RP
13.	Commercial Laundries	RP
14.	Commercial Swimming Pools	RP
15.	Dairies and Cold Storage Plants	RP
16.	Dye Works	RP

17.	Food Processing or Preparation Facilities	RP
18.	Film Processing Laboratories	RP
19.	Fire Systems (residential 13D) less than 2"	DC
20.	Fire Systems with Stand Pipe Systems	DCDA
21.	Fire Systems with Sprinkler Systems	DCDA
22.	Fire Systems with pump and/or storage tank	DCDA
23.	Fire Systems with auxiliary supply	RPDA
24.	Fire System with Chemicals Additives	RPDA
25.	Schools, High Schools, and Colleges	RP
26.	Hospital, Mortuaries, Medical and Dental Buildings and Sanitariums	RP
27.	Laundries and Dye works	RP
28.	Irrigation Systems (with pop-up sprinkler heads, injector pumps, or alt. water source)	RP
29.	Laboratories	RP
30.	Manufacturing, Processing or Fabricating Plants	RP
31.	Mop Sinks	RP
32.	Motion Picture Studios	RP
33.	Multistoried Buildings (with booster pumps or internal reservoir)	RP
34.	Multistoried Buildings (with boiler systems or cooling towers)	RP
35.	Multistoried Buildings (non-health hazard)	DC
36.	Oil and Gas Production Plants	RP
37.	Paper and Paper Products Facilities	RP
38.	Plating Plants	RP
39.	Radioactive Materials Processing Facilities	RP
40.	Restaurants, Kitchens, Food Processing Facilities	RP
41.	Restricted, Classified or other Closed Facilities	RP
42.	Rubber Plants	RP
43.	Sand and Gravel Plants	RP
44.	Served by reuse or reclaimed water	RP
45.	Solar Domestic Hot-Water Systems with direct make-up lines	RP
46.	Steam Boiler Plants	RP
47.	Sewage and Storm Drainage Facilities (Including lift stations)	RP
48.	Water-Hauling Equipment	RP
49.	Where Cross-Connection is Maintained	RP

A.2 Other Equipment Requiring Protection

The presence of specific equipment on a site may also require the installation of an approved backflow prevention assembly. The type of assembly required shall be determined by the City of Port Orange's Authorized Agent and shall be commensurate with the degree of hazard. If required, the assembly shall be installed prior to any water connection serving the site and shall be located within five feet of the meter or service connection to the public water system. The presence of an equipment-specific backflow prevention assembly may not necessarily relieve the need for (or requirement of) a site-specific backflow prevention assembly on the water service connection to protect the public water system.

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CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 2/18/2025

SUBJECT: (G17) First Reading - Ordinance No. 2025-08 - First Amendment to the Madeline Commons PUD Master Development Agreement (Case No. PRZA-24-0009)

DEPARTMENT: Community Development

GOAL: 3 - Quality of Life

RECOMMENDED MOTION: Move to approve Ordinance No. 2025-08.

SUMMARY: Planning Commission Action (1/23/25): Recommended Approval 7-0

The proposed 1st Amendment to the Madeline Commons Master Development Agreement (MDA) is to modify the MDA to require the developer to install Rapid Flashing Beacon signs and a flashing Stop sign (signs) as a safety improvement at Sugar Mill Elementary's parent pick-up/drop-off driveway at Charles Street instead of installing a 6-foot privacy fence between the subdivision and Sugar Mill Elementary School. The signs are positioned at the intersection of the parent pick-up/drop-off driveway at Charles Street to alert drivers entering and exiting the school of the pedestrian crossing. **The proposed amendment does not change any other requirements in the MDA.**

In 2021, Volusia County School District (VCSD) staff requested a requirement be added to the Madeline Commons MDA to provide a privacy fence along the north and east sides of Sugar Mill Elementary School to provide a buffer between the proposed development and the school. According to the Land Development Code, a 6-foot privacy fence is NOT required along the boundary of the PUD adjacent to Sugar Mill Elementary School. However, the developer agreed to provide the privacy fence as requested by the school district staff.

During the construction of the subdivision, it was determined that the installation of the 6-foot privacy fence would create an impact on a protected wetland area located in the subdivision and could create a security concern by restricting visibility into the school property from the perimeter. The developer met with staff from the VCSD, and it was agreed that the developer could install the signs at the Sugar Mill Elementary pick-up/drop-off driveway on Charles Street instead of installing the 6-foot privacy fence.

According to VCSD staff, it was determined that the retention areas, wetlands, landscape buffers, and tree conservation areas along the perimeter of the subdivision, as well as the existing 6-foot tall chain link fence on the school property, that will remain,

provide sufficient security and buffer between the school and the subdivision. Since the requirement to install the fence is listed in the Madeline Commons MDA, an amendment to the MDA is needed to remove the requirement to install the 6-foot privacy fence. If the Amendment is not approved, the developer will be required to install the 6-foot privacy fence.

