REGULAR CITY COUNCIL MEETING

6:30 PM – COUNCIL CHAMBERS – CITY HALL

APRIL 15, 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. Invocation by Pastor Nathan Buker of Victorious Life Church
2. Pledge of Allegiance
3. Roll Call
4. Public Comments on Consent Agenda Items Only

B. RECOGNITION AND PROCLAMATIONS

5. Citizen Commendation Award Presented to Deborah Joy

C. CONSENT AGENDA

6. Approval of Minutes
    a. Regular City Council Meeting - April 1, 2025
7. Bid Awards and Contract Items
    a. Intent to Award RFP #25-05 (Wrecker Service Agreement) to J & A Balboa Enterprises, Inc. d/b/a Arrow Service & Towing
    b. Approval to Award RFSQ #24-03 for Construction Manager at Risk for Construction of the Force & Water Main River Crossing to Wharton-Smith, Inc.
    c. Approval of Task Authorization No. 24 with Kimley-Horn & Associates, Inc. for Design and Construction Manager at Risk (CMAR) Coordination Services for the 16-inch River Crossing Water Main Replacement.
    d. Approval of Amendment and Renewal No. 1 to American Sports Officials, Inc. for Officials and Scorekeepers for Various Athletic Leagues
    e. Approval of Change Order No. 1 to Task Authorization No. 7 with Kimley-Horn and Associates, Inc. under the Master Contract for Engineering & Environmental

Services (RFSQ No. 21-03) related to the City-Wide Stormwater Master Plan Update

f. Approval to Award a Contract to Ring Power for the rental of a back-up generator at 520 Monroe Street

g. Approval to Award a Contract to Ring Power for the rental of a back-up generator at 410 Monroe Place

8. Resolution No. 25-23 - Approval of Second Quarter Budget Amendments for Fiscal Year 2024-2025
9. Resolution No. 25-06 - Approval of FDOT Local Agency Program (LAP) Agreement 444033 Port Orange Sidewalk Gaps (various locations)
10. Resolution No. 25-09 - Approval of FDOT Locally Funded Agreement 444033-3-62-02 Construction Engineering Inspection for Port Orange Sidewalk Gaps
11. Resolution No. 25-21 - Approval of FDOT Local Agency Program (LAP) Funding Agreement for Right-of-Way Phase of 449770 Dunlawton Turn Lanes (#CD215)

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

E. COMMENTS AND ADDITIONAL ITEMS

12. Council Members
13. City Attorney
14. City Manager

F. BOARD APPOINTMENTS, INTERVIEWS, AND REPORTS

15. Citizen Advisory Committee for TPO
16. Parks and Recreation Advisory Board Report

G. PUBLIC HEARING

17. Second Reading - Ordinance No. 2025-11 - First Amendment to the Summer Trees Plaza PCD Master Development Agreement (Case No. PRZA-25-0001)
18. First Reading - Ordinance No. 2025-12: Rezoning/5656 Isabelle Avenue
19. First Reading - Ordinance No. 2025-13 - Rezoning/4619 and 4629 Clyde Morris Boulevard

H. COUNCIL COMMITTEE REPORTS

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

I. ADJOURNMENT

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

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

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

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

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

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

CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 4/15/2025

SUBJECT: (B5) Citizen Commendation Award Presented to Deborah Joy

DEPARTMENT: Police Services

GOAL: 1 - Public Safety

RECOMMENDED MOTION: N/A

SUMMARY: On 1/16/2025, Circle K clerk Deborah Joy observed an elderly couple with $10,000 in cash using the Bitcoin ATM inside the store. Deborah suspected this to be a scam and called the police. Officer Pierce responded to the scene where he contacted the victim and her husband near the Bitcoin ATM. Officer Pierce quickly determined that they were victims of a scam and convinced them not to complete the transaction.

The victim explained that this originated from a random email that she clicked on which she thought was from PayPal. It was not from PayPal. She then spoke to a male with an Indian accent on the phone who advised he had inadvertently placed $10,000 in her bank account. He then sent her a link to a fraudulent website that looked like her Fifth Third Bank account statement. The victim was instructed to withdraw the $10,000 and send it back via Bitcoin ATM. The victim did as she was instructed by the scammer to the point where she lied to the bank teller about what the money was being withdrawn for.

The victims were escorted back to Fifth Third Bank to verify that the money that had been accidentally placed in their account was not real. The bank confirmed this to be a case of attempted fraud.

Clerk Deborah Joy should be commended for her vigilance with the hope that everyone in the community could help stop these scams which are increasingly victimizing our elderly and vulnerable citizens.

PRESENTER: Manuel Marino

ATTACHMENTS:

Beth Unruh Created/Initiated - 3/20/2025

Manuel Marino	Approved - 3/31/2025
Wayne Clark	Final Approval - 4/3/2025

REGULAR CITY COUNCIL MEETING MINUTES
COUNCIL CHAMBERS – CITY HALL
1000 CITY CENTER CIRCLE
PORT ORANGE, FLORIDA
APRIL 1, 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 Deacon Mike Rosolino of Epiphany Church

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 Asst. City Attorney Shannon Balmer Deputy City Clerk Amanda Bonin

4. Public Comments on Consent Agenda Items Only

Robert Reinhagen, resident, expressed his concerns about Item #7 Memorandum of Agreement (MOA) with ICE and requested an explanation of it.

CONSENT AGENDA

5. Approval of Minutes
   a. Regular City Council Meeting - March 18, 2025
6. Bid Awards and Contract Items
   a. Award of ITB #24-17 for the Police Department Generator Replacement to Paul Culver Construction, Inc.
   b. Approval of Change Order No. 1 to Task Authorization No. 5 with Mead and Hunt, Inc. as it relates to the Police Department Generator Replacement project under ITB #24-17
   c. Approval of Task Authorization No. 1 to Paul Culver Construction, Inc. for repairs at Riverwalk Park
7. Approval of a Memorandum of Agreement (MOA) between the United States Immigration and Customs Enforcement (ICE), a component of the Department of Homeland Security (DHS) and the City of Port Orange

Motion to approve the Consent Agenda as presented was made by Councilman Shawn Goepfert and Seconded by Councilman Jonathan Foley. Motion carried unanimously by voice vote.

PUBLIC PARTICIPATION (Non-Agenda – 20 minutes)

There were none.

COMMENTS AND ADDITIONAL ITEMS

8. Council Members

Vice Mayor Tracy Grubbs, spoke on the Arthaus Down Under Painting Project, the Mayor's Golf Tournament on June 14, 2025, and the Parks and Recreation Bunny search from April 11–17, 2025.

Councilman Foley mentioned he will be leaving at 7:30 p.m. due to an appointment.

Mayor Stiltner thanked and congratulated staff on the recent Spring Brew and Food Fest, and advised that Tony Delmonte passed away. Mr. Delmonte previously served on the City's Golf Advisory Board. Mayor Stiltner recognized Mr. Delmonte and his service to the city.

9. City Attorney

There were none.

10. City Manager

Wayne Clark, City Manager, introduced the City's new Finance Director Mark Simpson, and thanked Assistant Finance Director Linda Truitt for the work she and her team did during the interim.

> Motion to move the Golf Advisory Board Appointment to follow the City Manager's comments was made by Councilman Lance Green and seconded by Councilman Jonathan Foley. Motion carried unanimously by voice vote.

Item #13 - Golf Advisory Board Appointment was moved up to be discussed before the Audit.

SPECIAL REPORTS

11. FY2024 Audit Discussion with James Moore & Company

Zach Chalifour, partner with James Moore and Company, provided the annual audit presentation for the year-ending September 30, 2024, and answered the Council's questions.

Council members commented on the importance of the pension, thanked staff, and Mr.

Chalifour for his knowledge and presentation.

Councilman Foley advised the City does not have a fund balance policy and spoke on the possibilities of moving unassigned funds to prepare for natural disasters and touched on the benefits of doing so.

Mayor Stiltner requested the topic of moving funds be placed on an agenda for further discussion.

12. Capital Financing Discussion

Toby Wagner, Financial Advisor with Southeastern Investment Securities, LLC, provided a presentation on the finance plan overview regarding funding for the Parks Bond and the new Public Utilities facility and answered the Council's questions.

BOARD APPOINTMENTS, INTERVIEWS, AND REPORTS

13. Golf Advisory Board Appointment

> Motion to re-appoint Richard Lee and Jane Taylor to the Golf Advisory Board was made by Councilman Lance Green and Seconded by Vice Mayor Tracy Grubbs. Motion carried unanimously by voice vote.

COUNCIL COMMITTEE REPORTS

14. City Council Committee Reports

a. Volusia Flagler TPO - Councilman Jonathan Foley

Councilman Foley stated there is nothing new to report.

b. Fire Pension Board - Councilman Jonathan Foley

Councilman Foley provided an update and mentioned member Chris Taylor was re-appointed as the 5th member on the board, but there is still a vacant seat. The Council-appointed member position needs to be filled.

ADJOURNMENT - 7:26 p.m.

_____
Mayor Scott Stiltner

Attest:

_____
Robin Fenwick, MMC
City Clerk

CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 4/15/2025

SUBJECT: (C7a) Intent to Award RFP #25-05 (Wrecker Service Agreement) to J & A Balboa Enterprises, Inc. d/b/a Arrow Service & Towing

DEPARTMENT: Police Services

GOAL: 1 - Public Safety

RECOMMENDED MOTION: Move to award the Wrecker Service Agreement contract to J & A Balboa Enterprises, Inc. d/b/a Arrow Service & Towing and authorize the Mayor and City Clerk to execute contract documents.

SUMMARY: The current Wrecker Service Agreement was initially established on May 10, 2021. The contract was awarded to J & A Balboa Enterprises, Inc. d/b/a Arrow Service & Towing. There were three successive, one-year renewals completed, which were allowed by the original agreement that extended the contract to May 9, 2025. A Request for Proposal (RFP) was sent out in January 2025 for a new contract to commence on May 10, 2025.

Two proposals were received in response to RFP #25-05 for Wrecker/Towing Services. Proposals were received from Arrow Service & Towing and Universal Towing.

The selection committee ranked Arrow Service & Towing the highest of the two proposals. Arrow Service & Towing has met all pre-award conditions and staff recommends awarding the contract to J & A Balboa Enterprises, Inc. d/b/a Arrow Service & Towing.

The initial contract term is for 1 year with an option to renew for three (3), one (1) year extensions based upon staff recommendation to the City Manager. The initial contract term will commence on May 10, 2025.

PRESENTER: Manuel Marino

ATTACHMENTS:

1.	J & A Balboa Enterprises, Inc. dba Arrow Service & Towing - RFP 25-05 Wrecker Services	J & A Balboa Enterprises, Inc. dba Arrow Service & Towing - RFP 25-05 Wrecker Services.pdf
2.	J&A Balboa Enterprises, Inc. dba Arrow Service & Towing Payment and	J&A Balboa Enterprises, Inc. dba Arrow Service & Towing Payment and

	Performance Bond RFP 25-05 Wrecker Services	Performance Bond RFP 25-05 Wrecker Services.pdf
3.	RFP #25-05 Wrecker Services	RFP #25-05 Wrecker Services.pdf
4.	RFP 25-05 Wrecker Services Addendum 1	RFP 25-05 Wrecker Services Addendum 1.pdf
5.	RFP 25-05 Wrecker Services Evaluation Summary	RFP 25-05 Wrecker Services Evaluation Summary.pdf
6.	Arrow Service & Towing complete proposal	Arrow Service & Towing complete proposal.pdf
7.	RFP 25-05 Wrecker Services Notice of Intent to Award	RFP 25-05 Wrecker Services Notice of Intent to Award.pdf
8.	RFP 25-05 Wrecker Service Agreement with Exhibits	RFP 25-05 Wrecker Service Agreement with Exhibits.pdf

Eric Fisher	Created/Initiated - 3/13/2025
Manuel Marino	Approved - 3/13/2025
Linda Truitt	Approved - 3/13/2025
Matthew Jones	Approved - 4/1/2025
Wayne Clark	Final Approval - 4/3/2025

WRECKER SERVICE AGREEMENT

THIS AGREEMENT entered into this _____ day of _____, 2025, by and between the City of Port Orange, Florida, a municipal corporation, located at 1000 City Center Circle, Port Orange, Florida 32129, hereinafter referred to as "City," and J & A Balboa Enterprises, Inc. d/b/a Arrow Service & Towing, a Florida Corporation, with a principal address of 541 Carswell Avenue, Holly Hill, Florida 32117-4411, hereinafter referred to as "Towing Company," in consideration of the mutual covenants contained herein, and subject to the terms and conditions listed below:

W I T N E S S E T H

1. Definitions. The following words and terms, as used in this Agreement, shall have the meaning respectively ascribed:

Immobilization shall mean the installation of a boot or similar device on a vehicle on private property for the purpose of making it unmovable.

Nonconsensual towing shall mean the removal and storage of wrecked or disabled vehicles from an accident scene or the removal and storage of a vehicle in the event the owner or operator is incapacitated, unavailable, leaves the procurement of wrecker service to the law enforcement officer at the scene, or otherwise does not consent to the removal of the vehicle, excepting, however, all incidents of "trespass towing" as hereinbelow defined.

Property owner shall mean that person who exercises dominion and control over a parcel of real property, including but not limited to the legal title holder, lessee, a resident manager, a property manager or other agent who has legal authority to bind the owner. A person providing a towing service may not be appointed as an agent for a property owner.

Tow shall mean to haul, carry, pull along, or otherwise transport or remove a vehicle by means of another vehicle.

Trespass towing shall mean towing or removal of a vehicle, without the consent of the vehicle's owner or operator, as such is authorized by F.S. § 715.07, when that vehicle is parked on private real property.

Wrecker shall mean any truck or other vehicle which is used to carry, tow or otherwise transport vehicles and which is equipped for that purpose with a boom, winch, car carrier, or similar equipment. "Wrecker" shall include the person or firm owning, operating, and/or controlling the wrecker vehicles.

2. The Towing Company shall provide the following services including those outlined in the Request for Proposal 25-05, Addenda (if any), and Contractor's Proposal, all of which are incorporated and made a part hereof by reference:

a. When so authorized by a representative of the City, the Towing Company shall provide for the towing and storage, when required, of motor vehicles and trailers from public or private property lying within the City of Port Orange.

b. When authorized by a representative of the City, the Towing Company shall provide for the towing and storage of any motor vehicle, trailer, motorcycle, or motor scooter which is towed under the provisions of Chapter 70 or other applicable provisions of the Code of the City of Port Orange covering the removal and/or impounding of illegally parked or disabled vehicles, applicable State Statutes, or which is otherwise impounded or required to be moved by or at the direction of a police officer, from the point of origin to the place of business of the Towing Company, and provide for the towing and storage of any vehicle or trailer from the scene of an accident to a location within the City, as designated by the owner of the vehicle (which may be a place of business other than the place of business of the Towing Company).

c. When authorized by a representative of the City, the Towing Company shall tow, service, and/or provide temporary storage for the following vehicles at no charge to the City: (1) Police Department or Fire Department vehicles, owned or leased; (2) vehicles seized under the Florida Contraband Forfeiture Act, Chapter 932, Florida Statutes; and (3) Vehicles initially towed to the police department or city owned impound yard that are held for evidence to include THI vehicles. If one of the vehicles listed in this subsection (2) or (3) above is subsequently released by an authorized representative of the City, the Towing Company will tow the vehicle to its storage yard within 24 hours. Under these circumstances, the owner of the vehicle shall only incur a single flat-rate tow, and shall not be responsible for the initial tow to the police department or city-owned impound. Likewise, the owner of the vehicle shall not incur storage fees unless or until the vehicle has been moved to the Towing Company's storage yard.

All other City owned or leased disabled vehicles shall be towed and/or serviced at no charge excluding refuse collection vehicles and vehicles leased by the City where the Lessor is responsible for the towing/servicing.

Any vehicle towed at the direction of the City or any disabled City owned or leased vehicle that shall be towed shall be removed from its location or point of disability (within a fifty (50) mile radius of the City limits to any point within the City) as may be directed by the City. Mileage in excess of the 50 mile radius shall be reimbursed by the City at the rate of $3.00 per full extra mile for Class A vehicles; $4.00 per full extra mile for Class B vehicles; $5.00 per

full extra mile for Class C vehicles; and $6.00 per full extra mile for Class D vehicles.

In addition, the Towing Company shall change the flat tire(s) of any City Class "A" vehicles within Volusia County at no charge to the City.

d. The Towing Company shall, at no cost to the City, promptly clean all debris off the public streets, ways, sidewalks, parks, avenues, and property of the City, and remove the same to a proper place away from the scene of any motor vehicle accident if the accident scene is to be, is being, or has been serviced by the Towing Company.

e. The Towing Company guarantees that wrecker service shall be rendered at any and all times, as required by this Agreement, twenty-four (24) hours a day, seven (7) days a week, including holidays, and that personnel shall be subject to call at any and all times. The Towing Company further guarantees that, for all emergency response calls, it shall be at the requested location within the City limits within twenty (20) minutes from the time the Towing Company, its representative, or answering service receives a call requesting that a wrecker be dispatched. The time shall not exceed twenty (20) minutes even during special times (bike week, speed week, spring break, etc.) Wrecker vehicles shall not be parked at private residences within the municipal boundaries of the City of Port Orange. A call for emergency response shall include existing or potential conditions at a scene requiring that vehicles be removed and or roadways cleared as soon as possible in the judgment of the requesting police officer.

f. The Towing Company shall answer expeditiously all calls from the Port Orange Police Department, or other City representative, for on-scene service at accidents and shall immediately remove all debris and obstructions caused by accidents even if actual towing is not required (clean-ups only).

g. Upon request, the Towing Company shall provide the Port Orange Police Department with reasonable assistance in the examination of vehicles stored by the Towing Company. Such assistance shall include the availability and use of a wrecker at the storage site for the moving of vehicles to be examined by the police.

h. An "Innocent Owner's" vehicle may be towed and stored as a result of a crime. The Chief of Police or his designee shall identify these vehicles to the Towing Company. An "Innocent Owner" is an owner or other person authorized to possess the vehicle who is not the perpetrator of a crime or civil infraction. "Innocent Owner" vehicles include, but are not limited to, the

following:

1) Recovered stolen vehicles;
2) Vehicles that are seized for forensic testing (i.e., sexual batteries, abductions, homicides, etc.) when the owner/operator was not the perpetrator;
3) Vehicles damaged by stop-sticks when the owner/operator of the vehicle was not the intended target;
4) Vehicles damaged in crashes caused by or resulting from the pursuit of a criminal or a criminal flight from apprehension where the owner/operator was not involved.

NOTE: "Innocent Owners" shall not include those persons whose vehicles are determined by the Chief of Police or his designee to have been stolen by an immediate family member, where it is reasonably believed that the vehicle was exchanged by the owner/operator for illegal controlled substances, or where the vehicle is used in the commission of a crime, and the suspect is operating the vehicle with the implied or actual consent of the owner.

i. If a victim meets the definition of an "Innocent Owner" and has no insurance or has a deductible of seventy-five ($75.00) dollars or more, the Towing Company shall charge the "Innocent Owner" a fee not to exceed seventy-five ($75.00) dollars. The Towing Company can charge additional costs to the "Innocent Owner's" insurance carrier or to some other insurance company who is liable for those costs, but in no event will the "Innocent Owner" be responsible to pay more than seventy-five ($75.00) dollars out-of-pocket for the cost of towing and the first seventy-two (72) hours of storage. The rate for subsequent storage shall be as stated in Section 5 (Rate Charged Owners and the City). The "per tow" fee shall not apply to "Innocent Owner" tows.

j. All services rendered by the Towing Company under this Section 2 shall be at no expense to the City, unless specifically provided otherwise.

3. Payment to the City

In consideration of the Towing Company being called by the City for the term as provided in Section 4 below, the Towing Company shall pay the City the prorated amount of Three Thousand Three Hundred Eighty-Seven and 10/100 Dollars ($3,387.10), on May 10, 2025. Thereafter, on the first of every month, beginning June 1, 2025, the Towing Company shall pay monthly to the City, the sum of Five Thousand and 00/100 Dollars ($5,000.00) per month, so long as this Agreement is in effect.

4. Term

a. The term of this Agreement shall begin May 10, 2025 at midnight, and end on May 9, 2026 at 11:59 p.m., unless extended.

b. Extension - The City shall have the option of extending this Agreement for three (3) consecutive twelve-month periods: (1) The first extension period beginning on May 10, 2026 at midnight, and ending on May 9, 2027 at 11 :59 p. m.: (2) The second extension beginning on May 10, 2027 at midnight, and ending on May 9, 2028 at 11 :59 p.m.; and (3) The third extension period beginning on May 10, 2028 at midnight, and ending on May 9, 2029 at 11 :59 p.m.

c. It is further understood by the parties to this Agreement that in the event the Towing Company is unable to respond to a call with one of its own wreckers, it is still responsible for providing a wrecker during the term of this Agreement. It may utilize a wrecker from any other wrecker company licensed in the City, the County, or any other municipality located in Volusia County. In such cases, the substitute wrecker shall comply with the terms agreed upon herein.