The signs are directed at motorists and pedestrians at the intersection. City staff has worked with staff from the Volusia County School District, Port Orange Police Department, and Volusia County Sheriff's Office to ensure the location of the signs will enhance visibility and warning at the school pick-up/drop-off driveway on Charles Street. The timer on the flashing Stop sign will be set for active flashing from 6:00 am – 9:00 am and 1:00 pm – 5:00 pm unless it is determined that the timeframes need to be adjusted; all other times, it will just be a regular stop sign. The timers on pedestrian signs will be button-activated 24 hours/day.

The Staff Report is attached for more information.



PRESENTER: Penelope Cruz, Tim Burman

ATTACHMENTS:

1.	Ordinance No. 2025-08 w exhibit	Ordinance No. 2025-08 w exhibit.pdf
2.	Amendment to MDA for Madeline Commons	Amendment to MDA for Madeline Commons.pdf
3.	STAFF REPORT	STAFF REPORT .pdf
4.	Business Impact Estimate - ORD 2025-08 - PRZA-24-0009	Business Impact Estimate - ORD 2025-08 - PRZA-24-0009.docx

Penelope Cruz
Tim Burman
Shannon Balmer
Wayne Clark

Created/Initiated - 1/21/2025
Approved - 1/27/2025
Approved - 2/6/2025
Final Approval - 2/11/2025

ORDINANCE NO. 2025-08

AN ORDINANCE OF THE CITY OF PORT ORANGE,
VOLUSIA COUNTY, FLORIDA, APPROVING THE FIRST
AMENDMENT TO THE MADELINE COMMONS PLANNED
UNIT DEVELOPMENT MASTER DEVELOPMENT
AGREEMENT AS IT RELATES TO REMOVAL OF THE
REQUIREMENT TO INSTALL A FENCE ADJACENT TO
SUGAR MILL ELEMENTARY SCHOOL; PROVIDING FOR
THE REPEAL OF CONFLICTING ORDINANCES;
PROVIDING FOR SEVERABILITY OF; AND PROVIDING AN
EFFECTIVE DATE.

WHEREAS, the City and Developer desire to enter into First Amendment to the Madeline Commons Planned Unit Development Master Development Agreement (“MDA”); (hereinafter referred to as the “First Amendment”); and

WHEREAS, the Owner submitted a request to the Planning Commission to approve the First Amendment; and

WHEREAS, a public hearing was held following public notice as prescribed by ordinance; and

WHEREAS, the Planning Commission has by majority vote recommended denial of the proposed First Amendment; and

WHEREAS, the City Council has approved by a majority vote of the members present the First Amendment.

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

Section 1. The City Council of the City of Port Orange does hereby approve the First Amendment (attached hereto as **Exhibit “1”**).

Section 2. The Mayor and City Clerk are hereby authorized to execute said First Amendment.

Section 3. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

Section 4. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are declared severable.

Section 5. This ordinance shall become effective immediately upon adoption.

MAYOR SCOTT STILTNER

ATTEST:

Robin L. Fenwick, MMC, City Clerk

Passed on first reading on the day of _____, 2025

Passed and adopted on second and final reading on the day of _____,
2025

Reviewed and Approved: _____
Shannon K. Balmer, Senior Assistant City Attorney

EXHIBIT 1

FIRST AMENDMENT TO THE MADELINE COMMONS PLANNED UNIT DEVELOPMENT MASTER DEVELOPMENT AGREEMENT

THIS FIRST AMENDMENT TO THE MADELINE COMMONS PLANNED UNIT DEVELOPMENT MASTER DEVELOPMENT AGREEMENT (the "**First Amendment**") is made this _____ day of _____, 2025, by and between the **CITY OF PORT ORANGE, FLORIDA** ("City"), a Florida municipal corporation, and **CAMPBELL CROSSING OWNERS ASSOCIATION, INC.**, a Florida not for profit corporation, in its capacity as the owner of the Property ("Owner"), hereby agree and covenant, and bind their heirs, successors, and assigns, as follows:

WHEREAS, the Owner is the owner of the property more particularly described in **Exhibit "A"**, attached hereto, ("**Property**"), which is the only property impacted by this First Amendment; and

WHEREAS, the City and Madeline Commons LLC, previously entered into the Madeline Commons Planned Unit Development Master Development Agreement, adopted November 9, 2021, and recorded in Official Records Book 8154, Page 833, Public Records of Volusia County, Florida (the "MDA");

WHEREAS, during the review of the proposed MDA, Volusia County School District staff requested the MDA include a requirement for a fence along the PUD property boundary adjacent to Sugar Mill Elementary School;

WHEREAS, during construction of the PUD development it was determined that installation of said fence would create impacts to an on-site protected wetland area;

WHEREAS, the Volusia County School District staff agreed that said fence was no longer desired, and that installation of safety flashing beacons at Sugar Mill Elementary's driveway on Charles Street in lieu of said fence is a more desired improvement;

WHEREAS, the Parties desire to amend the MDA to remove the requirement for a fence along the property boundary adjacent to Sugar Mill Elementary School, subject to installation of safety flashing beacons at Sugar Mill Elementary's driveway on Charles Street, and subject the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree to amend the MDA as follows:

1. The recitals provided above are recognized as true and correct representations and are incorporated herein.

2. **Section 12. of the MDA is amended in part to read as follows: [additions shown in UNDERLINE, deletions shown in STRIKETHROUGH]**

12. Project Buffers and Landscaping

In order to comply with the requirements of Chapter 13, Sections 3 and 3.5 of the Port Orange LDC, a perimeter buffer shall be provided as shown on the CDP and shall comply with the following standards and requirements. The intent of the landscape buffer is to provide a protected green space separation between the Property and surrounding neighborhoods. There shall be a perimeter buffer with a width of ten (10') feet along the Property boundary adjacent to the City of South Daytona, twenty (20') feet along 5th Street where lots are not present, twenty (20') along Charles Street, twenty (20') feet along McDonald Road, and ten (10') feet along the Property boundary adjacent to Sugar Mill Elementary School. ~~A six (6) foot privacy fence setback a minimum 3 feet from the Property line for maintenance shall also be installed along the Property boundary adjacent to Sugar Mill Elementary School.~~ All buffers will remain as existing conditions or at time of each lot build out shall be required to install minimum landscape requirements for the Port Orange LDC. Landscape buffers and privacy fencing shall be constructed in the initial phase of development. No clearing or altering of the Property shall occur until the phase of that project area has been issued an approved construction plan. Existing vegetation in the perimeter buffer that may remain undisturbed shall count toward the landscaping requirements for the buffer. Existing vegetation that is determined by the City to be invasive exotics, diseased/dying and/or interfering with required extension of utilities may be removed, provided that any viable protected or specimen trees shall be mitigated in accordance with the City of Port Orange LDC. The landscape plans required for the final plat shall account for the removal and mitigation of trees with the perimeter buffers. No structures, primary or accessory, will be allowed within perimeter buffers, except for fencing. The Madeline Commons HOA shall establish maintenance standards in the covenants and restrictions for the landscape/buffer easements. The covenants and restrictions shall provide for procedures to allow the HOA to notice individual lot owners that landscaping is not being maintained in accordance with the standards established in the covenants and restrictions. The covenants and restrictions shall include provisions for the HOA to charge the individual lot owners for the costs of the HOA maintaining the landscape buffer.

3. This First Amendment shall be effective as of the date it is executed by all parties. The MDA, as previously enacted, shall remain in full force and effect except with the respect to those matters specifically amended by this First Amendment.
4. This First Amendment shall be recorded in the Public Records of Volusia County, Florida, at the Developer's expense. The restrictions on use and development imposed by this First Amendment shall be binding upon all successors in interest in the Property.

IN WITNESS WHEREOF, the parties hereto attached their hands and seals on the dates set forth below.

Signed, sealed and delivered in the presence
of:

**THE CITY OF PORT ORANGE,
FLORIDA, a Florida municipal
corporation**

Witness 1

Print Name of Witness 1

By: _____
Scott Stiltner, Mayor

Attest:

Witness 2

Print Name of Witness 2

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

Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization this _____ day of _____, 2025 by Scott Stiltner, Mayor, and Robin L. Fenwick, City Clerk, both of The City of Port Orange, Florida, a chartered municipal corporation, on behalf of the City. They are personally known to me and did not take an oath.

Notary Public

Commission No: _____

Signed, sealed and delivered in the presence of:

CAMPBELL CROSSING OWNERS ASSOCIATION, INC., a Florida not for profit corporation

Witness 1

Print Name of Witness 1

Witness 2

Print Name of Witness 2

By:

Print Name: Anael Jobalia

Date:

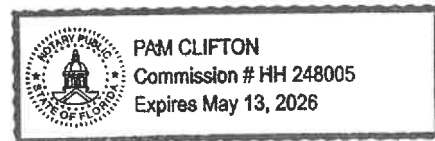
12/19/24

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization this 19th day of December, 2025, by Anael Jobalia of Campbell Crossing Owners Association, Inc. He or she is ☒ personally known to me or ☐ produced as identification and did not take an oath.