5. Rate Charged Owners and the City

a The Towing Company shall not charge for towing or storage of any vehicle that is the subject of a non-consensual tow or trespass tow originating within the City of Port Orange in excess of the maximum rates as established by Resolution of the City Council of the City of Port Orange, No. 19-15(a copy of the Resolution is attached as Exhibit “A”). The maximum rates set forth herein are subject to amendment at any time by Resolution of City Council.

b. All limitations contained herein on the rate or fee that may be charged by the Towing Company for services contemplated by this Agreement shall be inclusive of any applicable taxes including but limited to sales tax. By way of example, if the towing charge for a “Class A” vehicle is limited to a maximum of $125.00, then the service charge invoiced by the Towing Company shall not exceed $125.00 inclusive of tax. Assuming that sales tax is 6.5% of the sale price, the maximum the Towing Company would be able to charge in this example would be $117.37 for the service and an additional $7.63 for the sales tax totaling $125.00. This limitation in no way relieves the Towing Company from collecting and remitting all applicable taxes to the appropriate taxing authorities.

c. The City shall not be responsible for any fees or charges resulting from nonpayment by the owner of the vehicle being towed.

d. Charging rates in excess of the legal maximum rate, shall be considered a breach of this Agreement and shall be grounds for termination as provided in Section 24.

e. The rates for towing/servicing of City owned/leased vehicles shall be as outlined previously herein at Section 2.c. The City shall not be charged for any services rendered to it under this Agreement except as specifically provided under this Agreement.

f. Towing Company agrees to tow abandoned or junked vehicles at no charge to the City, and City shall surrender all salvage rights to the vehicle to Towing Company and shall retain no liens upon the vehicle.

g. The services specified in Section 2 of this Agreement shall be provided at no cost to the owner of the towed vehicle whenever the City determines that the vehicle was towed in error at the request of the City. The City, in such a case, shall notify the Towing Company of the error as soon as practicable and shall not be responsible for payment of towing charges or storage costs.

h. One day of storage shall equal twenty-four (24) hours at the storage facility except that the first twelve (12) hours of storage shall be provided free of charge to the customer. On the first day of storage only, a vehicle that is stored at the storage facility between twelve (12) hours and twenty-four (24) hours shall be charged for one (1) day of storage. Thereafter, the customer may be billed for an additional day of storage for each twenty-four (24) hour period the vehicle remains in storage at the storage facility beyond the first twenty-four (24) hours of storage. By way of example, a vehicle that is at the storage facility for forty-seven (47) hours shall be charged for one (1) day of storage, while a vehicle that is at the storage facility for forty-nine (49) hours shall be charged for two (2) days of storage.

i. Acceptable forms of payment shall include any two of the following groupings:
   1. Cash, cashier's check, money order, or traveler's check;
   2. Bank, debit, or credit card; or
   3. Mobile payment service, digital wallet or other.

6. Salvage Rights

In consideration for the services to be provided by the Towing Company, under the terms of this Agreement, the City hereby grants the Towing Company all salvage rights that may be permitted by law on any vehicle which may be towed pursuant to this Agreement and as specifically outlined herein at Section 5.e, excluding those vehicles seized and held for possible forfeiture by the City.

7. Storage Facilities and Office

a. The Towing Company shall maintain an office and a storage garage and/or outside storage facility complying with applicable building, zoning and land use regulations. Such storage facility shall:

(1) Contain a minimum of one hundred (100) spaces in an area which is completely secured and fenced at all times.

(2) Have available a minimum of two (2) spaces inside a building affixed to a permanent foundation for storing vehicles which require police processing. Moveable storage facilities are not acceptable. These spaces shall be maintained to provide protection from the weather and security to preserve the evidence and legal chain of custody for vehicles which require police processing. These spaces shall consist of sufficient space and access for police processing of a vehicle stored therein.

(3) Be located within a **seven (7) mile radius** from the City of Port Orange limits, on the same premises as the office.

b. The Towing Company shall own or lease the property where the office and storage facility are located. In the event that the property is leased, the term of said lease shall be not less than the term of this Agreement or any extension thereof as set forth in Section 4. The Towing Company shall provide a copy of the current lease or deed for prequalification and upon request by the City and upon any extension of the Agreement by the City. The Towing Company shall furnish copies of subsequently effective leases and deeds to the City and shall notify the City within three (3) business days upon receiving notice of cancellation, termination, or non-renewal of any lease or any change in ownership. The City reserves the right to terminate this Agreement in the event of expiration, cancellation, termination, or non-renewal of any lease for the property or any change in ownership.

c. The Towing Company shall have an employee on duty at said storage facility from 8:00 A.M. to 6:00 P.M. Monday through Friday, excluding legal holidays and shall have an employee available on-call for Police Department access

to said facility or to facilitate the redemption or inspection of a vehicle by its owner, lienholder, insurance company representative, or their agent after-hours and on holidays.

d. The Towing Company shall prominently post a sign indicating a telephone number where the operator of the site can be reached at all times. Upon receipt of a telephoned request from the owner, lienholder, insurance company representative, or their agent to open the site to redeem a vehicle or the personal property therein, the Towing Company shall return to the site within one hour for redemption of the vehicle or return of personal property therein. Upon payment of the authorized towing and storage fees, the vehicle shall be released to the owner or authorized representative immediately whenever possible, but in no event more than 30 minutes after an acceptable method of payment is made.

e. The Towing Company must release to the renter of a rental vehicle or vessel all personal property belonging to the renter which is not affixed to the rental vehicle or vessel within one hour after the renter's arrival.

f. An employee of the Towing Company shall be on call twenty-four (24) hours a day and able to respond to any call with arrival at the requested location within twenty (20) minutes.

g. Storage facilities shall be in compliance with all state, local and federal regulations. The facility shall be free from trash, rodents, insects and any other cause for contamination of vehicles. The facility shall have comprehensive security to protect property and public that enters the premises. Failure to maintain a clean, safe and secure facility, in the sole discretion of the Chief of Police, shall subject this Agreement to termination as provided herein at Section 24.

h. Storage facilities shall be subject to inspection upon 24 hours notice by the City and shall be required to obtain approval from the City prior to the award of Agreement or any extensions thereto. Storage facilities shall be subject to periodic inspections at any time by the Chief of Police or his designee during the term of this Agreement when deemed necessary by the City to ensure compliance with this Agreement.

i. Vehicles that have been marked “HOLD” for investigative or forfeiture purposes by the Police Department shall be held at the storage facility at no charge to the City for up to 5 days, excluding weekends and holidays, unless an extension is authorized in writing, to properly process the vehicle and

finish the investigation,. If the hold is to continue beyond 5 days, excluding holidays and weekends, the Police Department may request the vehicle be removed to its designated impound lot, in which event the Police Department will not release the vehicle to the owner or lienholder of the vehicle until proof of payment of the towing and storage charges incurred by the Towing Company is presented to the Police Department. If the Police Department chooses to have the vehicle remain at the Towing Company's storage facility beyond 5 days, excluding holidays and weekends, pursuant to the written notification, the Police Department is responsible for payment of the storage charges incurred by the Towing Company for the requested extended period. The owner or lienholder is responsible for payment of accrued towing and storage charges for the first 5 days, excluding holidays and weekends, or any period less than the first 5 days, excluding holidays and weekends, when the Policy Department either moves the vehicle from the Towing Company's storage facility to a designated impound lot or provides written notification to extend the hold on the vehicle prior to the expiration of the 5 days, excluding holidays and weekends. Personnel of the Police Department shall be permitted access to such vehicles at any time. Vehicles marked "HOLD" shall be secured and stored in locked enclosed areas with no access by any person except as authorized by the Police Department. The Towing Company shall maintain comprehensive security to protect all stored vehicles and their contents from theft and damage. At such time the City releases the "HOLD", storage fees may begin to accrue against the owner of the vehicle.

8. Wrecker Equipment and Wrecker Company Personnel

a. The Towing Company shall, during the term of this Agreement, own or lease a minimum of four (4) wreckers to provide the services specified in this Agreement. The wreckers shall include: three (3) Class "A" wreckers, one (1) of which shall have four-wheel drive; and one (1) Class "C" wrecker. The wreckers of the Towing Company shall meet the equipment requirements and specifications set forth in Rule 15B-9.005, Fla. Adm. Code, as the same now exists and as may be amended from time to time. A copy of said Rule, as it currently exists, is attached hereto as Exhibit "B", and incorporated by reference herein.

b. No employee or agent of the Towing Company who provides services to the City under this Agreement shall have been:

(1) Convicted of any felony within the last ten (10) years.

(2) For the purposes of this section, a conviction shall mean an adjudication of guilt by a court of competent jurisdiction; a plea of

guilty or nolo contendere; or a judge's finding or a jury verdict of guilty when adjudication is withheld and the accused is placed on probation, within the last ten (10) years.

c. The Towing Company shall not hire or retain any wrecker driver, permanently or temporarily, who has been convicted of the offense of driving under the influence of alcohol or any controlled substance or chemical substance to the extent that normal faculties are impaired or driving with an unlawful blood alcohol level, or of any criminal traffic offense, within the last ten (10) years.

d. Prior to any extension of this Agreement and within five business (5) days of hiring any new employees, the Towing Company shall provide written notice to the Police Department of the names, addresses and drivers license numbers of all new employees, owners, partners or agents of the Towing Company.

9. Telephone Communications

The Towing Company shall provide cellular telephone communication system between the office and all tow trucks operated by the Towing Company. The Towing Company shall maintain a direct telephone line for incoming police calls.

DIRECT LINE _____
ON-CALL Phone _____

10. Non-Exclusiveness of Service

The Towing Company agrees that the owner or person in possession of any vehicle that has been incapacitated shall have the opportunity of contacting a wrecker or tow company of his/her own choice if the disabled vehicle does not create a hazardous condition and a reasonable response time can be expected. Said person, at the accident or place of incapacity, shall be given the opportunity of having such vehicle towed to a location other than the storage facility of the Towing Company.

11. Benefits from Repairs

The Towing Company shall not benefit directly or indirectly without the express written consent of the owner of the vehicle, or the owner's designated representative, from any motor vehicle repair or painting with respect to vehicles towed and/or stored by the Towing Company under the terms and provisions of any Agreement between the City and the Towing Company. Any such agreement between the Towing Company and the owner, or between the Towing Company and a repair facility, shall state the repairs/painting to be done as well as the price and

terms of payment therefor.

12. Liability of Towing Company

The liability of the Towing Company for any towed vehicle and all property contained therein shall commence at the time a wrecker is hooked to any vehicle to be towed. The Towing Company or its employee, representative, or agent shall inventory all personal property contained in the vehicle to be towed or endorse the inventory prepared by the police officer in charge.

13. Personal Property in Vehicles

To the extent provided by law, the Towing Company shall be accountable and liable for damage or loss to all personal property in the vehicles towed and for all vehicle accessories. Personal property situated in a vehicle stored by the Towing Company shall not be disposed of to defray any charges for storage or towing of the vehicle, except as provided by law. All such personal property shall be returned at once, unless directed otherwise by the City, to the owner or person entitled to legal possession thereof upon proper proof of ownership or right to possession, as provided by law. The determination of the owner or person entitled to legal possession shall be made by the Towing Company. Should the Towing Company release any personal property, the Towing Company shall obtain a receipt for the property from the owner or person entitled to possession thereof. The Towing Company shall provide reasonable access to the owner or person entitled to legal possession of the vehicle to retrieve all personal property from the vehicle. Said access shall include towing the vehicle to a location in the storage yard or near the gate of the storage yard where the vehicle may be accessed. The Towing Company shall not charge the owner or person entitled to legal possession of the personal property for accessing the vehicle in which the personal property is located or any other service that may be incidental to allowing the individual to retrieve the personal property from the vehicle.

14. Release of the Vehicle

a. The Towing Company must accept an original or a copy of any of the following documents as evidence of a person's interest in a vehicle or vessel:
   (1) An electronic title;
   (2) A paper title;
   (3) A contract between a lender and the owner of the vehicle or vessel;
   (4) A contract between the lessor and the lessee of the vehicle or vessel;
   (5) Credentials establishing the person as an employee or contract agent of an insurance company along with documentation identifying the vehicle by the vehicle identification number or vessel by the hull identification

number; or

(6) A written agreement evidencing that the person is an agent of the vehicle or vessel owner or lienholder.

b. Presenting one form of current government-issued photo identification constitutes sufficient identity for verification purposes under this Agreement.

c. The Towing Company agrees to release any vehicle, which has not been marked "HOLD" to the proper owner, lienholder, insurance company representative, or their agent. Any vehicle that has been marked "HOLD" by the Port Orange Police Department cannot be released without prior written authority from the Police Department. The Towing Company shall require proper proof of ownership or right to possession before releasing a vehicle, and the Towing Company shall obtain a receipt for the vehicle. The Towing Company shall deliver to the **Port Orange Police Department, 4545 Clyde Morris Boulevard, Port Orange, FL 32129** by 9:00 a.m. daily a report of all vehicles released the previous day. The Towing Company shall be required to make the vehicle available for release by either allowing the owner, lienholder, insurance company representative, or their agent to enter the storage lot to retrieve the vehicle or towing the vehicle from its current location to the front gate of the storage lot where the owner or person entitled to possession may take possession of the vehicle. The Towing Company shall not charge the person entitled to possession for retrieving the subject vehicle from the lot or "setting out" the vehicle at the gate of the storage lot or for any other service that may be incidental to releasing said vehicle to the owner, lienholder, insurance company representative, or their agent. This does not prohibit the Towing Company from negotiating a consensual tow to a property other than the Towing Company's storage lot at the request of the owner, lienholder, insurance company representative, or their agent. However, if the person entitled to possession would prefer to have a different towing company provide said service, the Towing Company shall not charge any fee related to releasing the vehicle to another towing company.

15. Posting Charges and Rate Sheets

a. The Towing Company shall prominently post a sign at the storage facility in such a manner that it is conspicuous to the public with one-inch black lettering on a white background, which lists the charges to be imposed upon persons whose vehicles are towed pursuant to this Agreement. As to such persons, the Towing Company shall not impose any charges that exceed the legal maximum rate established for the City of Port Orange.

b. The Towing Company must maintain a rate sheet listing all fees for, or incidental to, the recovery, removal, or storage of a vehicle or vessel and must do all of the following:

1. Make the rate sheet available upon request by the vehicle or vessel owner, lienholder, insurance company, or their agent.
2. Before attaching a vehicle or vessel to a wrecker, furnish the rate sheet to the owner or operator of the vehicle or vessel, if the owner or operator is present at the scene of the disabled vehicle or vessel.

16. Itemized Statements

a. Should any owner, lienholder, insurance company, or their agent entitled to possession of a towed and/or stored vehicle seek to reclaim the same from the Towing Company, the Towing Company shall provide such owner, lienholder, insurance company, or their agent with an itemized statement of all charges related to the towing and storage of such vehicle. Such statement shall be provided free of charge.

b. An itemized statement must be produced and be available to the vehicle or vessel owner, lienholder, insurance company, or their agent no later than one business day after:
• The tow is completed; or
• The towing-storage operator has obtained all necessary information to be included on the invoice, including any charges submitted by subcontractors used by the towing-storage operator to complete the tow and recovery.

The itemized statement shall include, at a minimum a detailed description of the work performed and/or services provided by the Towing Company including the following:
• The date and time the vehicle or vessel was towed and subsequently released from storage;
• The location to which the vehicle or vessel was towed;
• The name, address, and telephone number of the towing-storage operator;
• A description of the towed vehicle or vessel, including the color, make, model, model year, and vehicle identification number of the vehicle or hull identification number of the vessel;
• The license plate number and state of registration for the towed vehicle or vessel;
• The cost of the initial towing service;
• The cost of any storage fees, expressed as a daily rate;
• Other fees, including administrative fees, vehicle or vessel search fees, fees for hazardous material and nonhazardous material cleanup, and fees for labor; and
• A list of the services that were performed under a warranty or that were otherwise performed at no cost to the owner of the vehicle or vessel.

Any services provided by the Towing Company to the patron upon the patron's request shall be identified as such on the itemized statement by using the term "customer request" followed by a description of the work performed at the request of the customer. However, the customer shall not be charged for any services for which a charge has been forbidden by this Agreement even if requested by the customer.

The Towing Company must make the itemized invoice available for inspection and copying no later than 48 hours after receiving a written request to inspect such invoice from:
• A law enforcement agency;
• The Attorney General; or
• The vehicle or vessel owner, lienholder, insurance company, or their agent.

c. The City shall periodically audit Towing Company billing to ensure compliance with this Agreement. During any twelve (12) month period, failure by the Towing Company to provide itemized billing statements in accordance with this section shall result in a progressive liquidated damages charge (for the City's estimated costs as a result of billing issues) and up to termination, as follows:

First Offense	$50.00
Second Offense	$100.00
Third Offense	$150.00
Fourth Offense	Suspension and up to termination

17. Indemnification

The Towing Company shall indemnify and hold harmless the City of Port Orange and its agents, officers and employees from and against all claims, damages, losses, and expenses, including but not limited to attorneys' fees incurred prior to the filing of a suit and throughout any court proceeding, arising out of or resulting from the work or services or the performance of operations under this Agreement, provided that the claim, damage, loss and expense is caused in whole or in part by any willful or negligent act or omission of the Towing Company, any subcontractor, anyone directly or indirectly employed by any one of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

18. Insurance

a. Required Insurance:

The Towing Company shall purchase and maintain, at its own expense, the

following types and amounts of insurance:

(1) Workers' Compensation Insurance:

Workers' Compensation Insurance for all employees and subcontractors of the Towing Company connected with the work, which is the subject of this Agreement. The insurance required by this provision shall comply fully with the Florida Workers' Compensation Law and include Employers Liability insurance with limits of not less than $500,000 per occurrence or the statutory requirements whichever is greater. No class of employee, including the Towing Company itself, if an individual, shall be excluded from the Workers' Compensation coverage.

(2) Garage-keeper's policy. A garage-keeper's legal liability and direct primary policy covering fire, theft, vandalism, and other insurable perils in the minimum amount of $75,000.00, and a per-vehicle deductible not exceeding $1,000.00.

(3) On Hook/Cargo liability policy with a minimum limit of $75,000.00 and a deductible not exceeding $1,000.00 per towing vehicle.

(4) Automobile liability policy, covering the operation of wrecker's business, equipment, and vehicles with a combined single limit for bodily injury and property damage of no less than $1,000,000.00.

(5) General liability policy. A general liability policy, covering the operation of wrecker's business, equipment and vehicles, with a combined single limit for bodily injury and property damage of no less than $1,000,000.00.

(6) The above insurance coverage shall name the City of Port Orange as additional insured, with the exception of Workers' Compensation Insurance.

b. Proof of Insurance

The Towing Company shall furnish proof of insurance acceptable to the City showing the City as an additional insured within ten (10) days of the City Council award of this Agreement. The Towing Company shall not commence work under this Agreement until it has obtained all the insurance required under this Agreement and such insurance has been filed with and approved by the City. The Towing Company shall furnish evidence of all required insurance in the form of certificates of insurance which shall clearly outline all hazards covered as itemized above, the amounts of insurance applicable to each hazard, the expiration dates, and shall contain the following language as to cancellation:

In the event of cancellation of this policy by the insurer or any insured, this company shall give not less than thirty (30) days advance written notice to:

Port Orange Police Department
ATTN: Towing Contract Manager
City of Port Orange
4545 Clyde Morris Blvd.
Port Orange, Florida 32129

Upon request by the City, the Towing Company shall furnish copies of the insurance contracts to support the certificates of insurance and the Towing Company shall be required to satisfy any revision by the City.

The Towing Company shall file replacement certificates at least seven (7) days prior to expiration or termination of the required insurance occurring prior to the expiration of this Agreement. In the event such insurance shall lapse, the City expressly reserves the right to either declare a breach of this Agreement and terminate, or renew the insurance at the Towing Company's expense. The renewal of the insurance shall not waive the City's right to declare a breach of this Agreement.

The Towing Company agrees to comply with all applicable state and federal laws, rules and regulations. Nothing in this Section 18 shall be construed to reduce or limit any commercial insurance required for towing company operation by applicable state or federal laws, rules or regulations.

19. Records, Books and Payment

The City reserves the right, during normal business hours, to inspect and audit the Towing Company records pertaining to services provided under this Agreement. All records shall be maintained at one central location as provided hereinafter. Additionally, the monthly sum payable to the City by the Towing Company shall be submitted to the Office of the City Finance Director on the first day of each month for the duration of this Agreement. Copies of all Towing Company paid invoices for services provided each month as a result of this Agreement shall be submitted to the City on or before the 15th day following the end of the month in which such services were provided. Such invoices may be provided in the form of a computer printout, or in an electronic format approved by the Finance Director, and shall contain the information set forth in Subsection 19.a.(1) below.

a. The Towing Company shall maintain for three (3) years following the towing of any vehicle towed under authority of a representative of the City, the following records of such tow:

(1) Call date and time, dispatch time, arrival time, hooked, dropped and cleared time, where the vehicle was towed from; the date and time towed; the driver who towed the vehicle; where it was towed to; a complete description of the vehicle; the name and address of the registered owner; the disposition of the vehicle; the date and time the vehicle was released or disposed of; and all correspondence and documents sent or received concerning said vehicle, as required by this Agreement; and

(2) All notice publications and certified mailings, the purchase price of any unclaimed vehicle or vessel sold, the names and addresses of persons to which vehicles or vessels were released, the names and addresses of vehicle or vessel purchasers, all fees imposed under s. 713.78, F.S.

20. Right to Cancel Service Call

The City shall have the right to cancel a request for Towing Company services until the time the wrecker arrives on the scene, and there shall be no charge to the City or the vehicle operator/owner. When a wrecker is to be canceled, it shall be canceled over the police radio prior to the wrecker's arrival on the scene. The term "arrives on the scene" is construed to mean that the responding wrecker has arrived within the close physical proximity of the vehicle to be towed and the wrecker has stopped and its operator has exited the wrecker in preparation to perform the towing service.

21. Compliance with Laws and Rules

The Towing Company agrees to and shall comply with all applicable provisions of the Florida Statutes, including Section 316.530, all applicable City ordinances, resolutions, and the equipment requirements and specifications set forth in Rule 15B-9.005, Fla. Adm. Code, as may be amended, unless otherwise provided by ordinance or this Agreement.

22. Surety Performance Bond

Within ten (10) days of city council award of this Agreement by the Port Orange City Council, the Towing Company shall post a surety performance bond or provide a letter of credit. The surety shall be an A-rated or better company. The performance bond or letter of credit shall be in the amount of $50,000.00 (fifty thousand and 00/100 dollars) to be used by the City in the event:

a. The Towing Company fails to provide wrecker service required by this

Agreement, for the purpose of defraying costs incurred in making adequate arrangements for towing services, including the City's actual administrative costs.

b. The Towing Company breaches the terms of this Agreement and it is terminated by the City as provided in Section 24, for the purpose of defraying the cost of rebidding this Agreement.

23. Late Response

Liquidated damages for Late Response to emergency response calls. The Towing Company shall respond immediately to all emergency calls for service, and shall be at the location within twenty (20) minutes from the time the call is received.

The contractor assumes all liability in meeting the twenty (20) minutes response time including but not limited to any and all damages resulting from traffic accidents caused by the Towing Company's delay in response. During any twelve (12) month period, failure to meet the twenty (20) minute response time shall result in a progressive liquidated damages charge and up to termination, as follows:

First Offense	$50.00
Second Offense	$100.00
Third Offense	$150.00
Fourth Offense	Automatic suspension and up to termination

The Towing Company shall not be assessed a liquidated damages charge for delay or failure in providing service when such delay or failure is the result of fire, flood, strike, act of God, act of government, act of alien enemy or by any circumstances which, in the Police Chief's opinion, is beyond the control of the Towing Company. Act of government shall not include enforcement of Chapter 316, Florida Statutes.

24. Breach of Agreement and Termination

a. It shall be the right of the Chief of Police and any officials of the City which he may designate to observe closely the wrecker service operations and if, in the opinion of the Chief of Police, there has been a breach of contract, the Chief of Police shall so notify the Towing Company, in writing, specifying the manner in which there has been a breach of contract. If termination of the Agreement due to breach is recommended, the Chief of Police may so notify the City Manager and a hearing shall be set for a date within fifteen (15) calendar days of such notice. At that time, the City Manager shall hear the Towing Company and the City representative(s), and shall make a determination as to whether or not there has been a breach of contract, and

shall direct what further action shall be taken by the City, including but not limited to termination of this Agreement, as hereinafter provided. Pending the hearing, the Chief of Police has the right to suspend the Towing Company's operations under this Agreement, if he/she deems it necessary to protect health, safety and welfare; and the Towing Company shall have no recourse against the City for the suspension. Any lesser remedial action than termination shall not waive the City's right to further remedial action.

b. In addition to terminating this Agreement, the City may recover from the surety bond all actual administrative costs as provided by Section 22 of this Agreement.

c. The City may, if it so elects, pursue any other remedies provided by law for breach of this Agreement or any of its terms, covenants, conditions, or stipulations.

d. No right or remedy herein conferred upon or reserved to the City or the Towing Company is intended to be exclusive of any other right or remedy, and each and every right and remedy given hereunder, or now or hereafter existing at law or at equity or by statute.

25. Misleading, Dishonest, and Illegal Practices

a. The Towing Company warrants that it shall not engage in any misleading, dishonest, or illegal practices with regard to the vehicles towed pursuant to this Agreement, and shall charge owners of vehicles only those amounts permitted under this Agreement for those services covered by this Agreement. In the event that an overcharge or other violation covered by this section is reported to the City, the City shall promptly notify the Towing Company of the alleged violation.

b. If a satisfactory written explanation is not received by the City within twenty-four (24) hours from the Towing Company, or the violation is not otherwise remedied and assurances given that similar violations shall not occur in the future, within the twenty-four (24) hour period, the violation shall constitute a breach of this agreement that may be reported to the City Manager for termination of this Agreement or other appropriate action as provided by Section 24 herein.

c. The Towing Company shall remedy any overcharge or unauthorized billing immediately by reimbursing the overage or unauthorized amount to the patron billed. In addition to the reimbursement of any overages to the patron, during any twelve (12) month period, any overcharge or unauthorized billing

shall result in a progressive liquidated damages charge (for the City's estimated costs as a result of billing issues) and up to termination, as follows:

First Offense	$50.00
Second Offense	$100.00
Third Offense	$150.00
Fourth Offense	Suspension and up to termination

26. Public Records Compliance

a. Towing Company shall comply with public records laws as set forth in Chapter 119, Florida Statutes, and shall specifically:

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

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

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

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

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

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

27. Legislative Acknowledgement

The City and Towing Company acknowledge the recent creation and adoption of Section 166.04465 of the Florida Statutes. Both parties acknowledge that each monthly payment made to the City by the Towing Company under this Agreement are neither a rate nor fee imposed by ordinance upon the Towing Company. Rather the Towing Company has voluntarily sought to earn the right to perform the services contemplated by this Agreement on behalf of the City through a competitive procurement process. Both parties acknowledge and expressly agree that the monthly payments provided for herein are permissible under state law and in no way violates Section, 166.04465, Florida Statutes.

28. Non-Discrimination

During the performance of this Agreement, Towing Company agrees:

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

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

c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient compliance with this provision.

29. E-Verify

Towing Company 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 Towing Company during the term of this Agreement and who provide services to the City under this Agreement.

30. 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 or limit 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 by operation of law.

31. Miscellaneous

a. The descriptive headings appearing in this Agreement and by law are for convenience only and are not to be construed either as a part of the terms and conditions hereof or as any interpretation thereof.

b. The bid documents and specifications are made a part of this Agreement by reference, as if fully set forth herein. In the event of a conflict between the bid documents and specifications, and this Agreement, the terms of this Agreement shall control.

c. It is mutually understood and agreed that nothing contained in this Agreement is intended or shall be construed, as in any way creating or establishing the relationship of a partnership or joint ventures between the parties hereto or as constituting the Towing Company as agent or representative of the City for any purpose or in any manner whatsoever.

d. The Towing Company shall not assign this Agreement and its rights hereunder, in whole or in part, except with the prior written consent of the City.

b. In the event of any claim, action, litigation, or proceeding in court under this Agreement or in the event of any settlement of a dispute under this Agreement prior to a proceeding filed in court the prevailing party shall be entitled to an award of reasonable attorneys' fees and costs.

[REMAINDER OF PAGE LEFT BLANK]

TOWING COMPANY
J & A Balboa Enterprises, Inc.
d/b/a Arrow Service & Towing

Witnesses:

_____
Printed Name: _____

_____
Printed Name: _____

By: _____
Adolph Balboa, President

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

Date: _____

At this time the City <u>does not</u> accept electronic/digital signatures. A wet signature is required for this document.

CITY OF PORT ORANGE

By:_____

Scott Stiltner, Mayor

Date:_____

ATTEST:

By:_____

Robin L. Fenwick, MMC, City Clerk

Date:_____

EXHIBIT A

MAXIMUM NONCONSENSUAL AND TRESPASS TOW RATES

A. Maximum rates to be charged for the removal and storage of wrecked or disabled vehicles from an accident scene or the removal and storage of vehicles in the event the owner or operator is incapacitated, unavailable, leaves the procurement of wrecker service to the law enforcement officer at the scene, or otherwise does not consent to the removal of the vehicle, when the point of origin of the tow services are within the boundaries of the City of Port Orange shall be:

1. Towing vehicles, Class A (GVWR at 9,999lbs or less or a vehicle carrying a vessel 15 feet or less in length), shall be: $125.00

2. Towing vehicles, Class B (GVWR at 10,000lbs or more but less than 19,500lbs or vehicle carrying a vessel more than 15 feet, but less than 22 feet in length): $250.00

3. Towing vehicles, Class C (GVWR at 19,500 or more pounds, but less than 25,000lbs or vehicle carrying a vessel more than 22 feet in length): $375.00

4. Towing vehicles, Class D, greater than 25,000lbs GVWR: $500.00

5. Innocent Owner Fee (See Sec. 2(h) of the Wrecker Service Agreement) $75.00

6. If a tarp is required, a flat fee of: $15.00

7. If self-adhesive film is required to dry-in the vehicle, a flat fee of: $37.50

8. Additional flat fee per fifteen (15) minute block of extra labor for complicated situations beyond the initial 30 minutes at the scene for nonconsensual tows (i.e., water recovery, extraction of vehicle from pole, tree or house, righting overturned vehicle or clearing away a large amount of debris at an accident scene) shall be permitted as follows:
   - a) Class A $25.00
   - b) Class B $50.00
   - c) Class C $75.00
   - d) Class D $100.00

9. Services charges
   - a) Wrecker on-scene and owner arrives $25.00
   - b) Wrecker not on scene and owner arrives No charge

10. Storage Rates per day:
   - a) Any vehicle at compound under twelve (12) hours No charge
   - b) Class A:
     - Outside Storage $20.00
     - Inside Storage $25.00
   - c) Class B
     - Outside Storage $25.00
     - Inside Storage $30.00
   - d) Class C
     - Outside Storage $55.00
     - Inside Storage $60.00

e) Class D

- Outside Storage $55.00
- Inside Storage $60.00

11. An additional daily storage fee, as set forth in item 10 above, may be charged for any vessel, trailer or other mobile item, whether motorized or not, which is mounted on wheels and attached to a towed vehicle.

12. After business hours (Monday—Friday, 6:00 p.m.—8:00 a.m., Saturday and Sunday and national holidays) vehicle release fee: $35.00

B. After 48 hours of storage, an administrative fee for lien processing may be imposed for the actual costs of notification(s) so long as the wrecker service has actually complied with the requirements of F.S. 713.78 including execution and mailing of the lien notice or $65.00, whichever is less.

C. No additional charges or fees of any kind, other than those specified and authorized in this schedule's Sections A and B, are allowed for services governed by this Resolution, when towed from a point in the City. By way of illustration, no additional charges or fees may be assessed for:

a) Mileage
b) Special equipment or services such as double hook-up, vehicle entry when locked, dropping transmission linkage, axle or drive shaft removal, dollies, trailer or flat bed, lifts, slim jims, go jacks, removing bumpers, airing up brakes
c) Time spent at the scene of the tow, other than those specified in this schedule
d) Release fees during normal business hours (Monday—Friday, 8:00 a.m.—6:00 p.m.);
e) Access fees to allow the owner or the owner's representative to remove personal property or examine the vehicle
f) Yard fees, set-out fees, or gate fees for allowing the owner or any tow company designated by the owner or his insurance company to take custody of and remove the vehicle from the impound area
g) Fuel surcharge fees
h) Storage for the first twelve hours

EXHIBIT "B"

15B-9.005 Wrecker Classification and Required Equipment.

(1) Each tow truck owned or maintained by a wrecker operator shall be commercially manufactured and shall conform to the requirements of this rule. The requirements for commercial manufacture of trucks and equipment are waived for those operators who have been on the division's rotation list for one year prior to January 22, 1986. The wrecker and equipment shall be operable.

(2) The tow truck and equipment shall be inspected by the division's local troop commander or his designee and approved by the troop commander before being placed on the rotation list. Thereafter, trucks and equipment shall be subject to periodic checks as necessary to ensure compliance with these rules.

(3) Sirens on wreckers are prohibited.

(4) The wrecker operator shall not represent or imply on any vehicle, building or correspondence an official relationship between the wrecker operator and the division or any other police agency.

(5) It is prohibited for a tow truck or the business establishment maintained by the wrecker operator to have any equipment capable of monitoring messages or signals or frequencies assigned to the division.

(6) All trucks operated pursuant to this rule shall be equipped with a business-type communication radio or mobile telephone or cellular telephone. There shall be one radio or phone for each truck. Such equipment shall be licensed and approved by the Federal Communications Commission. The mobile radio or telephone shall enable the wrecker operator to communicate with his area of operations from any point within the assigned zone. A citizens band radio does not meet the requirements of this section. The troop commander may waive this requirement for all wrecker operators within a zone upon a showing that due to the limited number of operators in a zone that the installation of such communication devices is unnecessary or cost prohibitive or that the service is not readily available.

(7) Specifications and required equipment shall be as follows:

(a) ALL wreckers (All Classifications) shall include the following:

1. A cradle, tow plate or tow sling to pick up vehicles. The cradle, tow plate or tow sling shall be equipped with safety chains and constructed in such a manner that it will not damage the vehicle to be towed.

2. Dual rear wheels.

3. Clearance and marker lights and all other equipment as required by Chapter 316, F.S.

4. A rotor beam or strobe-type light, amber in color, mounted on the wrecker in such a manner that it can be seen from the front, rear, and both sides.

5. The name, address and telephone number of the wrecker operator for the zone in which the operator is qualified must be painted or permanently affixed in a conspicuous place on both sides of the trucks as required by Section 713.78(6), F.S. A unit number shall be painted on both sides of the cab of each wrecker. The same unit number on two or more wreckers qualified to tow within a zone is prohibited. Multiple addresses and telephone numbers are prohibited.

a. The name must be in letters at least three (3) inches in height.

b. The zone address and telephone number must be at least one (1) inch in height.

c. The unit number must be at least three (3) inches in height and in contrasting color.

d. Magnetic or removal signs or placards will not meet these requirements.

6. At least one heavy duty push broom with a minimum width of twenty-four (24) inches.

7. One square shovel.

8. One ax.

9. One crowbar or prybar with a minimum length of thirty (30) inches.

10. Minimum of one (1) five pound CO_2 or dry chemical fire extinguisher or equivalent. Must be approved type and have a current inspection tag attached.

11. One pair of bolt cutters with a minimum opening of 1/2 inch.

12. One set of jumper cables.

13. One four-way lug wrench.

14. One flashlight.

15. Five thirty minute fuses.

16. One snatch block for each winch with manufacturer's rating to match winch.

17. Extra towing chain six to eight feet in length with hooks.

18. At least three (3) safety cones or triangle reflectors.

19. Fifty pounds of sand or equivalent.

(b) Class "A" Wreckers – For the removal of cars and light duty trucks and vehicles weighing 10,000 pounds gross vehicle weight or less. Specifications and equipment in addition to requirements outlined in paragraph 15B-9.005(7)(a), F.A.C., shall be as follows:

1. A truck chassis with a manufacturer's rated capacity of at least 10,000 pounds gross vehicle weight. A complete, commercially manufactured boom and winch(es) having a manufacturer's combined rating of at least 4 tons must be mounted on the chassis. Hand crank winches do not satisfy these requirements and will not be approved.

2. A minimum of one hundred feet of 3/8-inch cable.

3. Dollies.

4. Flood lights on the hoist.

5. Vehicles which are equipped with wheel lifts or the equivalent may also qualify as Class A tow trucks so long as they are equipped with a boom and all other applicable requirements are met. Wheel lifts shall be rated at a minimum of 3,000 lbs. lift capacity and must utilize wheel safety straps when lifting vehicles by the wheels only.

6. Operators who wish to remove cars and light trucks may have, in addition, a roll-back or slide-back carrier truck/trailer with specifications and equipment as provided in subsection (c) of this rule.

7. HSMV Form 60308 shall be used by the Division for the inspection of Class "A" wreckers.

(c) Class "A" Roll-Back or Slide-Back Wreckers – For the removal of cars and light duty trucks and vehicles weighing 10,000 pounds gross vehicle weight or less. Specifications and equipment for roll-back or slide-back carriers in addition to the requirements outlined in subparagraphs 15B-9.005(7)(a)2.-20., F.A.C., shall include the following:

1. A truck chassis with a manufacturer's rated capacity of at least 10,000 pounds gross vehicle weight with a minimum of a sixteen (16) foot bed, dual rear wheels and a winch with at least 8,000 pound capacity.

2. A minimum of 50 feet of 3/8-inch cable.

3. A minimum of two safety tie-down chains of at least ten (10) feet each in length.

4. Two spot (flood) lights mounted on the rear of the carrier.

5. A roll-back or slide-back carrier trailer shall meet the following requirements:

a. A commercially manufactured carrier trailer with a rated capacity of at least 8,000 pounds gross vehicle weight with a minimum sixteen (16) foot bed. A winch with at least 8,000 pound capacity.

b. A minimum of 50 feet of 3/8 inch cable.

c. Brakes and trailer lights which meet the minimum statutory requirements of Florida law.

d. Safety chains.

e. Must be towed by and used in conjunction with an approved wrecker that meets or exceeds the class of the vehicle to be towed.

6. HSMV Form 60305 shall be used by the Division for the inspection of roll-back and slide-back carriers.

(d) Class "B" Wreckers – For removal of medium duty trucks or vehicles weighing 20,000 pounds gross vehicle weight or less. Specifications and equipment in addition to the requirements outlined in paragraph 15B-9.005(7)(a), F.A.C., shall be as follows:

1. A truck chassis with a manufacturer's rated capacity of at least 20,000 pounds gross vehicle weight. A complete, twin-winch, commercially manufactured boom and winches having a manufacturer's combined rating of at least ten (10) ton capacity mounted on the chassis. Class B wreckers that were previously approved at 15,000 pounds gross vehicle weight may continue in use within this class, even if sold to another approved rotation operator.

2. A minimum of one hundred feet of at least 1/2-inch cable on each drum.

3. One set of scotch blocks for wheels or hydraulic rear-extendable scotch blocks.

4. Flood lights on the hoist.

5. HSMV Form 60307 shall be used by the Division for the inspection of Class "B" wreckers.

(e) Class "C" Wreckers – For the removal of heavy duty trucks, house trailers, buses, etc., weighing over 20,000 pounds gross vehicle weight. Specifications and equipment in addition to the requirements outlined in paragraph 15B-9.005(7)(a), F.A.C., shall be as follows:

1. A truck chassis with a manufacturer's rated capacity of at least 30,000 pounds gross vehicle weight and 50,000 pounds gross vehicle weight for tandem axle trucks. A complete, twin-winch, commercially manufactured boom and winches having a manufacturer's combined rating of at least 25 ton capacity mounted on the chassis.

2. A minimum of two hundred feet of at least 5/8-inch cable on each drum.
3. Air brakes so constructed as to lock the rear wheels automatically upon failure.
4. External air hookup and hoses, to supply air to disabled vehicles.
5. One set of scotch blocks for wheels or hydraulic rear-extendable scotch blocks.
6. Flood lights on the hoist.
7. HSMV Form 60306 shall be used by the Division for the inspection of Class "C" wreckers.

Rulemaking Authority 321.051 FS. Law Implemented 321.051, 321.05(1) FS. History–New 1-22-86, Formerly 15B-9.05, Amended 10-15-92, 10-2-95.

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

PAYMENT AND PERFORMANCE BOND

(Public Works)

Notice and Time Limitations Must Be In Accordance
With Section 255.05(2), (8) and (10), Florida Statutes

BOND NO. _____

PRINCIPAL:

Developer or Contractor:	J&A Balboa Enterprises, Inc. d/b/a Arrow Service & Towing
Principal Business Address:	541 Carswell Avenue Holly Hill, Florida 32117-4411
Contact Person:	Adolph Balboa, President
Phone Number:	(352) 561-2990

SURETY: _____
Address: _____
_____
Contact Person: _____
Phone Number: _____

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

Amount: $50,000.00 **City Case/Project No.** **RFP 25-05 Wrecker Services**

Description of Work: RFP 25-05 Wrecker Services

Project Location: Various locations in and around the City of Port Orange, Volusia County, Florida

Front Page

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

J&A Balboa Enterprises, Inc. d/b/a Arrow Service & Towing

RFP 25-05 Wrecker Services

Bond No._____

COMBINATION PAYMENT AND PERFORMANCE BOND
FOR
PUBLIC CONSTRUCTION

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

BY THIS BOND, We, **J&A BALBOA ENTERPRISES, INC. d/b/a ARROW SERVICE & TOWING** as Principal, and _____, a corporation, as Surety, are bound to **CITY OF PORT ORANGE, FLORIDA**, a Florida municipal corporation, herein called "Owner" or sometimes referred to as "City," in the sum of **FIFTY THOUSAND AND 00/100 DOLLARS** (**$50,000.00**), for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

THE CONDITION OF THIS BOND is that if Principal:

1. Performs the terms of that certain Wrecker Services Agreement having an effective date of _____, 2025 entered into by and between the Principal and the City, for Wrecker Services, hereinafter referred to as the "Contract," being made a part of this bond by reference, at the times and in the manner prescribed in the Contract; and

2. Promptly makes payments to all claimants, as defined in Section 255.05(1), Florida Statutes, supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the Contract (the "Work"); and

3. Pays Owner all losses, damages, delay damages (including contractually authorized liquidated damages), expenses, costs, and attorney's fees, including appellate proceedings, that Owner sustains because of a breach or material breach by Principal under the Contract documents; and

4. Performs the guarantee of all work and materials furnished under the Contract for the time specified in the Contract, then this bond is void; otherwise it remains in full force.

Notice of Nonpayment and Time Limitations

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

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

IN WITNESS WHEREOF, this performance and payment bond shall be deemed an original, this _____, day of _____, 2025.

Attest:

J&A ENTERPRISES, INC. d/b/a ARROW SERVICE & TOWING

_____
(As to Corporate Principal) Secretary

By: _____
Adolph Balboa, President

_____
(Witness to Principal)

(Corporate Seal)

_____
(Surety)

_____
(Witness to Surety)

By: _____
Name: _____
(Attorney-in-Fact)

(Corporate Seal)

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

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

CITY OF PORT ORANGE, FLORIDA

REQUEST FOR PROPOSAL

RFP #25-05

WRECKER SERVICES

City of Port Orange Purchasing Division

Prepared by: Jill Poolman, Purchasing Manager
Release Date: January 24, 2025

Proposal Due Date and Time:
February 14 at 2:30 PM EST

City of Port Orange, Florida
1000 City Center Circle
Port Orange, FL 32129
(386) 506-5718
purchdiv@port-orange.org
www.port-orange.org

Legal Notice to Respondents

RFP #25-05 Wrecker Services

Notice is hereby given that the City of Port Orange is soliciting proposals for RFP #25-05 Wrecker Services. Proposals will be accepted in the City Clerk's Office, Port Orange City Hall, 1000 City Center Circle, Port Orange, Florida 32129 until **2:30 PM Eastern Standard Time (EST) on February 14, 2025,** which may be amended by addendum issued by the City. All untimely proposals will not be considered and will be returned to the Respondent unopened. All proposals will be evaluated to ensure they contain all the required forms in order to deem the Respondent responsive or non-responsive. **Proposals will be opened and Respondents' names will be read aloud at 2:30 PM EST in the Council Chambers located on the first floor of City Hall, 1000 City Center Circle, Port Orange, Florida 32129.**

DESCRIPTION: *The City of Port Orange is soliciting sealed Proposals to acquire the services and establish an agreement for Wrecker Towing Services.*

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

If awarded, the Respondent must be able to obtain both payment and performance bonds equal to one hundred percent (100%) of the project value from a surety company licensed in Florida and must submit proof of their present bonding capacity with their submitted bid package in the form of a current (not older than 3 months) letter from Respondent's bonding agent. Respondent's failure to include the bonding capacity letter with proposal package may result in rejection of Respondent's submittal.

All Requests for Proposals (RFPs) are solicited and will be evaluated on the criteria outlined in the RFP. An Evaluation Committee comprised of City staff has been appointed to evaluate and rank the proposals received in accordance with the Policies and Procedures as set forth in the City's Purchasing Manual.

Copies of the proposal documents, requirements, scope of service and all other pertinent information necessary to submit a complete package may be obtained electronically from the City of Port Orange Purchasing web page at www.port-orange.org/bids.aspx and DemandStar at www.demandstar.com.