Pam Clifton
Notary Public

Commission No. _____



Approved as to legal form:

By: _____

Shannon K. Balmer, Senior Assistant City Attorney

EXHIBIT "A"

**TRACT B, MADELINE COMMONS SUBDIVISION AS RECORDED IN MAP BOOK
66, PAGES, PUBLIC RECORDS, VOLUSIA COUNTY, FLORIDA.**

PARCEL NO. 6304-10-00-00B0

**FIRST AMENDMENT TO THE MADELINE COMMONS PLANNED UNIT
DEVELOPMENT MASTER DEVELOPMENT AGREEMENT**

THIS FIRST AMENDMENT TO THE MADELINE COMMONS PLANNED UNIT DEVELOPMENT MASTER DEVELOPMENT AGREEMENT (the "**First Amendment**") is made this _____ day of _____, 2025, by and between the **CITY OF PORT ORANGE, FLORIDA** ("City"), a Florida municipal corporation, and **CAMPBELL CROSSING OWNERS ASSOCIATION, INC.**, a Florida not for profit corporation, in its capacity as the owner of the Property ("Owner"), hereby agree and covenant, and bind their heirs, successors, and assigns, as follows:

WHEREAS, the Owner is the owner of the property more particularly described in **Exhibit "A"**, attached hereto, ("**Property**"), which is the only property impacted by this First Amendment; and

WHEREAS, the City and Madeline Commons LLC, previously entered into the Madeline Commons Planned Unit Development Master Development Agreement, adopted November 9, 2021, and recorded in Official Records Book 8154, Page 833, Public Records of Volusia County, Florida (the "MDA");

WHEREAS, during the review of the proposed MDA, Volusia County School District staff requested the MDA include a requirement for a fence along the PUD property boundary adjacent to Sugar Mill Elementary School;

WHEREAS, during construction of the PUD development it was determined that installation of said fence would create impacts to an on-site protected wetland area;

WHEREAS, the Volusia County School District staff agreed that said fence was no longer desired, and that installation of safety flashing beacons at Sugar Mill Elementary's driveway on Charles Street in lieu of said fence is a more desired improvement;

WHEREAS, the Parties desire to amend the MDA to remove the requirement for a fence along the property boundary adjacent to Sugar Mill Elementary School, subject to installation of safety flashing beacons at Sugar Mill Elementary's driveway on Charles Street, and subject the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree to amend the MDA as follows:

1. The recitals provided above are recognized as true and correct representations and are incorporated herein.

2. **Section 12. of the MDA is amended in part to read as follows: [additions shown in UNDERLINE, deletions shown in STRIKETHROUGH]**

12. Project Buffers and Landscaping

In order to comply with the requirements of Chapter 13, Sections 3 and 3.5 of the Port Orange LDC, a perimeter buffer shall be provided as shown on the CDP and shall comply with the following standards and requirements. The intent of the landscape buffer is to provide a protected green space separation between the Property and surrounding neighborhoods. There shall be a perimeter buffer with a width of ten (10') feet along the Property boundary adjacent to the City of South Daytona, twenty (20') feet along 5th Street where lots are not present, twenty (20') along Charles Street, twenty (20') feet along McDonald Road, and ten (10') feet along the Property boundary adjacent to Sugar Mill Elementary School. ~~A six (6) foot privacy fence setback a minimum 3 feet from the Property line for maintenance shall also be installed along the Property boundary adjacent to Sugar Mill Elementary School.~~ All buffers will remain as existing conditions or at time of each lot build out shall be required to install minimum landscape requirements for the Port Orange LDC. Landscape buffers and privacy fencing shall be constructed in the initial phase of development. No clearing or altering of the Property shall occur until the phase of that project area has been issued an approved construction plan. Existing vegetation in the perimeter buffer that may remain undisturbed shall count toward the landscaping requirements for the buffer. Existing vegetation that is determined by the City to be invasive exotics, diseased/dying and/or interfering with required extension of utilities may be removed, provided that any viable protected or specimen trees shall be mitigated in accordance with the City of Port Orange LDC. The landscape plans required for the final plat shall account for the removal and mitigation of trees with the perimeter buffers. No structures, primary or accessory, will be allowed within perimeter buffers, except for fencing. The Madeline Commons HOA shall establish maintenance standards in the covenants and restrictions for the landscape/buffer easements. The covenants and restrictions shall provide for procedures to allow the HOA to notice individual lot owners that landscaping is not being maintained in accordance with the standards established in the covenants and restrictions. The covenants and restrictions shall include provisions for the HOA to charge the individual lot owners for the costs of the HOA maintaining the landscape buffer.

3. This First Amendment shall be effective as of the date it is executed by all parties. The MDA, as previously enacted, shall remain in full force and effect except with the respect to those matters specifically amended by this First Amendment.
4. This First Amendment shall be recorded in the Public Records of Volusia County, Florida, at the Developer's expense. The restrictions on use and development imposed by this First Amendment shall be binding upon all successors in interest in the Property.

IN WITNESS WHEREOF, the parties hereto attached their hands and seals on the dates set forth below.

Signed, sealed and delivered in the presence
of:

**THE CITY OF PORT ORANGE,
FLORIDA, a Florida municipal
corporation**

Witness 1

Print Name of Witness 1

By: _____
Scott Stiltner, Mayor

Attest:

Witness 2

Print Name of Witness 2

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

Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization this _____ day of _____, 2025 by Scott Stiltner, Mayor, and Robin L. Fenwick, City Clerk, both of The City of Port Orange, Florida, a chartered municipal corporation, on behalf of the City. They are personally known to me and did not take an oath.