All questions must be directed in writing to Jill Poolman, Purchasing Manager @ jpoolman@port-orange.org and purchdiv@port-orange.org and reference **"Questions on RFP #25-05 Wrecker Services" in the subject line.** Last day for questions will be January 31, 2025 at 5:00 PM EST.

The Cone of Silence begins with the issuance of the solicitation document and continues until City Council meets to make a final decision on an award. During this time respondents, suppliers, contractors and sub-contractors are prohibited from all communications regarding the solicitation with City staff, City consultants, City legal counsel, City agents, or elected officials. Any respondent who initiates any discussions or attempts to influence a member or members of the aforementioned shall be disqualified from continued participation in the procurement process with regard to that particular solicitation. While the Cone of Silence is in effect, all communications from potential respondents, suppliers, contractors and sub-contractors must be directed to the Purchasing Division @ purchdiv@port-orange.org.

[Remainder of this page left intentionally blank]

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



SEALED PROPOSAL – DO NOT OPEN

SEALED PROPOSAL NO.: **RFP #25-05**

PROPOSAL TITLE: **WRECKER SERVICES**

DUE DATE/TIME: **February 14, 2025 AT 2:30 PM EST**

SUBMITTED BY: _____
(Name of Company)

ADDRESS: _____

_____

DELIVER TO: **City of Port Orange**
Attn: Jill Poolman, Purchasing Manager
Purchasing Division
1000 City Center Circle
Port Orange, FL 32129

DATE/TIME RECEIVED: _____
(To be stamped by Clerk's office)

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SECTION 1 – PURPOSE AND OVERVIEW

The purpose of this Request for Proposal (RFP) is to solicit competitive sealed proposals for the provision of providing wrecker towing services.

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

SECTION 2 – INSTRUCTIONS TO RESPONDENTS

Firms or companies (Respondents) desiring to provide services, as described herein, shall submit sealed proposals, including one (1) original, five (5) copies and one (1) identical digital version in PDF format on USB flash/thumb drive, in conformance with the detailed submittal instructions.

TIMELINE (Eastern Standard Time)

The City reserves the right to alter dates as needed.

DESCRIPTION	DATE
Date of Distribution	January 24, 2025
Deadline for Questions	January 31, 2025 by 5:00 PM
Addendum Posting (If needed)	February 7, 2025
Proposals Due	February 14, 2025 by 2:30 PM
Evaluation Period	To Be Determined
Public Scoring Meeting	To Be Determined
City Council Meeting for Approval of Recommendation of Award	To Be Determined

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

City of Port Orange City Clerk's Office
Attn: Jill Poolman, NIGP-CPP, CPPO, CPPB/Purchasing Manager
1000 City Center Circle
Port Orange, FL 32129

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

Proposals shall be sealed and Respondents must indicate on the outside of their proposal the following:

a. Request for Proposal (RFP) Number and Title
b. Date of Opening
c. Name of Respondent
d. Address of Respondent

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

Offers by telephone or email will not be accepted. Also, Respondents are instructed NOT to fax their proposal package. **Faxed proposals will be rejected as non-responsive regardless of where or when the fax is received.**

All proposals will be opened publicly and the names of all Respondents shall be read aloud. All conferences and meetings regarding this RFP are recorded electronically (audio only). The City of Port Orange reserves the right to reject any or all proposals or parts of proposals, if it is in the best interest of the City.

QUESTIONS

All questions shall reference **"Questions on RFP #25-05 Wrecker Services"** in the subject line. All questions concerning this RFP shall be submitted in writing no later than the date and time referenced in the Timeline above to:

Jill Poolman, Purchasing Manager
1000 City Center Circle
Port Orange, FL 32129
jpoolman@port-orange.org and purchdiv@port-orange.org

ADDENDA

The City will issue responses to inquiries and any other corrections or amendments it deems necessary in written addenda issued prior to the Proposal Due Date. Addenda will be provided via the City website Purchasing web page at www.port-orange.org/bids.aspx and the DemandStar website at www.demandstar.com. Respondents should not rely on any representations, statements or explanation other than those made in this RFP or in any addendum to this RFP. Where there appears to be a conflict between the RFP and any addenda issued, the last addendum issued will prevail. It is the Respondent's responsibility to be sure all issued addenda have been received and reviewed. Respondents should acknowledge the correct number of addenda received as part of their proposals by completing Form 9.3 – Addendum and Change Order Procedure Acknowledgement contained herein. This provision exists solely for the convenience and administrative efficiency of the City of Port Orange. No Respondent or other third party gains any rights by virtue of this provision or the application thereof, nor shall any Respondent or third party have any standing to sue or cause action arising therefrom.

CLARIFICATIONS

It is the Respondent's responsibility to become familiar with and fully informed regarding the terms, conditions and specifications of this RFP. Lack of understanding and/or misinterpretation of any portions of this RFP shall not be cause for withdrawal of your proposal after opening or for subsequent protest of award. Respondents must contact the Purchasing Representative, at the email provided, should clarification be required. Modification or alteration of the documents contained in the solicitation or contract shall only be valid if mutually agreed to in writing by the parties.

MINIMUM QUALIFICATIONS

Respondents must be commercially licensed to do business in the State of Florida and appropriately qualified in the areas specified in the scope of work and to perform the services identified herein. Respondents must be properly registered and licensed to engage in the scope of work pertaining to this RFP, by all applicable state and local agencies.

Respondents must provide a minimum of three (3) verifiable references from similar scopes of work as identified in this RFP on the provided Form 9.8 – Professional References for Previous Experience. If references cannot be reached using the provided contact information and/or are not responsive, points for this criterion shall reflect as such. **The City of Port Orange is not to be used as a reference.**

NO LOBBYING

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

EXCEPTIONS TO SPECIFICATIONS
If taking exception to any portion of the RFP specification, the Respondent must indicate those exceptions as stated on Form 9.2 – Respondent's Acknowledgement Form.

PROPOSAL SUBMISSION AND WITHDRAWAL
Unless otherwise specified, Respondent shall use the forms supplied by the Purchasing Division. Proposals, once opened, become the property of the City, cannot be withdrawn and will not be returned to the Respondents. Upon opening, Proposals become subject to public disclosure in accordance with Chapter 119, Florida Statutes.

CORRECTION OF PROPOSALS
Correction of inadvertently erroneous proposals shall be permitted up to the time of the RFP opening. Respondents shall not be allowed to modify their proposals after the opening time and date.

WITHDRAWAL OF PROPOSALS
NO proposal shall be withdrawn for a period of one-hundred-twenty (120) days subsequent to the opening date without the consent of the City of Port Orange. Negligence on the part of the Respondent in preparing the proposal confers no right of withdrawal or modification after the proposal has been opened at the appointed time and place by the City of Port Orange. Any such withdrawn proposal shall not be resubmitted.

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

PROPOSALS MAY BE REJECTED AND/OR RESPONDENT(S) DISQUALIFIED FOR THE FOLLOWING REASONS:

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

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

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

[Remainder of page left intentionally blank]

SECTION 3 – SCOPE OF SERVICES AND REQUIREMENTS

SCOPE OF SERVICES

It is the intent of the City to enter into a contract for wrecker and towing services. The Towing Company, when authorized by a representative of the City shall provide towing and/or storage services of any motor vehicle, trailer, motorcycle, or motor scooter from public or private property lying within the city of Port Orange. All services, including additional services provided herein shall be rendered at no cost to the City.

See **WRECKER SERVICE AGREEMENT** attached herein for details of the Scope of Services.

SECTION 4 – STANDARD PURCHASING DEFINITIONS

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

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

20. **Intent to Award** is a document that informs the public and respondents of the City's decision to award a contract pursuant to a previously issued competitive solicitation.
21. **Issues** means points, matters or concerns to be addressed during negotiations.
22. **Non-Professional Services** are services performed that are not of a professional nature such as lawn care, security, janitorial, etc.
23. **Offer** means a complete signed Response submitted to the City in response to a Solicitation including, but not limited to, a bid submitted in response to an Invitation to Bid, a proposal submitted in response to a Request for Proposal, a quote submitted in response to a Request for Quotation, a Statement of Qualifications and interest submitted in response to a Request for Statements of Qualifications or a reply submitted in response to an Invitation to Negotiate.
24. **Outlier** is a proposal which is determined by the Purchasing Director or Manager to be significantly dissimilar to or inconsistent with competing bids or offers.
25. **Pre-Bid/Proposal/Statement/Reply Conference** means a meeting conducted by the Purchasing Office, held in order to allow Respondents to ask questions regarding the proposed Contract and particularly the Contract specifications with the City Department requesting the goods/services.
26. **Price Analysis** is an evaluation of the total cost of a contract in order to determine if the price is reasonable.
27. **Procurement Process** is a term used in the governmental sector for the combined functions of acquiring (purchasing) needed goods and/or services, receiving and inspection, inventory management, contract administration and disposal/service.
28. **Professional Services** means those services within the scope of the practice of architecture, professional engineering, landscape architecture or registered surveying and mapping, as defined by the laws of the State, or those performed by any architect, professional engineer, landscape architect or registered surveyor and mapper in connection with his or her professional employment or practice.
29. **Proposal** is a complete, properly signed response to a Request for Proposal, based on performance that is offered rather than on that of price alone, which if accepted, would bind the Respondent to perform the resultant Contract.
30. **Protest** is a formalized process by which respondents have an opportunity to challenge a procurement practice or contract award.
31. **Purchase Order** is an order placed by the Purchasing Division for the purchase of goods or services written on the City's standard Purchase Order form and which, when accepted by the Respondent, becomes a contract. The Purchase Order is the Bidder's authority to deliver and invoice the City for the goods or services specified and the City's commitment to accept the goods or services for an agreed upon price.
32. **Request for Proposal (RFP)** means a formal request to prospective Respondents requesting qualifications of the Respondent and pricing for a specified good or service which has been advertised for Proposal in a newspaper.
33. **Respondent** means and entity that has (or will, i.e. "prospective respondents") submitted a response to a competitive solicitation being issued.
34. **Response/Submission** means all materials submitted to the City by a Respondent as part of a solicitation. A response may be called a bid, proposal, statement of qualifications or a reply, depending on the type of competitive solicitation being issued.
35. **Responsible (Respondent)** is a Respondent who has the capability in all respects to fully perform the contract requirements and the integrity and reliability that will assure good faith performance.
36. **Responsive (Respondent)** is a Respondent that has submitted a bid, proposal, statement of qualifications or reply that conform in all material respects to the solicitation.
37. **Scope** means the extent of the area or subject matter that something deals with or to which is relevant.
38. **Scope of Work** means a description of the work activities, deliverable and/or timeline that a Respondent must execute in terms of delivering specific commodities or in performance of contractual services.
39. **Services** include all work or labor performed for the City on an independent contractor basis other than construction.
40. **Solicitation** means a formal request, as applicable, for prospective Bidders or Respondents to submit a response to an Invitation to Bid, Request for Proposal or Request for Statement of Qualifications.
41. **Solicitation Document** means a document or collection of documents, either paper or electronic, that contains all information required to conduct a competitive procurement project according to §287.057, Florida statutes.

42. **Stakeholder** means an individual, who is not likely to become a Respondent, who has and interest in the commodities/contractual services needed.
43. **Subcontractor** means a person, firm or entity providing goods or services to a Respondent to be used in the performance of the Respondent's obligations under the Contract.
44. **Subject Matter Expert** means a person who has working or expert knowledge about a particular topic or field.

SECTION 5 – GENERAL TERMS AND CONDITIONS

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

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

1. **ADDENDA**
   When specifications are revised, the City of Port Orange Purchasing Division will issue an addendum addressing the nature of the change. Respondents should acknowledge all addenda by completing Form 9.3 contained herein. Failure to acknowledge the correct number of addenda issued may result in rejection of the Response. It is the responsibility of the Respondent to ensure all addenda have been received prior to submitting a proposal. All Addenda shall be posted by the City on www.demandstar.com and City of Port Orange Purchasing Web page at www.port-orange.org/bids.aspx. The City shall issue responses to inquiries and any other corrections or amendments it deems necessary in written addenda issued prior to the Solicitation Response Due Date. Respondents should not rely on any representations, statements or explanations other than those made in this Solicitation or in any addendum to the Solicitation. Where there appears to be a conflict between the Solicitation and any addenda issued, the last addendum issued shall prevail.
2. **ANTI-COLLUSION STATEMENT**
   By submitting this Response to a Formal Solicitation, the Respondent affirms that this Response is without previous understanding, agreement or connection with any person, business or corporation submitting a Response for the same materials, supplies or equipment, and that this Response is in all respects fair and without collusion or fraud. Additionally, Respondent agrees to abide by all conditions of this Solicitation and certifies that they are authorized to sign this Response for the Respondent. In submitting a Response to the City of Port Orange, the Respondent offers and agrees that if the Response is accepted, the Respondent shall convey, sell, assign or transfer to the City of Port Orange all rights, title and interest in and to all causes of action it may now or hereafter acquire under the Anti-trust laws of the United States and the State of Florida for price fixing relating to the particular commodities or services purchased or acquired by the City of Port Orange. At the City's discretion, such assignment shall be made and become effective at the time the City tenders final payment to the Respondent.
3. **APPLICABLE LAWS**
   In connection with the furnishing of supplies or performance of work under the Contract, the Respondent agrees to comply with the Fair Labor Standards Act, Equal Opportunity Employment Act and all other applicable federal and state laws, regulations and executive orders to the extent that the same may be applicable.
4. **ASSIGNMENT**
   The successful Respondent shall not sell, assign, transfer or convey this contract in whole or in part, without the prior written consent of the City of Port Orange. Any such assignment or transfer shall not release Respondent from all contractual obligations.
5. **AUTHORITY TO CONDUCT BUSINESS IN FLORIDA**
   A Florida corporation or partnership is required to provide evidence with its response that the Respondent is authorized to transact business in Florida and is in good standing with the Florida Department of State. If not with the response from the successful Respondent, such evidence must be submitted to the City no later than five (5) business days from request of the Purchasing Manager. A foreign (out-of-state) corporation or partnership is required to provide evidence with its response that the Respondent is authorized to transact business in Florida and is in good standing with the Florida Department of State. If not with the response from

the successful Respondent, such evidence must be submitted to the City no later than five (5) business days from request of the Purchasing Manager. A joint venture is required to provide evidence with its response that the joint venture, or at least one of the joint venture partners, is authorized to transact business in Florida and is in good standing with the Florida Department of State. If not with its response, such evidence must be submitted to the City no later than five (5) business days from request of the Purchasing Manager. However, the joint venture is required to provide evidence prior to contract execution that the joint venture is authorized to transact business in Florida and provide the City with a copy of the joint venture Agreement. A joint venture is also required to provide with its response a Statement of Authority indicating that the individual submitting the joint venture's proposal has the legal authority to bind the joint venture. If not with its response, such evidence must be submitted to the City no later than five (5) business days from the request of the Purchasing Manager.

6. AWARD AND EXECUTION OF CONTRACT

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

7. AWARDS

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

8. BONDS

If this Solicitation requires submission of bid guarantee and performance bonds, there will be a separate section explaining those requirements. When the Purchasing Manager deems it necessary, bid bonds/deposits shall be prescribed and are advertised in the public notices inviting bids. Responses submitted without the required bid bond or certified check shall be deemed non-responsive. Normally, if a bid bond/deposit is requested, it is in the amount of five percent (5%) of the bid amount.

Payment and Performance bonds requested for construction projects shall be in an amount equal to one hundred percent (100%) of the total contract amount which will be recorded by the City, at the Contractor's sole cost and expense, with the Clerk of the Circuit Court, Volusia County, Florida. After recording, the City will furnish to the contractor the recording information for the bond to evidence that the contractor has met the requirements of Florida law. The City will bill the cost of recording to the contractor. Unsuccessful Respondents are entitled to the return of their bid bond. A successful Respondent shall forfeit any surety required by the Purchasing Manager upon failure of the Respondent to enter into a contract within the time specified after the award of bid.

9. CERTIFICATE OF INSURANCE

If required upon notice of intent to award contract resulting from this solicitation, the selected Respondent will be required to submit a Certificate of Insurance showing proof of adequate coverage for professional general liability, errors and omissions and workers' compensation as identified under the insurance requirements of this solicitation and listing the City of Port Orange as a Certificate Holder prior to execution of the contract.

10. CHANGE ORDER REQUEST NOTIFICATION

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

11. CHANGE ORDERS

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

12. CLEAN UP

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

mulch to replace (if necessary) existing grass that has been damaged. If sod is used it shall match the sod present on the effected property. Contractor shall make all repairs and restorations at his expense.

13. CONDUCT OF RESPONDENTS

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

14. CONE OF SILENCE

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

Exceptions to the Cone of Silence:

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

15. CONFLICT OF INSTRUCTIONS

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

16. CONFLICT OF INTEREST

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

17. CONTRACT

Any acquisition above the $100,000 level shall be done through one of the formal competitive methods except upon City Council waiver and/or shall have City Council approval. Only the Purchasing Manager and/or City Manager, have the authority to obligate the City by entering into a written contract to purchase goods and/or services up to $25,000.00. The City of Port Orange, Florida reserves the right to reject any and all Responses or to waive any and all non-substantial irregularity in Responses received, whenever such waiver or rejection is in the best interest of the City.

18. CONTRACT OBLIGATION

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

19. CONTRACT RENEWALS

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

20. COOPERATIVE PURCHASING

The City Manager may elect to purchase through or join with other governmental units in cooperative purchasing ventures when the best interest of the City would be served thereby, provided the same is in accordance with all applicable laws. In the event the City Manager should elect to purchase through or join with other governmental agencies in cooperative purchasing ventures, all purchases in excess of twenty-five thousand dollars ($25,000.00) shall require council approval before the purchasing contracts are entered into. (Code 1981, § 8-33, Ord. 1997-22, § 5.6-1997; Ord. No. 2004-15, § 4, 7-20-2004)

21. COPYRIGHT AND PATENT RIGHTS

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

22. COST INCURRED BY RESPONDENT

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

23. DEBARMENT HISTORY

The City will consider a Respondent's debarment history information in its review and determination of responsibility. All Respondents are required to disclose to the City all cases of debarment filed, pending or resolved by the City or other public entity during the last five (5) years prior to the solicitation response due date, whether such actions were brought by or against the Respondent, any parent or subsidiary of the Respondent or any predecessor organization. If the Respondent is a joint venture, the information provided should encompass the joint venture (if it is not newly formed for purposes of responding to the solicitation) and each of the entities forming the joint venture. Although the review of a Respondent's debarment history is an issue of responsibility, the failure to provide debarment history on Form 9.11 as required in the RFP may result in a recommendation of non-responsive by the Purchasing Manager.

24. DEFAULT PROVISIONS

In the event of default by the Respondent the City reserves the right to procure the item(s) solicited from other sources and hold the Respondent responsible for excess costs incurred as a result. If a contractor defaults on a City contract the City Council may elect to refrain from doing business with the Respondent for a period of 36 months from the date of default.

25. DISCLOSURE OF CONFLICTS

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

26. E-VERIFY

Respondents shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Respondent during the term of contract and shall expressly require any subcontractor performing services pursuant to the contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the term of contract. Respondents shall complete Form 9.10 E-Verify Affidavit and include it in the returned Response package. Failure to include the affidavit may result in rejection of the Response.

27. EXCEPTIONS TO REQUIREMENTS

For purposes of evaluation, the Respondent must indicate any exception to the requirements, terms, and/or conditions, no matter how minor. This includes any agreement or contract forms supplied by the Respondent that are required to be signed by the City. If exceptions are not stated by the Respondent, in his/her proposal, it will be understood that the item(s)/services fully comply with the requirements, terms and/or conditions stated by the City. Exceptions are to be listed by the Respondent on Form 9.2 contained herein and if necessary, listing exceptions on an attachment included with the proposal. The City will not determine exceptions based on a review of any attached sales or manufacturer's literature.

28. FACILITIES

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

29. FAILURE TO RESPOND

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

30. FINANCIAL STABILITY

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

31. FORCE MAJEURE

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

32. FOREIGN COUNTRIES OF CONCERN

A governmental entity may not knowingly enter into a contract with an entity which would give access to an individual's personal identifying information if: a) the entity is owned by the government of a foreign country of concern to include the People's Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolas Maduro, or the Syrian Arab Republic, including any agency of or any other entity of significant control of such foreign country of concern; b) the government of a foreign country of concern has a controlling interest in the entity; or c) the entity is organized under the laws of or has its principal place of business in a foreign country of concern.

33. GOVERNING FORMS

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

34. GOVERNING LAW

Respondents shall comply with all applicable federal, state and local laws and regulations. All Responses are solicited and shall be made pursuant to the Code of Ordinances, City of Port Orange, Chapter 2, Article VI, Division 2, Section 2-263, and all Responses will be evaluated in accordance with the provisions thereof. Code of Ordinances, City of Port Orange is on file in the Office of the City Clerk, City Hall, 1000 City Center Circle, Port Orange, Florida and at www.municode.com. The City of Port Orange is also governed by the Consultants' Competitive Negotiation Act, Section 287.055, Florida Statutes, as the method of selecting architects, engineers and land surveyors. The City has utilized the procedures in the Act for Professional counselors, environmentalists, planners, general contractors, computer systems, designers, telecommunications consultants, maintenance technicians, financial services and other professional services. Every acquisition equal to or greater than $35,000.00 must have a signed, notarized "Public Entity Crimes Form" to comply with Section 287.133(3)(a), Florida Statutes. Also required is the "Drug- Free Preference Form" to comply with Section 287.087, Florida Statutes. Each form is included in the Solicitation.

35. GRANT FUNDING

Any contract entered into by the City that is to be paid from grant funds shall be limited to payment from the grant funding and the Respondent/provider understands that the City has not set aside any City funds for the

payment of obligations under a grant contract. If grant funding should become unavailable at any time for the continuation of services paid for by the grant, and further funding cannot be obtained for the contract, then the sole recourse of the provider shall be to terminate any further services under the contract and the contract shall be null and void.

36. HIPAA COMPLIANCE

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

37. INDEMNIFICATION/HOLD HARMLESS

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

38. INDEPENDENT CONTRACTOR

It is expressly understood and agreed by both parties hereto that the City is contracting with the successful Respondent as an independent Contractor. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the successful Respondent under this contract and that the successful Respondent has no authority to bind the City. The Respondent represents itself to be an independent Contractor offering such services to the public and shall not represent himself or his employees to be an employee of the City. Therefore, the Respondent shall assume all legal and financial responsibility for taxes, FICA, employee fringe benefits, worker's compensation, employee insurance, minimum wage requirements, overtime, etc., and agrees to indemnify, save, and hold the City, its officers, agents, and employees, harmless from and against, any and all loss; cost (including attorney's fees); and damage of any kind related to such matters. The Respondent shall further understand that the City cannot save and hold harmless and or indemnify the Respondent and/or the Respondent's employees against any liability incurred or arising as a result of any activity of the Respondent or any activity of the Respondent's employees performed in connection with the Contract.

39. INSPECTIONS AND TESTING

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

40. INSURANCE

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

41. INSURANCE CANCELLATION

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

42. INSURANCE REQUIREMENTS

Contractor shall maintain insurance, as required herein, during the life of this Contract. Contractor shall provide to the City, a certificate of insurance endorsing the City of Port Orange as an additional named insured. All insurance coverages of the Contractor shall be primary and non- contributory. All insurance coverages of the Contractor shall not seek contribution from any other insurance or self-insurance available to the City. For

workers' compensation coverage, the Contractor's insurance certificate shall include the insurer's waiver of subrogation in lieu of endorsing the City as an additional insured for workers' compensation.
IMPORTANT: The City does not accept Workers' Compensation Exemptions. Contractor may use leased employees if the Contractor ensures that all workers who access the jobsite are employees covered by the employee leasing company, and no non-employees are permitted to access the jobsite. Any Contractor using a leased employee shall complete the City's Leased Employee Affidavit Form Exhibit. Policies for Workers' Compensation may be issued by companies authorized as a group self-insurer by F.S. 440.572. Policies other than Workers' Compensation shall be issued by insurers licensed and/or duly authorized under Florida Law to do business in the State of Florida and all insuring companies are required to have a minimum rating of "A-" in the "Best Key Rating Guide" published by A.M. Best & Company, Inc. Contractor shall not commence work under this Contract until the City has received a certificate or certificates of insurance with endorsement evidencing the required insurance. Insurer shall provide the City written notice of cancellation, nonrenewal or any other changes in coverage no later than thirty (30) days prior to the effective date of the change and shall provide notice to the City no later than 10 days after non-payment. The Certificates of Insurance and required insurance policies shall contain provisions that thirty (30) days prior written notice shall be given to the City of any cancellation, intent not to renew, or reduction in the policies or coverages.

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

The City reserves the right to increase insurance coverage as determined for higher risk contracts. The acceptance by the City of any Certificate of Insurance does not constitute approval or agreement by the City that the insurance requirements have been satisfied or that the insurance policy shown on the Certificate of Insurance is in compliance with and does not waive the insurance required by this.

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

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Standard Insurance Requirements			
Required	**Insurance**	**Standards**	**Additional Requirements**
☒	Workers' Compensation The Contractor shall maintain coverage for its employees with statutory workers' compensation limits, and no less than the limits indicated in the Schedule of Limits for Employers' Liability. Said coverage shall include a waiver of subrogation in favor of the City. **The City will not accept elective exemptions.** Any Contractor using an employee leasing Company shall complete the Leased Employee Affidavit Exhibit Form.	Contract Amount Limits Up to $10 million Statutory/$500,000 $10 -$20 million Statutory/$1,000,000 Contracts over $20 million to be determined by the City	• If contract requires work on or about navigable waters, Longshoreman's and Harbor Workers' coverage required. • If vessels involved, Jones Act coverage with limits of $500,000 required
☒	Comprehensive General Liability (including completed operations and contractual liability)	Limits: Combined Single Limit Bodily Injury and Property damage: $1,000,000 each occurrence $1,000,000 aggregate	When work is on or under Railroad rights of way or properties, the Contractor shall take out and maintain during the life of the contract, Railroad protective liability and property damage insurance in amounts as requested by the Railroad.
☒	Comprehensive Business, Automobile Liability to include all owned, hired and non-owned automobiles	Limits: Auto Liability Bodily Injury and Property Damage: $1,000,000 each occurrence $1,000,000 aggregate	
Additional Insurance Requirements			
☐	Property Insurance Builders Risk Additional Coverage:	Limits: Buildings – completed value of contract "All Risk" coverage on latest ISO or its equivalent. Permission granted to occupy. Owner named as insured AIMA	If agreement required handling or installation of Owner's equipment, coverage should be furnished on "All Risk" form, including transit and Owner shall be named.
☐	Installation Floater (IT)	Limits: Coverage – To Be Determined	
☐	Contractor Pollution Liability	Limits: Coverage - $1,000,000	
☐	Professional Liability/Errors and Omissions	Limits: Coverage - $1,000,000	
☐	Umbrella Policy	Limits: Coverage – To Be Determined	
☐	Payment and Performance Bond required	Limits: Coverage – equal to amount of contract	
	City Manager waives Payment and Performance Bond for all work under $200,000 unless otherwise required by Department Director.		
	Unless otherwise required by law, City Manager waives insurance for FOB goods.		

43. INVOICES AND PAYMENTS

All invoices shall be sent to: City of Port Orange, Accounts Payable, P.O. Box 291759, Port Orange, Florida, 32129 or email apbilling@port-orange.org. In accordance with Florida Statutes, Chapter 218, payment will be made within 45 days after receipt of merchandise and a proper invoice. The City will attempt to pay within fewer days if Respondent offers a payment discount. The City cannot make advance payments, make deposits in advance of receipt of goods, or pay C.O.D. Respondents should state any payment discount in the space provided on the proposal form for construction services. If the awarded firm would like to receive payment via ACH, this can be accommodated after the contract is fully executed.

44. IRREVOCABILITY OF RESPONSES

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

45. LATE SUBMISSIONS, LATE MODIFICATIONS AND LATE WITHDRAWALS

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

46. LEGAL REQUIREMENTS

Applicable provision of all federal, state, county and local laws, and all ordinances, rules and regulations shall govern development, submittal and evaluation of all Responses received in response hereto and shall govern any and all claims and disputes which may arise between person(s) submitting a response to a Solicitation hereto and the City by and through its officers, employees and authorized representatives or any other person, natural or otherwise; and lack of knowledge by any Respondent shall not constitute a cognizable defense against the legal effect thereof. Upon execution of a contract, the successful Respondent shall hold harmless, indemnify and defend the City of Port Orange, its members, officials, officers and employees against any claim, action, loss, damage, injury, liability, cost and expense of whatsoever kind or nature (including, but not by way of limitation, attorneys' fees and court costs) arising out of or incidental to the performance of the Contract, whether or not due to or caused by negligence of the City of Port Orange, its members, officials, officers or employees. This Contract requirement shall be reflected in the insurance coverage certificate.

47. LICENSES, PERMITS AND TAXES

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

48. LITERATURE (if applicable)

If no brand, model or make is specified, Respondents shall submit descriptive literature and technical data, fully detailing all features, designs, construction, appointments, finishes and the like not covered in the specifications, necessary to fully describe the equipment, material and/or services he/she proposes to furnish.

49. NON-DISCRIMINATION

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

50. NON-EXCLUSIVITY OF CONTRACT

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

51. NON-PERFORMANCE

Failure to meet the expected quality of workmanship, schedule or other criteria agreed upon, shall be considered a default. In case of default, the City may procure the required services from other sources and hold the Consultant responsible for any excess costs occasioned thereby and may immediately cancel the contract.

52. NOTICE TO CONTRACTOR

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

53. OPTIONAL CONTRACT USAGE

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

54. POSTPONEMENT/CANCELLATION/WAIVER OF IRREGULARITIES

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

55. PRE-PROPOSAL CONFERENCE

The Purchasing Manager shall determine if a pre-proposal conference is required and details of the conference shall appear in the Solicitation legal advertisement and Solicitation requirements. The conference shall normally be held in the Council Chambers, located on the first floor of City Hall, 1000 City Center Circle, Port Orange, Florida. A site visit may be included and shall immediately follow unless stated in the advertisement or this solicitation as mandatory, attendance to the pre-proposal conference is not mandatory. The representative of each Respondent shall be an authorized employee of the Respondent and shall sign in accordingly.

56. PROPOSAL EVALUATION

Respondents who wish to receive a copy of the proposal evaluation may obtain it via www.demandstar.com or on the City of Port Orange Purchasing web page at www.port-orange.org/bids.aspx.

57. PROPOSAL RETURNS

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

58. PROPRIETARY INFORMATION

Upon receipt by the City, responses to Solicitations, become public records subject to the provisions of Florida's state policy on public records, Section 119, Florida Statutes. If you believe that any portion of your response is exempt, you should clearly identify the specific documents for which confidentiality is claimed and provide specific legal authority of the asserted exemption. Any financial statement that an agency requires a prospective Respondent to submit in order to prequalify for responding to a proposal for a road or any other public works project is exempt from Section 119.07, Florida Statutes, and Article I, 24(a), Florida Constitution. Respondent must complete Form 9.12 Non-Disclosure Agreement for confidential materials.

59. PROTECTION

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

60. PROTEST

Any person who is adversely affected by the City's decision or intended decision shall file with the City Purchasing Manager a notice of protest in writing within 72 hours after the posting of the notice of decision or intended decision. With respect to a protest of the terms, conditions, and specifications contained in a solicitation, including any provisions governing the methods for ranking Bids, Proposals, Statements, or Replies, awarding contracts, reserving rights of further negotiation, or modifying or amending any contract, the notice of protest shall be filed in writing within 72 hours after the posting of the Solicitation. Saturdays, Sundays, and state holidays shall be excluded in the computation of the 72-hour time established herein. The formal written protest shall be filed with the Purchasing Manager in writing within ten (10) days after the date the notice of protest is filed. The formal written protest shall state with particularity the facts and law upon which the protest is based. Failure to file a notice of protest or failure to file a formal written protest shall constitute a waiver of proceedings.

Upon receipt of the formal written protest that has been timely filed, the City shall stop the solicitation or contract award process until the subject of the protest is resolved by final City action. However, the City may continue the solicitation or award process, provided the City Manager sets forth in writing particular facts and circumstances which require the continuance of the solicitation or contract award process without delay in order to avoid an immediate and serious danger to the public health, safety, or welfare. The City shall provide an opportunity to resolve the protest by mutual agreement between the parties. The policy the City has established is as follows:

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

61. PUBLIC ENTITY CRIMES

In accordance Section 287.133 (2)(a), Florida Statutes: A person or affiliate who has been placed on the convicted Respondent list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 Months from the date of being placed on the convicted Respondent list.

62. PUBLIC RECORDS COMPLIANCE

Contractor shall comply with public records laws as set forth in Section 119, Florida Statutes, and shall specifically:

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

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 386-506-5563, cityclerk@port-orange.org, CITY OF PORT ORANGE, 1000 CITY CENTER CIRCLE, PORT ORANGE, FLORIDA, 32129.

The failure of Contractor to comply with a public records request shall constitute a material breach of the contract.

63. PUBLIC RECORDS/PUBLIC MEETING EXEMPTION STATEMENT

Section 119.071(1)(c), Florida Statutes: Any financial statement that an agency requires a prospective Respondent to submit in order to prequalify for responding to a proposal for a road or any other public works project is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. On June 2, 2011, Governor Scott signed HB 7223 into law. This new legislation amends Florida's Public Records and Sunshine Laws, by expanding

"exemptions" applicable to bids, proposals and replies to sealed competitive solicitations, and closes evaluation meetings from the public in certain instances. First, Section 119.071, Florida Statutes was amended to provide that sealed bids, proposals, or replies received by a Florida public agency shall remain exempt from disclosure until an intended decision is announced or until 30 days from the opening, whichever is earlier. This means that Respondents will not be able to procure a copy of their competitor's proposals until an intended decision is reached, or 30 days has elapsed since the time of the bid opening. The prior version of the law provided for a 10-day exemption. Next, Section 286.0113, Florida Statutes was amended to provide that meetings of persons appointed to evaluate proposals and negotiate contracts shall be closed in certain circumstances. Specifically, portions of such meetings may now be closed to the public during oral presentations made by a Respondent, or where a Respondent answers questions. In other words, neither Respondents, nor the public will be permitted to sit in on meetings, unless this exemption is waived by the City Council, wherein their competitors are making presentations or discussing their bid or proposal with the committee members. The portions of these meetings must still be recorded and are subject to disclosure at the time of an intended award decision or within 30 days of the bid or proposal opening, whichever is earlier. Portions of the meetings that do not involve presentations, questions and answers, or negotiation strategy or negotiation sessions are still open to the public and competing Respondents, but the new law limits public attendance to portions of such meetings.

64. QUESTIONS/INTERPRETATIONS

Questions regarding interpretation of Responses, Solicitation results or Solicitation awards shall be directed in writing to the Purchasing Division and referenced by the Solicitation number no later than the last day for questions as specified in the Solicitation documents. The City of Port Orange shall not be responsible for oral interpretations given by any City personnel or representative or others. The issuance of a written addendum is the only official method whereby interpretation, clarification or additional information can be given.

65. RECORDS/AUDIT

The Respondent shall maintain records sufficient to document their completion of the scope of services as a public record and as a requirement of the Contract. At all reasonable times, these records, unless exempt or confidential, shall be subject to review, inspection, copy and audit by persons duly authorized by the City. These records shall be kept for a minimum of three (3) years after completion of the Contract and in accordance with the requirements of public records retention as prescribed by general law. Records which relate to any litigation, appeals or settlements of claims arising from performance under this requirement shall be made available until a final disposition has been made of such litigation, appeals, or claims.

66. REQUEST FOR ADDITIONAL INFORMATION

Prior to the final selection for award, Respondents may be required to submit additional information which the City may deem necessary to further evaluate the Respondent's qualifications to perform under the terms of the Solicitation and subsequent Contract.

67. REVIEW OF RESPONSES SUBMISSIONS

Each Response will be reviewed to determine if the Response is responsive to the submission requirements outlined in the Solicitation. A responsive Proposal is one which follows the requirements of the Solicitation, includes all required documentation, is submitted in the format outlined in the Solicitation, is of timely submission, and has the appropriate signatures as required on each document. Failure to comply with these requirements may deem your Proposal non- responsive.

68. RIGHT OF NEGOTIATION

The City reserves the right to negotiate with the selected Respondent the exact terms and conditions of the Contract.

69. RIGHT OF WITHDRAWAL

A bid, proposal, statement or reply may not be withdrawn before the expiration of one-hundred-twenty (120) days from the Response due date.

70. RIGHTS TO SOLICITATION SUBMITTED MATERIAL

All Responses, inquiries or correspondence relating to or in reference to a Solicitation, and all reports, charts and other documentation submitted by Respondents shall become the property of the City when received.

71. RULES, REGULATIONS AND LICENSING REQUIREMENT

The Respondents shall comply with all laws, ordinances and regulations applicable to the services contemplated herein, including those applicable to conflict of interest and collusion. Respondents are presumed to be familiar

with all federal, state, and local laws, ordinances, codes and regulations that may in any way affect the services offered.

72. SCRUTINIZED COMPANIES LIST

The Contractor shall refrain from any of the prohibited business activities with the Governments of Sudan and Iran as described in section 215.473, Florida Statutes. Pursuant to section 287.135(5), Florida Statutes, the City may immediately terminate this Contract for cause if the Contractor is found to have submitted a false certification or if the Contractor is placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or is engaged in business operations with Cuba or Syria during the term of the contract. The Contractor shall provide a completed Form 9.9 Scrutinized Company Certification, certifying the Contractor's compliance with this section, prior to the execution of this Agreement.

73. SEPARATION AND DISTRIBUTION

The Solicitation has been designed for transmittal as a complete document to interested parties. It is recommended that it not be separated; however, it may be reproduced in its entirety as additional distribution might dictate.

74. SEVERABILITY

If any section, subsection, paragraph, sentence, clause, phrase or word of these requirements or the specifications shall be held invalid, such holding shall not affect the remaining portions of these requirements and the specifications and it is hereby declared that such remaining portions would have been included in these requirements and the specifications as though the invalid portion had been omitted.

75. SIGNATURE REQUIRED

All Responses must show the company name and be signed by a company officer or employee who has the authority to bind the company or firm by their signature. **UNSIGNED RESPONSES WILL BE REJECTED**. All manual signatures must be original - no rubber stamp, photocopy, etc.

76. SIGNED RESPONSE CONSIDERED AN OFFER

The signed Response is considered an offer on the part of the Respondent, which offer shall be considered accepted upon approval by the City of Port Orange City Council (if required). The City of Port Orange will issue a purchase order or a letter of authorization to the successful Respondent, as authorization for delivery of the items awarded subject to requirements of detailed specifications and those contained herein. In the event of default on the part of the Respondent after such acceptance, the City may take such action as it deems appropriate including legal action for damages or specific performance.

77. SOCIAL, POLITICAL, OR IDEOLOGICAL INTERESTS

Pursuant to Florida Statute 287.05701, the governing body of a county, municipality, special district, or any other political subdivision of the state may not request documentation of or consider a vendor's social, political, or ideological interests when determining if the vendor is responsible. Furthermore, an awarding body may not give preference to a vendor based on the vendor's social, political, or ideological interests.

78. SOLICITATION FORM COMPLETION, SUBMISSION AND RECEIPT OF RESPONSES

Unless otherwise specified, Respondent shall use the Solicitation forms supplied by the Purchasing Division. Responses shall be typewritten or handwritten in ink and shall bear the original signature of the Respondent's authorized representative. Responses containing erasures or corrections must be initialed by the Respondent in ink. Responses shall be submitted by mail or hand delivery only. No Response will be accepted by facsimile transmission, e-mail or other electronic delivery. Responses submitted by mail shall be addressed to: City of Port Orange, Purchasing Division, Port Orange City Hall, 1000 City Center Circle, Port Orange, Florida 32129. Responses submitted by hand delivery shall be delivered to: City Clerk, Port Orange City Hall, 1000 City Center Circle, Port Orange, Florida 32129. Responses will be accepted until 2:30 P.M. on the date indicated in the Solicitation documents or an addenda issued by the City. One (1) sealed envelope or package shall be submitted. The sealed envelope/ package must contain the required forms and price proposals, where applicable, and will be evaluated and deemed responsive or non-responsive. Proposals (Envelope/Package) shall contain one (1) original and one (1) digital (flash drive) PDF version unless otherwise indicated in the legal advertisement and shall be mailed or delivered as set forth in the preceding paragraph in one (1) SEALED ENVELOPE/PACKAGE. The envelope/package shall be clearly marked on the outside to include the project name, proposal number, name and address of the Respondent.

79. STATE LICENSING REQUIREMENTS

All entities defined under Chapters 607, 608, 617 or 620, Florida Statutes, seeking to do business with the City shall be on file and in good standing with the State of Florida's Department of State. Prior to making an offer, the Respondent shall have met the license, certification and any other requirements of the state, county, city and/or other agency of authority with jurisdiction in such matters and should provide copies of documentation that evidence such qualifications with the response to the Solicitation; and, that the Respondent shall provide follow-up evidence that the Respondent maintains such credentials throughout the period of the agreement. A copy of a current certificate of authority from the Secretary of State authorizing the Respondent/Responder to do business in the State of Florida, or other evidence of legal authority to do business in the state, county, city and/or any other agency of authority should be provided with your response to the Solicitation. Information concerning certification with the Secretary of State may be obtained at http://ccfcorp.dos.state.fl.us/index.html . Contract documents shall be executed by the entity's duly authorized officer as evidence by entity records.

80. SUBCONTRACTING

The Respondent will not sub-contract or enter into any subcontracting agreements pertaining to this contract, without obtaining written approval from the City of Port Orange.

81. TAXES

The City of Port Orange is exempt from all federal excise, state and local taxes unless otherwise stated in this document. A Tax Exemption Certificate will be furnished upon written request to the City of Port Orange Purchasing Division.

82. TERMINATION

For Convenience: The City of Port Orange reserves the right to terminate the Contract or any work or delivery required hereunder, from time to time either in whole or part, whenever the City Manager of Port Orange shall determine that such termination is in the best interest of the City. Termination, in whole or in part, shall be effected by delivery of a Notice of Termination signed by the City Manager or his designee, postmarked or delivered to the Contractor at least thirty (30) days prior to the date of termination, and specifically setting forth the effective date of termination.

For Default: The City may terminate the Contract if the Contractor breaches any of the terms therein, including, but not limited to, warranties of the Contractor or if the Contractor becomes insolvent or commits acts of bankruptcy. Such right of termination is in addition to and not in lieu of any other remedies which the City of Port Orange may have in law or equity. Default may be construed as, but is not limited to, failure to deliver the proper goods and/or services within the proper amount of time, and/or to properly perform any and all services required to the City's satisfaction and/or to meet all other obligations and requirements. The City may cancel the Contract at any time for breach of contractual obligations by providing the Contractor with a written notice of such cancellation. Should the City exercise its right to cancel the Contract for such reasons, the cancellation shall become effective on the date as specified in the notice of cancellation sent to the Contractor. In the event of default by the Contractor, the City reserves the right to procure the item(s) bid from other sources and holds the Contractor responsible for excess costs incurred as a result. City Council may elect to refrain from doing business with the Contractor as stipulated in City Code 2-276 Suspension and Disbarment.

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

83. USE OF SOLICITATION FORMS

The Respondent shall complete the appropriate Solicitation Form(s) included in the Solicitation. All blanks on the Solicitation Forms shall be completed. If a question or confirmation is not applicable, it should be answered with an "N/A." Supplemental information may be attached to the Solicitation Forms. Failure to fully complete the appropriate Solicitation Forms may result in disqualification of the Response. If additional space for a response is required, attach an additional page to the page on which the question is stated. Clearly identify the number of the question to which the response is attached. Further, if additional Solicitation Form pages are needed, photocopy or replicate as appropriate, and attach such additional pages to the page on which the question or chart is stated. The signature of the Authorized Person or Entity must be that of an officer, partner or a sole proprietor of the entity making the Response. The original Response, and each copy submitted shall contain an original signature on the Respondent's Acknowledgement Form contained in each Solicitation.