Notary Public
Commission No: _____

Signed, sealed and delivered in the presence of:

CAMPBELL CROSSING OWNERS ASSOCIATION, INC., a Florida not for profit corporation

Witness 1

Print Name of Witness 1

Witness 2

Print Name of Witness 2

By:

Print Name: Anael Jobalia

Date:

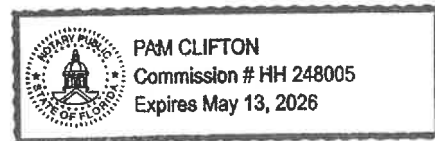
12/19/24

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization this 19th day of December, 2025, by Anael Jobalia of Campbell Crossing Owners Association, Inc. He or she is ☒ personally known to me or ☐ produced as identification and did not take an oath.

Pam Clifton
Notary Public

Commission No. _____



Approved as to legal form:

By:

Shannon K. Balmer, Senior Assistant City Attorney

EXHIBIT "A"

**TRACT B, MADELINE COMMONS SUBDIVISION AS RECORDED IN MAP BOOK
66, PAGES, PUBLIC RECORDS, VOLUSIA COUNTY, FLORIDA.**

PARCEL NO. 6304-10-00-00B0



STAFF REPORT

1st Amendment to Madeline Commons Master Development Agreement
CASE NO. PRZA-24-0009

REQUEST:	Approve the 1st amendment to the Madeline Commons Master Development Agreement to remove the requirement to install a fence adjacent to Sugar Mill Elementary School and for Safety Flashing Beacon and Stop signs at the Sugar Mill Elementary parent drop off/pick-up driveway at Charles Street.
LOCATION:	964 Commons Way (Figure 1 - Location Map)
OWNER:	Campbell Crossing Owners Association Inc.
STAFF CONTACT:	Penelope Cruz, Planning Manager (386) 506-5671
STAFF RECOMMENDATION:	Approval
PLANNING COMMISSION:	Recommended Approval 7-0 (January 23, 2025)
CITY COUNCIL:	February 18, 2025

PROPOSED AMENDMENT

The proposed 1st Amendment to the Madeline Commons Master Development Agreement (MDA) is to modify the MDA to require the developer to install Rapid Flashing Beacon signs and a flashing Stop sign (signs) as a safety improvement at Sugar Mill Elementary's parent pick-up/drop-off driveway at Charles Street instead of installing a 6-foot privacy fence between the PUD and Sugar Mill Elementary School. The signs are positioned at the intersection of the parent pick-up/drop-off driveway at Charles Street to alert drivers entering and exiting the school of the pedestrian crossing. **The proposed amendment does not change any other requirements in the MDA.**

Figure 1. Location Map



In 2021, Volusia County School District (VCSD) staff requested a requirement be added to the Madeline Commons MDA to provide a privacy fence along the north and east sides of Sugar Mill Elementary School to provide a buffer between the proposed development and the school. According to the Land Development Code, a 6-foot privacy fence is **NOT** required along the boundary of the PUD adjacent to Sugar Mill Elementary School. However, the developer agreed to provide the privacy fence as requested by the school district staff.

During the construction of the subdivision, it was determined that installation of the 6-foot privacy fence would create impacts on a protected wetland area located in the subdivision and could create a security concern by restricting visibility into the school property from the perimeter. The developer met with staff from the VCSD, and it was agreed that the developer could install the signs at the Sugar Mill Elementary pick-up/drop-off driveway on Charles Street instead of installing the 6-foot privacy fence. According to VCSD staff, it was determined that retention areas, wetlands, landscape buffers, and tree conservation areas along the perimeter of the subdivision, as well as the existing 6-tall chain link fence on the school property that will remain, provide sufficient security and buffer between the school and the subdivision. Since the requirement to install the fence is listed in the Madeline Commons MDA, an amendment to the MDA is needed to remove the requirement to install the 6-foot privacy fence. If the Amendment is not approved, then the developer will be required to install the 6-foot privacy fence.



Picture of existing 6-foot chain link fence and existing vegetation buffer adjacent to the subdivision

The signs are directed at motorists and pedestrians at the intersection. City staff has worked with staff from the Volusia County School District, Port Orange Police Department, and Volusia County Sheriff's Office to ensure the location of the signs will

enhance visibility and warning at the school pick-up/drop-off driveway on Charles Street. The timer on the flashing Stop sign will be set for active flashing from 6:00 am – 9:00 am and 1:00 pm – 5:00 pm, unless it is determined that the timeframes need to be adjusted; all other times it will just be a regular stop sign. The timers on pedestrian signs will be button-activated 24 hours/day.