84. VARIANCES

For purposes of Response evaluation, Respondents must indicate any variances, no matter how slight, contained in the Response. No variations or exceptions by a Respondent will be considered or deemed a part of the Response submitted unless such variances or exceptions are listed in the Response and referenced in the space provided on the Response pages. If variances are not stated or referenced as required, it will be assumed that the product or service complies with the City's terms, conditions and specifications. By receiving a Response, the City does not necessarily accept any variances contained in the Response. All variances submitted are subject to review and approval by the City. If any Response contains material variances that, in the City's sole opinion, make that Response conditional in nature, the City reserves the right to reject the Response or part of the Response that is declared, by the City, as conditional.

85. WAIVER OF IRREGULARITIES

The City of Port Orange reserves the right to waive and/or reject any non-substantial irregularity in Proposals received whenever such waiver or rejection is in the best interest of the City and/or it does not meet the minimum requirements set forth. All reasonably responsive Proposals will be considered. However, the City reserves the right to waive formalities or informalities in Proposals, to reject, with or without cause, any or all Proposals or portions of Proposals, or to interview or not interview individual Respondents and to accept any Proposals or portions of Proposals deemed to be in the best interest of the City. The city council shall grant the City Manager to waive any and all non-substantial irregularities in any and all formal Solicitations. (Code 1981, § 8-29; Ord. No. 2015-17, § 1, 5-19-2015)

SECTION 6 – SPECIAL CONDITIONS

PERIOD OF OFFER VALIDITY

Proposals offered in this RFP must remain firm for a period of one-hundred-twenty (120) days from the RFP opening date.

CONTRACT TERM

The awarded respondent will be required to enter into a contract for an initial period of one (1) year and shall commence on May 10, 2025 at midnight and end on May 9, 2026 at 11:59 PM, unless extended. There will be the availability of three (3) one-year renewal periods. The City of Port Orange reserves the right to extend this agreement or enter into a competitive proposal process at the end of each term.

ELIGIBILITY OF RESPONDENT

To be eligible to respond to this RFP, the Respondent must have prior experience working with the services described in this RFP. Please provide eligibility experience with your submittal by completing Form 9.7 Statement of Respondent's Qualifications in its entirety.

PAYMENT & PERFORMANCE BONDS

Upon award, the successful proposer will be required to furnish and pay for a satisfactory contract Payment and Performance Bond or Letter of Credit in the amount of $50,000 (fifty thousand and 00/100 dollars) to be recorded by the City, with the Clerk of the Circuit Court, Volusia County, Florida and to enter into a contract for services with the City of Port Orange. After recording, the City will furnish to the contractor the recording information for the bond or Letter of Credit to evidence that the contractor has met the requirement of Florida law. The City will bill the cost of recording to the contractor. (Please see Item #22 on the DRAFT RFP Wrecker Service Agreement attached herein.)

INSPECTION

The City of Port Orange reserves the right to conduct an inspection of the awarded Proposer's storage facilities upon 24 hours' notice by the City and shall be required to obtain approval from the City prior to the award of Agreement or any extensions thereto. Storage facilities shall be subject to periodic inspections at any time by the Police Chief or his designee during the term of this Agreement when deemed necessary by the City to ensure compliance with this Agreement.

LIQUIDATED DAMAGES

Liquidated damages for Late Response to emergency response calls. The Towing Company shall respond immediately to all emergency calls for service and shall be at the location within twenty (20) minutes from the time the call is received.

The contractor assumes all liability in meeting the twenty (20) minutes response time including but not limited to any and all damages resulting from traffic accidents caused by the Towing Company's delay in response. During any twelve (12) month period, failure to meet the twenty (20) minute response time shall result in a progressive liquidated damages charge and up to termination, as follows:

First Offense	$50.00
Second Offense	$100.00
Third Offense	$150.00
Fourth Offense	Automatic suspension and up to termination

The Towing Company shall not be assessed a liquidated damages charge for delay or failure in providing service when such delay or failure is the result of fire, flood, strike, act of God, act of government, act of alien enemy or by any circumstances which, in the Police Chief's opinion, is beyond the control of the Towing Company. Act of government shall not include enforcement of Chapter 316, Florida Statutes.

ADDITIONAL INSURANCE

In addition to insurance coverages checked as 'Required' on the Standard Insurance Requirements table on p. 17 of this RFP, the awarded contractor will be required to provide Garage-keeper's coverage of a minimum of $75,000, and a per-vehicle deductible not exceeding $1,000. The awarded contractor will also be required to provide Hook/Cargo liability coverage with a minimum limit of $75,000 and a deductible not exceeding $1,000 per towing vehicle. (Both of these additional insurance requirements are outlined in the DRAFT RFP Wrecker Service Agreement attached herein.)

NOTICE

The City reserves the right to consider cooperative contracts, federal, state municipal etc., in the evaluation process. If in the City's best interest, the City may utilize a cooperative contract in lieu of making an award.

SECTION 7 – PROPOSAL SUBMITTAL & REQUIREMENTS

Proposals shall include all of the information solicited in this RFP, and any additional data that the respondent deems pertinent to the understanding and evaluation of the proposal. The respondent should not withhold any information from the written response in anticipation of presenting the information orally or in a demonstration, since oral presentations or demonstrations may not be solicited.

Submittal of a proposal shall constitute the Respondent's agreement and intent to follow and adhere to all statements, offerings and monetary incentives contained within this proposal.

The sections of the submitted Proposals that will be scored during the evaluation process are identified with the maximum attainable points in "Section 8 – Evaluation of Proposals. Additional areas used for awarding evaluation points are also addressed in "Section 8 – Evaluation of Proposals."

In conjunction with other material and information requested in the RFP, all Respondents responding to this solicitation shall provide one (1) original, five (5) copies and one (1) identical digital version in PDF format on USB flash/thumb drive. The digital version must be an identical copy of the fully signed original submission. All required attachments are to be in 8 ½" by 11" format, clearly legible, tabbed and bound in the following order:

TABLE OF CONTENTS

The Table of Contents should outline in sequential order the areas of submittal. All pages, including enclosures, must be clearly and consecutively labeled and/or numbered and correspond to the Table of Contents.

STATEMENT OF INTEREST

The Respondent will provide a letter, on firm's letterhead, not exceeding two (2) pages which serves as a statement of interest and introduction to the submittal. The Statement of Interest shall show the RFP number and title. This letter must be signed by the person authorized to bind the firm, company, or corporate entity. The Statement of Interest should also include the name and contact information of a customer contract manager who will serve as the main point of contact for all issues related to the services performed under the scope of this RFP.

TAB A – REQUIRED DOCUMENTS

Include all required City of Port Orange forms. FAILURE TO PROVIDE ALL INFORMATION listed on each form may result in the rejection of your proposal, or a reduction in evaluation points. Required forms include:

- Form 9.1 Proposal Submittal Checklist
- Form 9.2 Respondent's Acknowledgement Form
- Form 9.3 Addendum & Change Order Procedure Acknowledgement Form
- Form 9.4 Drug Free Preference Statement
- Form 9.5 Sworn Statement on Public Entity Crimes
- Form 9.6 Anti-Collusion Form
- Form 9.7 Statement of Qualifications
- Form 9.8 Professional References for Previous Experience
- Form 9.9 Scrutinized Companies Certification
- Form 9.10 E-Verify Affidavit
- Form 9.11 Debarment, Suspension and Other Responsibility Matters
- Form 9.12 Affidavit of Compliance with Section 287.138 Florida Statutes
- Form 9.13 Non-Disclosure of Confidential Materials
- Exhibit A – Description of Confidential Materials
- Form 9.14 No Submittal Response Form
- Appendix A – 44 C.F.R. Part 18 – Certification Regarding Lobbying
- Provide a copy of license to do business in the State of Florida Sunbiz report showing your company registered as "Active".
- If applicable – copy of county business license of primary business operations
- Bonding capacity letter as outlined in Section 6

TAB B – COMPANY HISTORY, QUALIFICATIONS AND RELATED EXPERIENCE OF RESPONDENT (Weight 20 %)

1. Provide a brief company biography, two (2) pages maximum. Include general information on the company, number of years the company has been in business, the location of corporate headquarters, and the number of branch offices.
2. Demonstrate your company's ability and capacity to perform the services outlined in this RFP by providing examples of prior experience with other public entities providing the services outlined in this RFP.

TAB C – MANAGEMENT PLAN (Weight 10 %)

This section shall describe the company's detailed plans for accomplishing the objectives required to deliver excellent towing and wreckers services for the City. It should include methods for planning, organizing, scheduling, coordinating and administering the total effort. Identify a proposed manager responsible for the day-to-day tasks and their experience with contracts of a similar nature and scope.

TAB D – FINANCIAL HISTORY, CONTRACT, LITIGATION AND DEBARMENT HISTORY (Weight 20 %)

All Respondents shall provide a financial statement with their proposal, preferably a certified audit of the last available fiscal year. A third party prepared financial statement **and** the latest Dunn & Bradstreet report will be accepted in lieu thereof.

This Tab shall contain information on the nature and magnitude of any litigation, arbitration, claims or proceeding whereby, during the past five (5) years, a court or any administrative agency has ruled against the firm in any matter

related to the professional activities of the firm. This shall include any class actions within your company where named, industry investigations by the Attorney General, in addition to individual cases.

This Tab shall contain information on the nature and magnitude of any debarment or proceeding during the past five (5) years against the firm in any matter related to the professional activities of the firm. Include any debarment actions against your company by the City or other public entity.

Respondent must indicate whether any contract awarded by another government agency has been terminated in default or convenience.

Include any previous contracts with the city and history of any problems during the contract period.

TAB E – REFERENCES (Weight 10 %)

Professional References from Form 9.8 (to be provided in Tab A only) will be contacted and provided a series of questions regarding your performance/relationship with them. Reference responses will be provided to the Proposal Evaluation Committee for their review and will be scored as part of Tab B to further demonstrate your firm's ability to meet the requirements and needs of the City with regard to the Scope of Services in this RFP. **Contact information for references must be accurate and reference contacts must be responsive. If listed references are not reachable or otherwise non-responsive, scoring for this criterion could be adversely affected.**

TAB F – BILLING PRACTICES (Weight 40%)

For each scenario below, please provide a detailed breakdown of the invoice your company would provide for the services described herein under the terms of the attached agreement and considering the maximum fees established by the City of Port Orange. Your response to these scenarios will directly impact your ranking as part of this solicitation. Furthermore, the responses will set an expectation regarding your billing practices that you will be bound to in the performance of the services under this agreement in the event that you are the successful proposer.

1. A wrecker is called for a Class A vehicle involved in a crash at Clyde Morris Blvd. and Herbert St. on a Monday night. The wrecker arrives at 9:00pm. Driver spent 57 minutes on scene due to having to clear a large amount of debris. The wrecker leaves the scene at 9:57pm. The vehicle, with heavy front-end damage and not drivable, arrives at the storage yard at 10:20pm. Oil is leaking from vehicle on arrival at the wrecker yard. Vehicle is stored outside. On Tuesday, the following day, at 11:00am, owner shows up and requests personal items from the vehicle. On Wednesday of that same week at 4:30pm, a properly authorized wrecker from another company shows up to retrieve the vehicle at the owner's request. The vehicle is towed from the storage lot out to the front gate for the other wrecker to take possession of the vehicle.

2. On Wednesday, a single, undriveable Class A vehicle is towed after an accident. The wrecker arrives on scene at 11:53am, must pull the vehicle apart from a trailer that is connected to a Class B truck. The Class B truck with the trailer attached is then able to leave the scene without further assistance. The wrecker leaves the scene 12:33 with the undriveable Class A vehicle and arrives to the wrecker yard at 1:00pm and vehicle is stored outside. On Saturday of that same week, at 11am, owner arrives on site of the wrecker office and calls to have their vehicle set out so another wrecker company can take possession of the vehicle to bring it to their own body repair shop.

3. On Sunday afternoon, the wrecker arrives at 8:15pm for a Class D semi-truck involved in a crash that will require a tow to the wrecker yard. The wrecker is on scene for 1 hour 10 min. The wrecker arrives at the tow yard at 9:55pm and the semi-truck is stored outside. On Monday at 8:30am the owner shows up to retrieve the truck.

4. On Tuesday at 11pm, a Class B vehicle drives off the roadway and into a retention pond. Two (2) tow trucks are required to remove safely. Both drivers are on scene for 1 hour 50 minutes. The undrivable vehicle is then towed to the wrecker yard and arrives at 1:30am and stored outside. On Friday at noon, the owner arrives and requests to retrieve items from the vehicle. Owner also needs documents notarized to release

the vehicle to a third party. On Monday of the following week at 12pm, a wrecker arrives at the request of the insurance company to tow the undriveable vehicle to another location.

SECTION 8 – EVALUATION OF PROPOSALS

EVALUATION PROCEDURE OF WRITTEN PROPOSALS

The Evaluation Committee comprised of City staff will evaluate and rank proposals based on a 10-point weighted score formula. Weights will be assigned to each criterion and will be applied by multiplying the points scored for each criterion by the weighted percentage of each criterion. Scores shall be in whole, half or quarter percent increments. Examples of acceptable scores are 5.25, 5.50 or 6.0 in the 10-point scale. Scores such as 5.10 or 5.80 are NOT acceptable. If an evaluator returns a score for any criterion other than whole, half or quarter percent increments, they will be asked to round up or down based on standard rounding rules. Respondent's resulting weighted scores will be rounded to 2 decimal points also using standard rounding rules.

All interested firms are hereby cautioned not to contact any staff or Council member of the City of Port Orange, or any member of the Evaluation Committee. Any and all questions should be made through the Purchasing Agent noted in this RFP and any attempts to lobby or persuade through any other channels may result in disqualification.

All proposals will be subject to a review and evaluation process. It is the intent of the City that all Respondents responding to this RFP, who meet the requirements, will be ranked in accordance with the criteria established in these documents. The City will consider all responsive and responsible proposals received in its evaluation and award process. The committee may choose to conduct an oral interview with each short-listed firm.

The City's evaluation criteria, for written proposals will include consideration of, but will not be limited to the following:

1. Responsiveness of the proposal related to the Scope of Services.
2. The ability, capability, and skill of the Respondent to perform the contract, including the range of services offered.
3. Whether the provider can perform the contract within the time specified without delay or interference.
4. The quality, availability and adaptability of the supplies or contractual services to the particular use required.
5. The character, integrity, reputation, judgment, experience, and efficiency of the Respondent.
6. Professional licensure required when service of a skilled nature is required by law to perform such service and/or skill.
7. The quality of performance of previous contracts.
8. The number and scope of conditions attached to the bid or proposal.
9. Responsiveness of client references.

Written proposals will be evaluated and scored based upon the following criteria:

EVALUATION CRITERIA FOR WRITTEN PROPOSALS

TAB B. COMPANY HISTORY, QUALIFICATOINS AND RELATED EXPERIENCE OF RESPONDENT: (Weight 20%)
Company history, qualifications, ability and capacity; Experience with related Scope of Work required for this RFP…… (0-10 points)

TAB C. MANAGEMENT PLAN: (Weight 10%)
Describe your company's detailed plans to provide excellent towing and wrecker services for the City……(0-10 points)

TAB D. FINANCIAL HISTORY, CONTRACT, LITIGATION AND DEBARMENT HISTORY: (Weight 20%)
Provide information on the nature and magnitude of any/all litigation, arbitration, and claims, as well as any/all debarment proceedings during the past 5 years, in addition to providing details of any/all contract terminations for default or convenience……(0-10 points)

TAB E. REFERENCES: (Weight 10%)
Professional References from Form 9.8 (Contact information for references must be accurate and reference contacts must be responsive.)……(0-10 points)

TAB F. BILLING PRACTICES: (Weight 40%)
Completed scenarios as provided in Section 7 ……(0-10 points)

Total Maximum Points ***(50 points)***

Scoring Guidelines (0 – 10 points):
0-2.0 = Did Not Meet: Not responsive to the question or topic; 2.25-4.0 = Below minimum standards: Responsive to the question or topic, but below acceptable standards; 4.25-6.0 = Marginal: Minimal acceptable performance standards and responsive to the question or topic; 6.25-8.0 = Satisfactory: Above minimum performance, effective and responsive to the question or topic; 8.25-10.0 = Exceeds Expectations for effectiveness and responsiveness to the question or topic. The Evaluator's score times the "weighted value" assigned to the criterion outlined above equals the total score for that section. Resulting scores will be rounded to 2 decimal points. For example:

Criterion: Tab C: Management Plan	***Evaluator's Score*** *10-point scale*	***Weighted Value of Total***	***Resulting Score***
Company A	8.50	10%	.85
Company B	6.25	10%	.63

FORMAL ORAL INTERVIEWS/PRESENTATIONS In Person (If Required)
Upon completion of the technical criteria evaluation of written proposals, rating and ranking, the City of Port Orange may conduct oral interviews and/or presentations with short listed firms. Evaluation criteria and scoring for the oral interviews and/or presentations are to be determined.

If the City chooses to allow oral interviews and/or presentations, such interviews and/or presentations will not be open to the public pursuant to the conditions set forth in Florida Statute § 286.0113. If oral presentations or interviews are held the following guidelines will be used:

The City's Purchasing Division will establish the schedule and Respondents will be notified via DemandStar at www.demandstar.com and the City of Port Orange Purchasing web page at www.port-orange.org/bids.aspx at least seven (7) calendar days in advance of the date, time and place of the oral interviews and/or presentations. The specific interview/presentation format will be provided to Respondents with the notifications.

The City will allot equal time for each Respondent and may divide into two sequential parts: formal presentations and questions and answers. The times allotted are maximums and no Respondent will be penalized for using less than the allotted time.

FINAL RANKING AND RECOMMENDATION FOR AWARD
After oral presentations are completed, the Evaluation Committee will score the oral interviews and or/presentations. A final ranking is determined of the short-listed Respondents considered to be most capable of performing the work outlined in this RFP and to be in the best interest of the City.

The Evaluation Committee's final ranking will be provided to the Purchasing Manager to read aloud. The Intent to Award will be posted on www.demandstar.com and the City of Port Orange Purchasing web page at www.port-orange.org/bids.aspx. The City project manager will create an agenda item recommending the award to the City Council. City Council's decision will be final.

SECTION 9 – REQUIRED FORMS

FORM 9.1 – PROPOSAL SUBMITTAL CHECKLIST

____ Form 9.2 – Respondent's Acknowledgement

____ Form 9.3 – Addendum and Change Order Procedure Acknowledgement

____ Form 9.4 – Drug Free Preference Statement

____ Form 9.5 – Public Entity Crimes Statement

____ Form 9.6 – Anti-Collusion Form

____ Form 9.7 – Statement of Qualifications

____ Form 9.8 – Professional References for Previous Experience

____ Form 9.9 – Scrutinized Companies Certification

____ Form 9.10 – E-Verify Affidavit

____ Form 9.11 – Debarment, Suspension and Other Responsibility Matters

____ Form 9.12 – Affidavit of Compliance With Section 287.138, Florida Statutes

____ Form 9.13 – Non-Disclosure Agreement for Confidential Material

____ Exhibit "A" – Description of Confidential Material

____ Form 9.14 – No Submittal Request Form

____ Appendix A, 44. C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING Certification for Contracts, Grants, Loans, and Cooperative Agreements

____ Provide a copy of license to do business in the State of Florida Sunbiz report showing your company registered as "Active".

____ Bonding Capacity Letter (as outlined in Section 6)

____ If applicable – copy of county business license of primary business operations

____ Submission of one (1) original marked "ORIGINAL', five (5) copies and one (1) digital (USB flash drive) version in PDF format

BY: _____
Name of Business

_____
Authorized Signature

_____
Date

This document must be completed and returned with your Submittal

FORM 9.2 – RESPONDENT'S ACKNOWLEDGEMENT FORM

I have carefully examined the Request for Proposal (RFP), Instructions to Respondents, General and/or Special Conditions, Specifications and any other documents accompanying or made a part of this request.

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

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

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

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

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

NO EXCEPTIONS ALLOWED AFTER THE PROPOSAL IS SUBMITTED:

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

_____

_____

_____ _____

Name of Business Mailing Address

_____ _____

Authorized Signature City, State & Zip Code

_____ _____

Printed Name and Title Telephone Number

_____ _____

Federal Identification No. E-mail Address

STATE OF:_____ COUNTY OF: _____

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

_____ day of _____, 2025, by_____ and who:

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

_____ Notary Public, State of _____

Printed, typed or stamped name, commission and expiration:

This document must be completed and returned with your submittal

FORM 9.3 – ADDENDUM AND CHANGE ORDER PROCEDURE ACKNOWLEDGEMENT

ADDENDUM ACKNOWLEDGEMENT

I have carefully examined the Request for Proposal (RFP), Instructions to Respondents, General and/or Special Conditions, Specifications and any other documents accompanying or made a part of this RFP.

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

Addendum#_____ Date:_____ Addendum#_____ Date:_____

Addendum#_____ Date:_____ Addendum#_____ Date:_____

CHANGE ORDER PROCEDURE ACKNOWLEDGEMENT

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

I acknowledge the above statement regarding Addendum Acknowledgement and Change Orders Procedures:

_____
Name of Business

_____
Authorized Signature

_____
Printed Name and Title

STATE OF:_____ COUNTY OF: _____

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

_____ day of _____, 2025, by_____ and who:

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

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

This document must be completed and returned with your Submittal

FORM 9.4 – DRUG-FREE PREFERENCE STATEMENT

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

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

1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.

2. Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation and employee assistance programs and the penalties that may be imposed upon employees for drug abuse violations.

3. Give each employee engaged in providing the commodities or contractual services that are under a proposal a copy of the statement specified in subsection (1).

4. In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under the proposal, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of chapter 893 or of any controlled substance the law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.

5. Impose a sanction on or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by an employee who is so convicted.

6. Make a good faither effort to continue to maintain a drug-free workplace through implementation of Section 287.087, Florida Statutes.

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

_____
Name of Business

_____
Authorized Signature

_____
Printed Name and Title

STATE OF:_____ COUNTY OF: _____

The foregoing instrument was acknowledged before me by means of ☐physical presence or ☐online notarization, this _____ day of _____, 2025, by_____ and who:

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

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

This document must be completed and returned with your Submittal

FORM 9.5 – SWORN STATEMENT ON PUBLIC ENTITY CRIMES
UNDER SECTION 287.133(3)(A), FLORIDA STATUTES
(To be signed in the presence of a notary public or other authorized to administer oaths.)

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

1. The business address of _____(name of Offeror or business) is

   _____.

2. My relationship to _____(name of Offeror or business) is _____

   _____(relationship such as sole proprietor, partner, president, vice president.)

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

_____
Name of Business

_____
Authorized Signature

STATE OF:_____

COUNTY OF: _____

_____
Printed Name and Title

The foregoing instrument was acknowledged before me by means of ☐physical presence or ☐online notarization, this _____ day of _____, 2025, by_____ and who:

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

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

This document must be completed and returned with your Submittal

FORM 9.6 – ANTI-COLLUSION FORM

ANTI-COLLUSION STATEMENT PROPOSAL FORM:

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

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

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

NAME OF FIRM: _____

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

PRINTED SIGNATURE: _____

TITLE: _____

ADDRESS: _____

CITY, STATE AND ZIP CODE: _____

TELEPHONE: _____

F.E.I.N.: _____

This document must be completed and returned with your Submittal

FORM 9.7 STATEMENT OF RESPONDENT'S QUALIFICATIONS

The undersigned warrants that he or she is duly authorized to complete this document, and hereby affirms that the information contained in Form 9.7 is complete, true and correct to the best of his or her knowledge and belief. If necessary, questions may be answered on separate paper and attached with any additional information that may be pertinent.

A. Name of Respondent: _____

B. Permanent main office address: _____

C. Date organized: _____

D. If a corporation, where incorporated: _____

E. How many years have you been engaged in the business under your present firm or trade name? _____

F. Contracts on hand: (List these, showing amount of each contract and the approximate anticipated dates of completion.) **USE SEPARATE SHEET & ATTACH TO SUBMITTAL.**

G. Have you ever failed to complete any work awarded to you? If so, where and why?_____

H. Have you ever defaulted on a contract? If so, where and why? _____

I. List your major equipment currently owned or leased: **USE SEPARATE SHEET & ATTACH TO SUBMITTAL.**

J. List the more important projects recently completed by your company, stating the approximate cost for each and the month and year completed: **USE SEPARATE SHEET & ATTACH TO SUBMITTAL**.

K. Background and experience of the principal members of your organization, including the officers: **USE SEPARATE SHEET & ATTACH TO SUBMITTAL**

L. Credit currently available: $_____

M. Give bank name, contact name and phone number: _____

Will you, upon request, fill out a detailed financial statement and furnish any other information that may be required by the Owner? ☐Yes ☐No

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

_____
Name of Business

_____
Authorized Signature

_____
Printed Name and Title

STATE OF:_____

COUNTY OF: _____

The foregoing instrument was acknowledged before me by means of ☐physical presence or ☐online notarization, this _____ day of _____, 2025, by_____ and who:

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

_____ Notary Public, State of _____

Printed, typed or stamped name, commission and expiration:

This document must be completed and returned with your Submittal

FORM 9.8 – PROFESSIONAL REFERENCES FOR PREVIOUS EXPERIENCE

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

1. Company Name: _____

   Contact Person: _____

   City, State: _____

   Telephone Number: _____

   Email Address: _____

   Description of goods/services provided: _____

   Contract Amount: _____

   Start/End Date of Contract: _____

2. Company Name: _____

   Contact Person: _____

   City, State: _____

   Telephone Number: _____

   Email Address: _____

   Description of goods/services provided: _____

   Contract Amount: _____

   Start/End Date of Contract: _____

3. Company Name: _____

   Contact Person: _____

   City, State: _____

   Telephone Number: _____

   Email Address: _____

   Description of goods/services provided: _____

   Contract Amount: _____

   Start/End Date of Contract: _____

This document must be completed and returned with your Submittal.

(Form 9.8 – Professional References for Previous Experience Page 2)

LISTING OF PREVIOUS EXPERIENCE
COMMERCIAL CLIENT LIST

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

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

1. Contact Name: _____

   Phone: _____

   Current Client: ☐Yes ☐ No

   Number of years of service provided: _____

   Description of service: _____

   _____

2. Contact Name: _____

   Phone: _____

   Current Client: ☐Yes ☐ No

   Number of years of service provided: _____

   Description of service: _____

   _____

3. Contact Name: _____

   Phone: _____

   Current Client: ☐Yes ☐ No

   Number of years of service provided: _____

   Description of service: _____

   _____

This document must be completed and returned with your Submittal

FORM 9.9 SCRUTINIZED COMPANIES CERTIFICATION

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

SCRUTINIZED COMPANIES CERTIFICATION PURSUANT TO SECTION 287.135, FLORIDA STATUTES

I, _____, on behalf
(Print Name and Title)

of_____ ("Company"), certify that _____
(Company Name) (Company Name)

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

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

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

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

_____ _____
COMPANY NAME SIGNATURE

_____ _____
PRINT NAME TITLE

STATE OF FLORIDA COUNTY OF: _____

The foregoing instrument was acknowledged before me by means of ☐physical presence or ☐online notarization, this _____ day of _____, 2025, by_____ and who:

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

_____Notary Public, State of _____
Printed, typed or stamped name, commission and expiration:

This document to be completed and returned with your Submittal

FORM 9.10 - E-VERIFY AFFIDAVIT

CITY OF PORT ORANGE

CONTRACTOR E-VERIFY AFFIDAVIT

IN ACCORDANCE WITH SECTION 448.095, FLORIDA STATUTES

Project Name: _____

Solicitation Number: _____

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

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

A true and correct copy of _____ (insert contractor company name) proof of registration in the E-Verify system is attached to this Affidavit.

By affixing my signature below, I hereby affirm that I am duly authorized to bind the company reference herein and I will comply with all applicable E-Verify requirements.

_____ _____

Print or Type Name, Title Signature of Affiant

_____ _____

Federal Employer ID Number (FEIN) E-Verify Number

STATE OF FLORIDA

COUNTY OF: _____

The foregoing instrument was acknowledged before me by means of ☐physical presence or ☐online notarization, this _____ day of _____, 2025, by_____ and who:

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

_____ Notary Public, State of _____

Printed, typed or stamped name, commission and expiration:

This document to be completed and returned with your Submittal

FORM 9.11 - CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY

Matter Primary Covered Transactions

(To be completed by Prime Contractor)

1. The prospective participant certifies to the best of its knowledge and belief that it and its principals:

   (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by and Federal department or agency;

   (b) Have not within a three-year period preceding this proposal bee convicted for had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft forgery, bribery, falsification or destruction of records, making false statement or receiving stolen property.

   (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1. (b) of this certification;

   (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

_____ _____

Organization Name Proposal Number

_____ _____

Name and Title of Authorized Representative Signature Date

This document must be completed and returned with your Submittal

FORM 9.12 – AFFIDAVIT OF COMPLIANCE WITH SECTION 287.138, FLORIDA STATUTES

AFFIDAVIT OF COMPLIANCE WITH SECTION 287.138, FLORIDA STATUTES CONTRACTING WITH FOREIGN ENTITIES OF CONCERN

The undersigned ("Affiant"), on behalf of the entity listed below ("Entity"), hereby attests under penalty of perjury as follows:

1. Affiant is the _____ of _____
   (Title) (Business Name)
   which does business in the State of Florida, hereinafter called the "Entity".
2. Entity is not owned by the government of a foreign country of concern, as defined in Section 287.138 (1)(c), Florida Statutes.
3. The government of a foreign country of concern does not have a controlling interest in Entity, as defined in Section 287.138 (1)(a), Florida Statutes.
4. Entity is not organized under the laws of, and does not have a principal place of business in, a foreign country of concern.
5. Entity is not owned or controlled by the government of a foreign country of concern.
6. For purposes of this affidavit, a foreign country of concern means the People's Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolas Maduro, or the Syrian Arab Republic, including any agency of or any other entity of significant control of such foreign country of concern, as defined in Section 287.138(1)(c), Florida Statutes.

The undersigned is authorized to execute this affidavit on behalf of the Entity.

Date: _____, 20___ Signed: _____

Entity: _____ Name: _____

Title: _____

STATE OF: _____ COUNTY OF: _____

The foregoing instrument was acknowledged before me by means of ☐physical presence or ☐online notarization, this _____ day of _____, 2025, by_____ and who:

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

_____

Notary Public, State of Florida at Large: (seal)

Printed Name/Seal of Notary, Commission and Expiration Date:

My commission expires: _____

This document must be completed and returned with your Submittal

FROM 9.13 – NON-DISCLOSURE AGREEMENT

FOR

CONFIDENTIAL MATERIALS

REFERENCE# _____

RETURN THIS FORM ONLY IF CONFIDENTIAL MATERIALS ARE BEING INCLUDED WITH THE SUBMITTAL. PLEASE READ THE SECTION IN THE REQUEST FOR PROPOSAL TO DETERMINE IF THIS APPLIES.

Respondent: _____

Address: _____

This Agreement is entered into as of the date of the last signature set forth below between the City of Port Orange, a political subdivision of the State of Florida (hereinafter the "City"), and the above-named Respondent (hereinafter the ("Respondent"). The City and the Respondent are collectively referred to as the "Parties" and may be referred to individually as a Party.

RECITALS

WHEREAS, the Respondent asserts that it possesses certain confidential trade secret materials that it wishes to disclose to the City for the purpose of responding to a solicitation or otherwise conducting business with the City; and

WHEREAS, the City desires to review such materials in order to evaluate the City's interest in negotiating and concluding an agreement for the purchase of certain products and services, or otherwise conducting business with the Respondent.

NOW THEREFORE, in consideration of the mutual promises and premises contained herein, the receipt and sufficiency of which are hereby acknowledged, the City and the Respondent agree as follows:

1. Confidential Materials. The Respondent warrants and represents to the City that the materials described in the attached Exhibit A (Description of "Confidential Material") constitute trade secrets as defined by Section 812.081(1)(c), Florida Statutes, or financial statements required by the City for projects as defined in 119.071(1)(c), Florida Statutes. Subject to the terms and conditions of this Agreement, the City agrees not to disclose such Confidential Materials to third parties.
2. Additional Materials. During the course of the review or the business relationship with the City, the Respondent may disclose additional confidential or trade secret information to the City in which case the restrictions and obligations on the use and disclosure of the Confidential Materials imposed by this Agreement shall also apply to such additional information to the extent permitted by Florida law. Any such additional confidential or trade secret information shall be duly marked and stamped "confidential" or "trade secret" prior to delivery to the City, and shall be subject to this Agreement and Section 812.081(2), Florida Statutes, only if written receipt is provided by the City acknowledging receipt of such materials.
3. Exclusions. For purposes of this Agreement, the term "Confidential Materials" does not include the following:
    a. Information already known or independently developed by the City;
    b. Information in the public domain through no wrongful act of the City;
    c. Information received by the City from a third party who was legally free to disclose it;
    d. Information disclosed by the Respondent to a third party without restriction on disclosure;
    e. Information disclosed by requirement of law or judicial order, including without limitation Chapter 119 Florida Statutes; or
    f. Information that is disclosed with the prior written consent of the Respondent, but only to the extent permitted by such consent.

4. Non-Disclosure by Respondent. In the event that the City discloses confidential or trade secret information to Respondent, the Respondent agrees to not disclose such information to any third party or copy such information or use it for any purpose not explicitly set forth herein without the City's prior written consent. Further, upon conclusion of discussions or business transactions between the City and the Respondent, or at any time upon request of the City, Respondent agrees to return such information (including any copies) to the City.
5. Duty of Care. Each Party agrees to treat the other Party's confidential or trade secret information with the same degree of care, but not less than reasonable care, as the receiving Party normally takes to preserve and protect its own similar confidential information and to inform its employees of the confidential nature of the disclosing Party's information and of the requirement of nondisclosure. In the event either Party has actual knowledge of a breach of the nondisclosure requirements set forth in this Agreement, the Party acquiring such knowledge shall promptly inform the other Party and assist that Party in curing the disclosure, where possible, and preventing future disclosures.
6. Limitations of Florida Law. Respondent understands and agrees that its assertion that any item is confidential or a trade secret does not, in and of itself, render such material exempt from the Florida Public Records Law, Chapter 119 of the Florida Statutes, and that the City's ability to prevent disclosure of confidential and trade secret information may be subject to determination by a Florida court that such materials qualify for trade secret protection under Florida law. In the event a third party makes a public records request for the Confidential Materials or other materials deemed by Respondent to be confidential or a trade secret, the City may submit the materials to the court for inspection in camera as set forth in Section 119.07(1)(g) Florida Statutes. Respondent further understands that the City may be required to disclose such information if directed by a court of competent jurisdiction.
7. Indemnification by Respondent. In the event of any litigation instituted by a third party to compel the City to disclose such materials, Respondent shall, at its sole cost and expense, provide assistance to the City in defending the denial of the records request, and shall hold the City harmless from any claim for statutory costs and attorney's fees arising from the City's refusal to disclose such materials.
8. No Additional Obligations. This Agreement shall not be construed in any manner to be an obligation for either Party to enter into any subsequent contract or agreement.
9. Sovereign Immunity. Nothing in this Agreement shall be deemed as a waiver of immunity or limits of liability of the City beyond any statutory limited waiver of immunity or limits of liability, which has been or which may be adopted by the Florida Legislature, regardless of the nature of any claim which may arise, including but not limited to a claim sounding in tort, equity or contract. In no event shall the City be liable for any claim or claims for breach of contract, including without limitation the wrongful disclosure of confidential or trade secret information for an amount which exceeds, individually and collectively, the then current statutory limits of liability for tort claims. Nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim against the City, which would otherwise be barred under the Doctrine of Sovereign Immunity or by operation of law.
10. Notice. Whenever either Party desires to give notice unto the other, it must be given by written notice, sent by registered United States mail, with return receipt requested, addressed to the party for whom it is intended, at the place last specified, and the place for giving of notice in compliance with the provisions of this paragraph. For the present, the Respondent designates the address set forth above as its place for receiving notice, and the City designates the following address for such notice:

    The City of Port Orange, Florida
    Purchasing Manager
    1000 City Center Circle
    Port Orange, FL 32129

11. Governing Law. This Agreement shall be governed by the laws of the State of Florida, and venue for any action arising out of or relating to the subject matter of this Agreement shall be exclusively in Volusia County, Florida, or the Federal City Court for the Middle City of Florida, Jacksonville Division.
12. Respondent and the City hereby expressly waive any rights either may have to a trial by jury of any civil litigation related to this Agreement for any litigation related to or arising from this solicitation and resulting agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers the day and year as set forth below.

The City of Port Orange, FL

BY: _____

NAME: _____

TITLE: _____

DATE: _____

Respondent

BY: _____

NAME: _____

TITLE: _____

DATE: _____

ATTEST:

BY: _____

NAME: _____

TITLE: _____

DATE: _____

EXHIBIT A - DESCRIPTION OF CONFIDENTIAL MATERIAL

FORM 9.14 – NO SUBMITTAL RESPONSE FORM

If your company will not be submitting a proposal in response to this solicitation, please complete this form and return via e-mail prior to the solicitation due date established within to:

City of Port Orange
Purchasing Division
1000 City Center Circle
Port Orange, FL 32129
purchdiv@port-orange.org

This information will assist the Purchasing Division in the preparation of future solicitations.

Solicitation: RFP #25-05 Wrecker Services

Company Name: _____

Contact Person Name & Title: _____

Address: _____

Telephone: _____ Email Address: _____

Please check a reason for a "no response".

☐Specifications "too tight" or geared toward on brand or manufacturer (please explain below)

☐Insufficient time to respond

☐Specifications unclear (please explain below)

☐We do not offer this product/service or an equivalent

☐Our product schedule does not permit us to perform within stated timeline for the project

☐Unable to meet specifications

☐Unable to meet bond requirements

☐Unable to hold prices firm throughout the term of the contract period

☐Unable to meet insurance requirements

☐Other: _____

Print Name: _____

Signature: _____ Date:_____

Additional Information:

_____

_____

_____

_____

If submitting this form, only this form needs to be returned. It is not necessary to return the entire solicitation package.

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING Certification for Contracts, Grants, Loans, and Cooperative Agreements

(Required for each bid or offer exceeding $100,000)

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

4. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

_____

Signature of Contractor's Authorized Official

_____

Name & Title of Contractor's Authorized Official

Date: _____

IMPORTANT: This certificate must be completed and returned by the Awarded Respondent, upon issuance of a Notice of Intent to Award by the Purchasing Department of the City of Port Orange. Please note, the City of Port Orange does not accept exemptions for Workers' Compensation coverage.

AFFIDAVIT REGARDING WORKER'S COMPENSATION

State of _____ County of _____

I,_____, being duly sworn according to law, deposes and says (it, he, she, they) have accepted the Workers' Compensation laws of the State of Florida, with its supplements and amendments and has insured (its, his, her, their) liability there under accordance with the terms of said Laws with the _____ Company, under the terms of Policy Number _____for a period from _____, 20_____ to_____, 20_____.

WITNESS:

By: _____

Company: _____

CONTRACTOR:

By: _____

Company: _____

Name/Title: _____

STATE OF _____

COUNTY OF: _____

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

this _____ day of _____, 2025, by_____ and who:

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

_____ Notary Public, State of _____

Printed, typed or stamped name, commission and expiration:

IMPORTANT: This certificate must be completed and returned by the Awarded Respondent, upon issuance of a Notice of Intent to Award by the Purchasing Department of the City of Port Orange.

LEASED EMPLOYEE AFFIDAVIT

EXHIBIT CONTRACT #_____

☐ **I hereby certify that I do not utilize an employee leasing company or employee leased employees. I further agree to notify the City in the event these circumstances change.**

OR

☐ **I affirm that an employee leasing company provides my workers' compensation coverage. I further understand that my contract with the employee leasing company limits my workers' compensation coverage to enrolled worksite employees only. My leasing arrangement does not cover un-enrolled worksite employees, independent contractors, uninsured sub-contractors, or casual labor exposure.**

I hereby certify that 100% of my workers are covered as worksite employees with the employee leasing company. I certify that I do not hire any casual or uninsured labor outside the employee leasing arrangement. I agree to notify the City in the event that I have any workers not covered by the employee leasing workers' compensation policy. In the event that I have any workers not subject to the employee leasing arrangement, I agree to obtain a separate workers' compensation policy to cover these workers. I further agree to provide the City with a certificate of insurance providing proof of workers' compensation coverage prior to these workers entering any City jobsite.

I further agree to notify the City if my employee leasing arrangement terminates with the employee leasing company and I understand that I am required to furnish proof of replacement workers' compensation coverage prior to the termination of the employee leasing arrangement.

I certify that I have workers' compensation coverage for all of my workers through the employee leasing arrangement specified below:

Name of Employee Leasing Company: _____

Worker' Compensation Carrier: _____

A.M. Best Rating Carrier: _____

Inception Date of Leasing Agreement: _____

I further agree to notify the City in the event that I switch employee-leasing companies. I recognize that I have an obligation to supply an updated workers' compensation certificate to the City that documents the change of carrier.

I hereby attest that the information provided in this affidavit is accurate. In addition, I certify that I have read and understand the above statements regarding my responsibility under the Workers' Compensation coverage.

Signature of Contractor: _____

Signature of Owner/Officer: _____

Title: _____ Date: _____

IMPORTANT: This certificate must be completed and returned by the Awarded Respondent, upon issuance of a Notice of Intent to Award by the Purchasing Department of the City of Port Orange.

HUMAN TRAFFICKING AFFIDAVIT
(SECTION 787.06, FLORIDA STATUTES)

STATE OF FLORIDA §
§
COUNTY OF VOLUSIA §

The undersigned ("Affiant"), on behalf of the entity listed below ("Entity"), after being duly sworn, hereby attests as follows:

1. My name is _____. I am over the age of Twenty-one years old. I am the _____ of _____, a non- governmental entity which does business in the State of Florida, hereinafter called the "Entity."
   (Title) **(Business Name)**
2. I have personal knowledge of each and every statement of fact contained herein, and each and every statement of fact is true and correct.
3. Entity does not use coercion, as defined in Section 787.06, Florida Statutes, for labor or services.
4. The undersigned is an officer or representative of the entity and is authorized to execute this affidavit on behalf of the Entity.
5. Under penalties of perjury, I declare that I have read the foregoing Human Trafficking Affidavit and that the facts stated herein are true.

Further Affiant sayeth not.

Date: _____, 20___

Signed: _____
Print Name: _____
Title: _____

SUBSCRIBED AND SWORN before me by means of [_XX_] physical presence or [__] online notarization on the ____ day of _____, 20__ by _____ as _____ on behalf of _____ who is personally known to me or who has produced _____ as identification.

(Notary Seal)

_____
Notary Public, State of Florida
Printed name, commission and expiration of commission term

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

PAYMENT AND PERFORMANCE BOND

(Public Works)

Notice and Time Limitations Must Be In Accordance
With Section 255.05(2), (8) and (10), Florida Statutes

BOND NO. _____

PRINCIPAL:
Developer or Contractor: _____
Principal Business Address: _____

Contact Person:
Phone Number:

SURETY:
Address:

Contact Person:
Phone Number:

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

Amount: $_____ **City Case:** _____

Description of Work: _____

Project Location: _____

Legal Description: _____

Front Page

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

FOR INFORMATIONAL PURPOSES ONLY

Bond No._____

COMBINATION PAYMENT AND PERFORMANCE BOND
FOR
PUBLIC CONSTRUCTION

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

BY THIS BOND, We, _____, as Principal, and _____, a corporation, as Surety, are bound to **CITY OF PORT ORANGE, FLORIDA**, a Florida municipal corporation, herein called "Owner" or sometimes referred to as "City," in the sum of _____ **AND** ____**/100 DOLLARS** (**$**_____), for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

THE CONDITION OF THIS BOND is that if Principal:

1. Performs the terms of that certain _____, having an effective date of___ , entered into by and between the Principal and the City, for _____, hereinafter referred to as the "Contract," being made a part of this bond by reference, at the times and in the manner prescribed in the Contract; and

2. Promptly makes payments to all claimants, as defined in Section 255.05(1), Florida Statutes, supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the Contract (the "Work"); and

3. Pays Owner all losses, damages, delay damages (including contractually authorized liquidated damages), expenses, costs, and attorney's fees, including appellate proceedings, that Owner sustains because of a breach or material breach by Principal under the Contract documents; and

4. Performs the guarantee of all work and materials furnished under the Contract for the time specified in the Contract, then this bond is void; otherwise it remains in full force.