Picture of a Rapid Flashing Beacon sign and Flashing Stop sign installed at Sugar Mill Elementary pick-up/drop-off driveway on Charles Street

CONSISTENCY WITH COMPREHENSIVE PLAN

The subject property is designated *Urban Medium Density Residential* (4-8 units/acre) on the City's Future Land Use (FLU) Map. The Madeline Commons PUD was found to be consistent with the Comprehensive Plan when it was approved in 2021. The proposed amendment does not change the FLU designation or density allowed for the subject property and is consistent with the general intent of the Comprehensive Plan.

RECOMMENDATION

Staff recommends **approval** of the First Amendment to the Madeline Commons PUD Master Development Agreement.

ATTACHMENT

Exhibit 1 – First Amendment to the Madeline Commons PUD Master Development Agreement



Business Impact Estimate

This form should be included in agenda packet for the item under which the proposed ordinance is to be considered, and must be posted on the City's website by the time notice of the proposed ordinance is

published.

Proposed ordinance's title/reference:

Ordinance No. 2025-08 – First Amendment to Madeline Commons PUD Master Development Agreement (Case No. PRZA-24-0009)

This Business Impact Estimate is provided in accordance with Section 166.041(4), Florida Statutes. If one or more boxes are checked below, this means the City is of the view that a business impact estimate is **not** required by state law¹ for the proposed ordinance, but the City is implementing the procedure required by statutory law to ensure that no inadvertent procedural issue could impact the enactment of the proposed ordinance. This Business Impact Estimate may be revised following its initial posting.

- ☐ The proposed ordinance is required for compliance with Federal or State law or regulation;
- ☐ The proposed ordinance relates to the issuance or refinancing of debt;
- ☐ The proposed ordinance relates to the adoption of budgets or budget amendments, including revenue sources necessary to fund the budget;
- ☐ The proposed ordinance is required to implement a contract or an agreement, including, but not limited to, any Federal, State, local, or private grant, or other financial assistance accepted by the municipal government;
- ☐ The proposed ordinance is an emergency ordinance;
- ☐ The ordinance relates to procurement; or
- ☒ The proposed ordinance is enacted to implement the following:
 - a. Development orders, and development permits, as those terms are defined in s. 163.3164; and development agreements as authorized by the Florida Local Government Development Agreement Act under ss. 163.3220-163.3243;
 - b. Comprehensive plan amendments and land development regulation amendments initiated by an application by a private party other than the municipality;
 - c. Sections 190.005 and 190.046, *Florida Statutes*, regarding community development districts;
 - d. Section 553.73, *Florida Statutes*, relating to the *Florida Building Code*; or
 - e. Section 633.202, *Florida Statutes*, relating to the *Florida Fire Prevention Code*.

¹ See Section 166.041(4)(c), Florida Statutes.

In accordance with the provisions of controlling law, even notwithstanding the fact that, an exemption noted above may apply, the City hereby publishes the following information:

1. Summary of the proposed ordinance (must include statement of the public purpose, such as serving the public health, safety, morals, and welfare):

The proposed 1st Amendment to the Madeline Commons Master Development Agreement (MDA) is to modify the MDA to require the developer to install Rapid Flashing Beacon signs and a flashing Stop sign (signs) as a safety improvement at Sugar Mill Elementary's parent pick-up/drop-off driveway at Charles Street instead of installing a 6-foot privacy fence between the PUD and Sugar Mill Elementary School. The signs are positioned at the intersection of the parent pick-up/drop-off driveway at Charles Street to alert drivers entering and exiting the school of the pedestrian crossing. The proposed amendment does not change any other requirements in the MDA.

2. An estimate of the direct economic impact of the proposed ordinance on private, for-profit businesses in the City, if any:

(a) An estimate of direct compliance costs that businesses may reasonably incur:

N/A

(b) Any new charge or fee imposed by the proposed ordinance or for which businesses will be financially responsible:

N/A

(c) An estimate of the City's regulatory costs, including estimated revenues from any new charges or fees to cover such costs:

N/A

3. Good faith estimate of the number of businesses likely to be impacted by the proposed ordinance: N/A

4. Additional information the governing body deems useful² (if any): N/A

² You may wish to include in this section the methodology or data used to prepare the Business Impact Estimate. For example: City staff solicited comments from businesses in the City as to the potential impact of the proposed ordinance by contacting the local Chamber of Commerce, social media posting, direct mail or direct email, posting on City website, public workshop, etc. You may also wish to include efforts made to reduce the potential fiscal impact on businesses. You may also wish to state here that the proposed ordinance is a generally applicable ordinance that applies to all persons similarly situated (individuals as well as businesses) and, therefore, the proposed ordinance does not affect only businesses.



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 2/18/2025

SUBJECT: (H18) Approval of Major Special Event Request for Bike Week 2025 for The Doghouse Bar and Grill at 3400 S. Nova Road

DEPARTMENT: Community Development

GOAL: 3 - Quality of Life

RECOMMENDED MOTION: Move to approve the ten (10) day Bike Week Major Special Event request for The Doghouse Bar and Grill, located at 3400 S. Nova Road, subject to the attached conditions.

SUMMARY: Hannah Pollock, operator of The Doghouse Bar and Grill, requests approval of a Special Event to be held during Bike Week 2025 at 3400 S. Nova Road (see Location Map below). The proposed event is planned for Friday, February 28, through Sunday, March 9. The proposed hours for the event are 11:00 a.m. to 2:00 a.m. daily, **with outdoor music playing until 10:00 p.m.** Normal hours of operation (11:00 a.m. until 2:00 a.m.) of The Doghouse Bar and Grill will continue during the event.

The dates of Bike Week 2025, as recognized by the Daytona Regional Chamber of Commerce, are Friday, February 28, to Sunday, March 9, the same as the proposed special event dates. During the last Special Event at The Doghouse Bar and Grill (Biketoberfest 2024), no citations for exceeding the noise ordinance were issued by the Police Department.

Normal hours of operation (11:00 a.m. until 2:00 a.m.) of The Doghouse Bar and Grill will continue during the event. The outdoor activities associated with the event include live music daily, contests, and the sale of food, alcohol, clothing, and bike accessories. There will be fourteen (14) vendors at this event selling food, alcohol, clothing, and bike accessories. Vendors are required to obtain a temporary merchant license for \$250 to participate in this event. There will be six (6) port-o-let facilities for the event, as well as the restrooms inside the business. Setup of the event will occur 72 hours before the event and take down will occur within 72 hours after the event.

According to the Code of Ordinances, the hours of operation of a special event shall generally be limited to 11:00 p.m. unless specifically waived or amended by the City Council. The applicant for this special event will have outdoor music playing until 10:00 p.m. but **is requesting a time extension of 3 hours for the ten (10) nights of the event so vendors at the event can sell food, alcohol, clothing, and bike accessories until 2:00 a.m.** instead of 11:00 p.m. If the Council grants the 3-hour time extension for vendor sales past 11:00 p.m., the special event will end at 2:00

a.m., **however outdoor music will still end at 10:00 p.m**

The proposed event has been reviewed by staff from Police, Fire, Public Works, Parks and Recreation, Code Enforcement, and Community Development. According to Code Enforcement, there are no code violations existing on the site at this time. The applicant is not requesting assistance from the Police Department or Public Works Department.

All noise from music and vendors during hours of operation, whether indoor or outdoor, shall not exceed the sound level limits established in the Code of Ordinances. Chapter 42, Article IV. Noise Regulations, Section 42-80. General Restrictions of the City of Port Orange Code of Ordinances describes the acceptable sound level limit dBA. It shall be the responsibility of the permit holder to monitor for noise violations. The Doghouse Bar and Grill shall take care of the placement of speakers for amplified music by adjusting them away from residential areas. A warning may be issued and if not corrected or the violation recurs, the special event may be terminated. All previous noise violations will be considered before permitting future events.



PRESENTER: Penelope Cruz, Tim Burman

ATTACHMENTS:

1.	The Doghouse Bar and Grill - Bike Week 2025 Special Event Conditions	The Doghouse Bar and Grill - Bike Week 2025 Special Event Conditions.pdf
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Penelope Cruz	Created/Initiated - 1/21/2025
Tim Burman	Approved - 1/29/2025
Manuel Marino	Approved - 1/31/2025
Joe Wulfing	Approved - 2/3/2025
Shannon Balmer	Approved - 2/6/2025
Wayne Clark	Final Approval - 2/11/2025

The following conditions apply to the Major Special Event for Doghouse Bar and Grill for Bike Week 2025.

1. The subject Major Special Event is for February 28th – March 9, 2025.
2. Applicant shall be responsible for any charges for City of Port Orange Police services related to this event and coordinate with the Police Department for all vehicular traffic patterns and pedestrian concerns. No Parking along shoulder of the roadway.
3. Applicant shall be responsible for coordination with the City of Port Orange Public Works Department for Public Works services and all charges for equipment (barricades, lights, etc.) used for this event for traffic control.
4. Rates for this event for staff time and equipment are per Resolution 19-2.
5. In accordance with the application submitted and approved by City Council, the hours for outdoor music at this event is from 11:00 a.m. until 10:00 p.m., but vendors are permitted to operate until 2 a.m. Normal indoor hours of operations (11:00 a.m. until 2:00 a.m.) of The Doghouse Bar and Grill will continue during the event. Alcohol shall not be served indoors or outdoors past 2:00 a.m., as required by *Port Orange Code of Ordinances*.
6. Chapter 42, Article IV. Noise Regulations, Section 42-80. General Restrictions of the City of Port Orange Code of Ordinances describe the acceptable sound level limit dBA. It shall be the responsibility of the permit holder to monitor for noise violations. The Doghouse Bar and Grill shall take care of the placement of speakers for amplified music by adjusting them away from residential areas. Sound or noise projecting from one use district into another use district with a different noise level limit shall not exceed the limits of the district into which the noise is projected. A warning may be issued and if not corrected or the violation recurs, the Special Event may be terminated, and noise violations from this event will be taken into account before permitting future events.

Use occupancy category	Time	Sound level limit dBA
Residential	7:00 a.m.—10:00 p.m.	60
	10:00 p.m.—7:00 a.m.	50
Commercial or business	7:00 a.m.—10:00 p.m.	65
	10:00 p.m.—7:00 a.m.	55
Manufacturing, industrial or agriculture	All times	75
Noise sensitive zone	All times	55

7. Tents or canopies being used in association with this event shall comply with the requirements set forth in *NFPA 101 Chapter 11.11.1.2 (Tents)*. Tents shall be permitted only on a temporary basis.
 - Tents or canopies being used in association with this event shall comply with the requirements set forth in NFPA 101 Chapter 11.11 (Tents) Standards for Special Structures and High-Rise Buildings.
 - Tents or canopies cannot be erected more than seventy-two (72) hours prior to the event and must be removed within seventy-two (72) hours after the duration of the event. All tents/canopies must maintain at least two (2) exit ways in an unobstructed fashion to allow for a continuous path of travel.
8. If any outdoor lighting or other structural features are to be installed in association with this event, the event coordinator shall obtain the proper Building Permits from the Community

Development Department. Such lighting must be a minimum of twenty (20) foot candles to provide a safe environment at night.

9. Temporary electrical wiring shall be installed by a certified electrician and shall comply with Article 590 of the current adopted *NFPA #70 National Electrical Code*. This includes (F) Lamp protection. Any temporary lamps shall be protected from accidental contact or breakage by a suitable fixture or lamp holder with a guard.
10. Fire extinguishers shall be provided as outlined in accordance with the *NFPA #10, Standard for Portable Fire Extinguishers*.
11. All outdoor cooking equipment involving liquefied petroleum gas and/or storage cylinders shall comply with *NFPA #58 Liquefied Petroleum Gas Code* and be approved by the Fire Marshal.
12. No more than the requested four (14) vendors shall be on this site. The event coordinator shall be responsible for all participating vendors with respect to any permit conditions or compliance with applicable state, county and city laws, rules, regulations, codes and ordinances. Therefore, the event coordinator must screen all participating vendors to ensure compliance with but not limited to the following:
 - a. Noise ordinance referenced in condition #6 above.
 - b. *Article VI, Chapter 18, Port Orange Code of Ordinances*, relating to peddlers and transient merchants.
 - b. Temporary event permits issued by the Department of Business and Professional Regulation, Division of Hotels and Restaurants for all food vendors.
 - c. Required liquor license for a temporary event shall be obtained from the Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco.
 - d. Provisions and Standards of the City's *Body Art Ordinance*.
 - e. Provisions and Standards of the City's *Sexually Oriented Businesses Code*.
 - f. *Special Event Fee Resolution* establishing Temporary Merchant Fee.
13. All exits and means of egress shall remain accessible and unobstructed and it shall be the responsibility of the event coordinator to maintain access for emergency vehicles.
14. The event coordinator will be providing restrooms located inside the business in addition to providing 6 port-o-let facilities during the event. *A minimum of five percent (5%) of the portable toilets, but no less than one (1) for each sex, shall comply with Section 603 of FBCA as required per Section 213.2 FBCA for handicapped-accessible facilities.*
15. All areas being used for this special event shall be handicapped-accessible. Handicapped parking is to remain open and accessible for this event.
16. Tripping hazards shall be removed or isolated from pedestrian traffic. Vehicle areas, including parking, shall be physically separated from pedestrian areas.
17. If there are calls for police service, or if security threats develop, the Police Department shall require additional officers to provide security for this event. The additional officers will be hired at the expense of the event coordinator at the rate of \$62.00 per hour with a minimum of three hours.
18. The City's *Code of Ordinances* prohibits the exposure of any sexual organs at commercial establishments that serve alcoholic beverages. Furthermore, *Florida Statutes* prohibit any

type of public nudity at such an event.

19. A temporary sign permit shall be required for signage for this event.
20. No trees shall be removed, and care shall be taken to protect landscaped areas.
21. The event coordinator shall schedule an inspection online at <https://www.port-orange.org/570/How-to-Schedule-an-Inspection> for any fences or tents larger than 10x10 prior to first day of the event.
22. Repair of any disturbance of public right-of-way shall be the sole responsibility of the event coordinator.
23. The event coordinator shall schedule an inspection online at <https://www.port-orange.org/570/How-to-Schedule-an-Inspection> to ensure all items associated with the event have been removed to include all debris, signs/banners and tents within 72 hours after the event ends.
24. The event coordinator shall comply with the approved maximum capacity occupancy requirements within the confines of the facility.
25. Camping on premises prohibited by code; includes, but not limited to, tents, motor homes, travel trailers, or other vehicles.

Applicant (Print Name)

Applicant Signature