Notice of Nonpayment and Time Limitations

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

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

FOR INFORMATIONAL PURPOSES ONLY

IN WITNESS WHEREOF, this performance and payment bond is executed and shall be deemed an original, this _____, day of_____, 20__.

Attest:

_____
(Principal)

_____ By:_____
(As to Corporate Principal) Secretary Name, Title

_____ *(Corporate Seal)*
(Witness to Principal)

_____
(Surety)

_____ By:_____
(Witness to Surety) Name:_____
(Attorney-in-Fact)

(Corporate Seal)

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

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

FOR INFORMATIONAL PURPOSES ONLY

WRECKER SERVICE AGREEMENT

THIS AGREEMENT entered into this _____day of _____, 20__, by and between the City of Port Orange, Florida, a municipal corporation, located at 1000 City Center Circle, Port Orange, Florida 32129, hereinafter referred to as "City," and _____ _____, a _____, with a principal address of _____ _____, hereinafter referred to as "Towing Company," in consideration of the mutual covenants contained herein, and subject to the terms and conditions listed below:

W I T N E S S E T H

1. Definitions. The following words and terms, as used in this Agreement, shall have the meaning respectively ascribed:

Immobilization shall mean the installation of a boot or similar device on a vehicle on private property for the purpose of making it unmovable.

Nonconsensual towing shall mean the removal and storage of wrecked or disabled vehicles from an accident scene or the removal and storage of a vehicle in the event the owner or operator is incapacitated, unavailable, leaves the procurement of wrecker service to the law enforcement officer at the scene, or otherwise does not consent to the removal of the vehicle, excepting, however, all incidents of "trespass towing" as hereinbelow defined.

Property owner shall mean that person who exercises dominion and control over a parcel of real property, including but not limited to the legal title holder, lessee, a resident manager, a property manager or other agent who has legal authority to bind the owner. A person providing a towing service may not be appointed as an agent for a property owner.

Tow shall mean to haul, carry, pull along, or otherwise transport or remove a vehicle by means of another vehicle.

Trespass towing shall mean towing or removal of a vehicle, without the consent of the vehicle's owner or operator, as such is authorized by F.S. § 715.07, when that vehicle is parked on private real property.

Wrecker shall mean any truck or other vehicle which is used to carry, tow or otherwise transport vehicles and which is equipped for that purpose with a boom, winch, car carrier, or similar equipment. "Wrecker" shall include the person or firm owning, operating, and/or controlling the wrecker vehicles.

2. The Towing Company shall provide the following services including those outlined in the Request for Proposal #25-05, Addenda (if any), and Contractor's Proposal, all of which are incorporated and made a part hereof by reference:

a. When so authorized by a representative of the City, the Towing Company shall provide for the towing and storage, when required, of motor vehicles and trailers from public or private property lying within the City of Port Orange.

b. When authorized by a representative of the City, the Towing Company shall provide for the towing and storage of any motor vehicle, trailer, motorcycle, or motor scooter which is towed under the provisions of Chapter 70 or other applicable provisions of the Code of the City of Port Orange covering the removal and/or impounding of illegally parked or disabled vehicles, applicable State Statutes, or which is otherwise impounded or required to be moved by or at the direction of a police officer, from the point of origin to the place of business of the Towing Company, and provide for the towing and storage of any vehicle or trailer from the scene of an accident to a location within the City, as designated by the owner of the vehicle (which may be a place of business other than the place of business of the Towing Company).

c. When authorized by a representative of the City, the Towing Company shall tow, service, and/or provide temporary storage for the following vehicles at no charge to the City: (1) Police Department or Fire Department vehicles, owned or leased; (2) vehicles seized under the Florida Contraband Forfeiture Act, Chapter 932, Florida Statutes; and (3) Vehicles initially towed to the police department or city owned impound yard that are held for evidence to include THI vehicles. If one of the vehicles listed in this subsection (2) or (3) above is subsequently released by an authorized representative of the City, the Towing Company will tow the vehicle to its storage yard within 24 hours. Under these circumstances, the owner of the vehicle shall only incur a single flat-rate tow, and shall not be responsible for the initial tow to the police department or city-owned impound. Likewise, the owner of the vehicle shall not incur storage fees unless or until the vehicle has been moved to the Towing Company's storage yard.

   All other City owned or leased disabled vehicles shall be towed and/or serviced at no charge excluding refuse collection vehicles and vehicles leased by the City where the Lessor is responsible for the towing/servicing.

   Any vehicle towed at the direction of the City or any disabled City owned or leased vehicle that shall be towed shall be removed from its location or point of disability (within a fifty (50) mile radius of the City limits to any point within the City) as may be directed by the City. Mileage in excess of the 50 mile radius shall be reimbursed by the City at the rate of $3.00 per full extra mile for Class A vehicles; $4.00 per full extra mile for Class B vehicles; $5.00 per full extra mile for Class C vehicles; and $6.00 per full extra mile for Class D vehicles.

   In addition, the Towing Company shall change the flat tire(s) of any City Class "A" vehicles within Volusia County at no charge to the City.

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d. The Towing Company shall, at no cost to the City, promptly clean all debris off the public streets, ways, sidewalks, parks, avenues, and property of the City, and remove the same to a proper place away from the scene of any motor vehicle accident if the accident scene is to be, is being, or has been serviced by the Towing Company.

e. The Towing Company guarantees that wrecker service shall be rendered at any and all times, as required by this Agreement, twenty-four (24) hours a day, seven (7) days a week, including holidays, and that personnel shall be subject to call at any and all times. The Towing Company further guarantees that, for all emergency response calls, it shall be at the requested location within the City limits within twenty (20) minutes from the time the Towing Company, its representative, or answering service receives a call requesting that a wrecker be dispatched. The time shall not exceed twenty (20) minutes even during special times (bike week, speed week, spring break, etc.) Wrecker vehicles shall not be parked at private residences within the municipal boundaries of the City of Port Orange. A call for emergency response shall include existing or potential conditions at a scene requiring that vehicles be removed and or roadways cleared as soon as possible in the judgment of the requesting police officer.

f. The Towing Company shall answer expeditiously all calls from the Port Orange Police Department, or other City representative, for on-scene service at accidents and shall immediately remove all debris and obstructions caused by accidents even if actual towing is not required (clean-ups only).

g. Upon request, the Towing Company shall provide the Port Orange Police Department with reasonable assistance in the examination of vehicles stored by the Towing Company. Such assistance shall include the availability and use of a wrecker at the storage site for the moving of vehicles to be examined by the police.

h. An “Innocent Owner’s” vehicle may be towed and stored as a result of a crime. The Chief of Police or his designee shall identify these vehicles to the Towing Company. An “Innocent Owner” is an owner or other person authorized to possess the vehicle who is not the perpetrator of a crime or civil infraction. “Innocent Owner” vehicles include, but are not limited to, the following:

1) Recovered stolen vehicles;
2) Vehicles that are seized for forensic testing (i.e., sexual batteries, abductions, homicides, etc.) when the owner/operator was not the perpetrator;
3) Vehicles damaged by stop-sticks when the owner/operator of the vehicle was not the intended target;
4) Vehicles damaged in crashes caused by or resulting from the pursuit of a criminal or a criminal flight from apprehension where the owner/operator was not involved.

NOTE: "Innocent Owners" shall not include those persons whose vehicles are determined by the Chief of Police or his designee to have been stolen by an immediate family member, where it is reasonably believed that the vehicle was exchanged by the owner/operator for illegal controlled substances, or where the vehicle is used in the commission of a crime, and the suspect is operating the vehicle with the implied or actual consent of the owner.

i. If a victim meets the definition of an "Innocent Owner" and has no insurance or has a deductible of seventy-five ($75.00) dollars or more, the Towing Company shall charge the "Innocent Owner" a fee not to exceed seventy-five ($75.00) dollars. The Towing Company can charge additional costs to the "Innocent Owner's" insurance carrier or to some other insurance company who is liable for those costs, but in no event will the "Innocent Owner" be responsible to pay more than seventy-five ($75.00) dollars out-of-pocket for the cost of towing and the first seventy-two (72) hours of storage. The rate for subsequent storage shall be as stated in Section 5 (Rate Charged Owners and the City). The "per tow" fee shall not apply to "Innocent Owner" tows.

j. All services rendered by the Towing Company under this Section 2 shall be at no expense to the City, unless specifically provided otherwise.

3. Payment to the City

In consideration of the Towing Company being called by the City for the term as provided in Section 4 below, the Towing Company shall pay the City the prorated amount of Three Thousand Three Hundred Eighty-Seven and 10/100 Dollars ($3,387.10), on May 10, 2025. Thereafter, on the first of every month, beginning June 1, 2025, the Towing Company shall pay monthly to the City, the sum of Five Thousand and 00/100 Dollars ($5,000.00) per month, so long as this Agreement is in effect.

4. Term

a. The term of this Agreement shall begin May 10, 2025 at midnight, and end on May 9, 2026 at 11:59 p.m., unless extended.

b. Extension - The City shall have the option of extending this Agreement for three (3) consecutive twelve-month periods: (1) The first extension period beginning on May 10, 2026 at midnight, and ending on May 9, 2027 at 11 :59 p. m.: (2) The second extension beginning on May 10, 2027 at midnight, and ending on May 9, 2028 at 11 :59 p.m.; and (3) The third extension period beginning on May 10, 2028 at midnight, and ending on May 9, 2029 at 11 :59 p.m.

c. It is further understood by the parties to this Agreement that in the event the Towing Company is unable to respond to a call with one of its own wreckers, it is still responsible for providing a wrecker during the term of this Agreement. It may utilize a wrecker from any other wrecker company

licensed in the City, the County, or any other municipality located in Volusia County. In such cases, the substitute wrecker shall comply with the terms agreed upon herein.

5. Rate Charged Owners and the City

a. The Towing Company shall not charge for towing or storage of any vehicle that is the subject of a non-consensual tow or trespass tow originating within the City of Port Orange in excess of the maximum rates as established by Resolution of the City Council of the City of Port Orange, No. 19-15(a copy of the Resolution is attached as Exhibit "A"). The maximum rates set forth herein are subject to amendment at any time by Resolution of City Council.

b. All limitations contained herein on the rate or fee that may be charged by the Towing Company for services contemplated by this Agreement shall be inclusive of any applicable taxes including but limited to sales tax. By way of example, if the towing charge for a "Class A" vehicle is limited to a maximum of $125.00, then the service charge invoiced by the Towing Company shall not exceed $125.00 inclusive of tax. Assuming that sales tax is 6.5% of the sale price, the maximum the Towing Company would be able to charge in this example would be $117.37 for the service and an additional $7.63 for the sales tax totaling $125.00. This limitation in no way relieves the Towing Company from collecting and remitting all applicable taxes to the appropriate taxing authorities.

c. The City shall not be responsible for any fees or charges resulting from nonpayment by the owner of the vehicle being towed.

d. Charging rates in excess of the legal maximum rate, shall be considered a breach of this Agreement and shall be grounds for termination as provided in Section 24.

e. The rates for towing/servicing of City owned/leased vehicles shall be as outlined previously herein at Section 2.c. The City shall not be charged for any services rendered to it under this Agreement except as specifically provided under this Agreement.

f. Towing Company agrees to tow abandoned or junked vehicles at no charge to the City, and City shall surrender all salvage rights to the vehicle to Towing Company and shall retain no liens upon the vehicle.

g. The services specified in Section 2 of this Agreement shall be provided at no cost to the owner of the towed vehicle whenever the City determines that the vehicle was towed in error at the request of the City. The City, in such a case, shall notify the Towing Company of the error as soon as practicable and shall not be responsible for payment of towing charges or storage costs.

h. One day of storage shall equal twenty-four (24) hours at the storage facility except that the first twelve (12) hours of storage shall be provided free of charge to the customer. On the first day of storage only, a vehicle that is stored at the storage facility between twelve (12) hours and twenty-four (24) hours shall be charged for one (1) day of storage. Thereafter, the customer

may be billed for an additional day of storage for each twenty-four (24) hour period the vehicle remains in storage at the storage facility beyond the first twenty-four (24) hours of storage. By way of example, a vehicle that is at the storage facility for forty-seven (47) hours shall be charged for one (1) day of storage, while a vehicle that is at the storage facility for forty-nine (49) hours shall be charged for two (2) days of storage.

i. Acceptable forms of payment shall include any two of the following groupings:
   1. Cash, cashier's check, money order, or traveler's check;
   2. Bank, debit, or credit card; or
   3. Mobile payment service, digital wallet or other.

6. Salvage Rights

In consideration for the services to be provided by the Towing Company, under the terms of this Agreement, the City hereby grants the Towing Company all salvage rights that may be permitted by law on any vehicle which may be towed pursuant to this Agreement and as specifically outlined herein at Section 5.e, excluding those vehicles seized and held for possible forfeiture by the City.

7. Storage Facilities and Office

a. The Towing Company shall maintain an office and a storage garage and/or outside storage facility complying with applicable building, zoning and land use regulations. Such storage facility shall:
   (1) Contain a minimum of one hundred (100) spaces in an area which is completely secured and fenced at all times.
   (2) Have available a minimum of two (2) spaces inside a building affixed to a permanent foundation for storing vehicles which require police processing. Moveable storage facilities are not acceptable. These spaces shall be maintained to provide protection from the weather and security to preserve the evidence and legal chain of custody for vehicles which require police processing. These spaces shall consist of sufficient space and access for police processing of a vehicle stored therein.
   (3) Be located within a **seven (7) mile radius** from the City of Port Orange limits, on the same premises as the office.

b. The Towing Company shall own or lease the property where the office and storage facility are located. In the event that the property is leased, the term of said lease shall be not less than the term of this Agreement or any extension thereof as set forth in Section 4. The Towing Company shall provide a copy of the current lease or deed for prequalification and upon request by the City and upon any extension of the Agreement by the City. The Towing Company shall furnish copies of subsequently effective leases

and deeds to the City and shall notify the City within three (3) business days upon receiving notice of cancellation, termination, or non-renewal of any lease or any change in ownership. The City reserves the right to terminate this Agreement in the event of expiration, cancellation, termination, or non-renewal of any lease for the property or any change in ownership.

c. The Towing Company shall have an employee on duty at said storage facility from 8:00 A.M. to 6:00 P.M. Monday through Friday, excluding legal holidays and shall have an employee available on-call for Police Department access to said facility or to facilitate the redemption or inspection of a vehicle by its owner, lienholder, insurance company representative, or their agent after-hours and on holidays.

d. The Towing Company shall prominently post a sign indicating a telephone number where the operator of the site can be reached at all times. Upon receipt of a telephoned request from the owner, lienholder, insurance company representative, or their agent to open the site to redeem a vehicle or the personal property therein, the Towing Company shall return to the site within one hour for redemption of the vehicle or return of personal property therein. Upon payment of the authorized towing and storage fees, the vehicle shall be released to the owner or authorized representative immediately whenever possible, but in no event more than 30 minutes after an acceptable method of payment is made.

e. The Towing Company must release to the renter of a rental vehicle or vessel all personal property belonging to the renter which is not affixed to the rental vehicle or vessel within one hour after the renter's arrival.

f. An employee of the Towing Company shall be on call twenty-four (24) hours a day and able to respond to any call with arrival at the requested location within twenty (20) minutes.

g. Storage facilities shall be in compliance with all state, local and federal regulations. The facility shall be free from trash, rodents, insects and any other cause for contamination of vehicles. The facility shall have comprehensive security to protect property and public that enters the premises. Failure to maintain a clean, safe and secure facility, in the sole discretion of the Chief of Police, shall subject this Agreement to termination as provided herein at Section 24.

h. Storage facilities shall be subject to inspection upon 24 hours notice by the City and shall be required to obtain approval from the City prior to the award of Agreement or any extensions thereto. Storage facilities shall be subject to periodic inspections at any time by the Chief of Police or his designee during the term of this Agreement when deemed necessary by the City to ensure compliance with this Agreement.

i. Vehicles that have been marked “HOLD” for investigative or forfeiture purposes by the Police Department shall be held at the storage facility at no charge to the City for up to 5 days, excluding weekends and holidays, unless an extension is authorized in writing, to properly process the vehicle and

finish the investigation. If the hold is to continue beyond 5 days, excluding holidays and weekends, the Police Department may request the vehicle be removed to its designated impound lot, in which event the Police Department will not release the vehicle to the owner or lienholder of the vehicle until proof of payment of the towing and storage charges incurred by the Towing Company is presented to the Police Department. If the Police Department chooses to have the vehicle remain at the Towing Company's storage facility beyond 5 days, excluding holidays and weekends, pursuant to the written notification, the Police Department is responsible for payment of the storage charges incurred by the Towing Company for the requested extended period. The owner or lienholder is responsible for payment of accrued towing and storage charges for the first 5 days, excluding holidays and weekends, or any period less than the first 5 days, excluding holidays and weekends, when the Policy Department either moves the vehicle from the Towing Company's storage facility to a designated impound lot or provides written notification to extend the hold on the vehicle prior to the expiration of the 5 days, excluding holidays and weekends. Personnel of the Police Department shall be permitted access to such vehicles at any time. Vehicles marked "HOLD" shall be secured and stored in locked enclosed areas with no access by any person except as authorized by the Police Department. The Towing Company shall maintain comprehensive security to protect all stored vehicles and their contents from theft and damage. At such time the City releases the "HOLD", storage fees may begin to accrue against the owner of the vehicle.

8. Wrecker Equipment and Wrecker Company Personnel

a. The Towing Company shall, during the term of this Agreement, own or lease a minimum of four (4) wreckers to provide the services specified in this Agreement. The wreckers shall include: three (3) Class "A" wreckers, one (1) of which shall have four-wheel drive; and one (1) Class "C" wrecker. The wreckers of the Towing Company shall meet the equipment requirements and specifications set forth in Rule 15B-9.005, Fla. Adm. Code, as the same now exists and as may be amended from time to time. A copy of said Rule, as it currently exists, is attached hereto as Exhibit "B", and incorporated by reference herein.

b. No employee or agent of the Towing Company who provides services to the City under this Agreement shall have been:
   (1) Convicted of any felony within the last ten (10) years.
   (2) For the purposes of this section, a conviction shall mean an adjudication of guilt by a court of competent jurisdiction; a plea of guilty or nolo contendere; or a judge's finding or a jury verdict of guilty when adjudication is withheld and the accused is placed on probation, within the last ten (10) years.

c. The Towing Company shall not hire or retain any wrecker driver, permanently or temporarily, who has been convicted of the offense of driving under the

influence of alcohol or any controlled substance or chemical substance to the extent that normal faculties are impaired or driving with an unlawful blood alcohol level, or of any criminal traffic offense, within the last ten (10) years.

d. Prior to any extension of this Agreement and within five business (5) days of hiring any new employees, the Towing Company shall provide written notice to the Police Department of the names, addresses and drivers license numbers of all new employees, owners, partners or agents of the Towing Company.

9. Telephone Communications

The Towing Company shall provide cellular telephone communication system between the office and all tow trucks operated by the Towing Company. The Towing Company shall maintain a direct telephone line for incoming police calls.

DIRECT LINE _____

ON-CALL Phone _____

10. Non-Exclusiveness of Service

The Towing Company agrees that the owner or person in possession of any vehicle that has been incapacitated shall have the opportunity of contacting a wrecker or tow company of his/her own choice if the disabled vehicle does not create a hazardous condition and a reasonable response time can be expected. Said person, at the accident or place of incapacity, shall be given the opportunity of having such vehicle towed to a location other than the storage facility of the Towing Company.

11. Benefits from Repairs

The Towing Company shall not benefit directly or indirectly without the express written consent of the owner of the vehicle, or the owner's designated representative, from any motor vehicle repair or painting with respect to vehicles towed and/or stored by the Towing Company under the terms and provisions of any Agreement between the City and the Towing Company. Any such agreement between the Towing Company and the owner, or between the Towing Company and a repair facility, shall state the repairs/painting to be done as well as the price and terms of payment therefor.

12. Liability of Towing Company

The liability of the Towing Company for any towed vehicle and all property contained therein shall commence at the time a wrecker is hooked to any vehicle to be towed. The Towing Company or its employee, representative, or agent shall inventory all personal property contained in the vehicle to be towed or endorse the inventory prepared by the police officer in charge.

13. Personal Property in Vehicles

To the extent provided by law, the Towing Company shall be accountable and liable for damage or loss to all personal property in the vehicles towed and for all vehicle accessories. Personal property situated in a vehicle stored by the Towing Company shall not be disposed of to defray any charges for storage or towing of the vehicle, except as provided by law. All such personal property shall be returned at once, unless directed otherwise by the City, to the owner or person entitled to legal possession thereof upon proper proof of ownership or right to possession, as provided by law. The determination of the owner or person entitled to legal possession shall be made by the Towing Company. Should the Towing Company release any personal property, the Towing Company shall obtain a receipt for the property from the owner or person entitled to possession thereof. The Towing Company shall provide reasonable access to the owner or person entitled to legal possession of the vehicle to retrieve all personal property from the vehicle. Said access shall include towing the vehicle to a location in the storage yard or near the gate of the storage yard where the vehicle may be accessed. The Towing Company shall not charge the owner or person entitled to legal possession of the personal property for accessing the vehicle in which the personal property is located or any other service that may be incidental to allowing the individual to retrieve the personal property from the vehicle.

14. Release of the Vehicle

a. The Towing Company must accept an original or a copy of any of the following documents as evidence of a person's interest in a vehicle or vessel:
   (1) An electronic title;
   (2) A paper title;
   (3) A contract between a lender and the owner of the vehicle or vessel;
   (4) A contract between the lessor and the lessee of the vehicle or vessel;
   (5) Credentials establishing the person as an employee or contract agent of an insurance company along with documentation identifying the vehicle by the vehicle identification number or vessel by the hull identification number; or
   (6) A written agreement evidencing that the person is an agent of the vehicle or vessel owner or lienholder.
b. Presenting one form of current government-issued photo identification constitutes sufficient identity for verification purposes under this Agreement.
c. The Towing Company agrees to release any vehicle, which has not been marked "HOLD" to the proper owner, lienholder, insurance company representative, or their agent. Any vehicle that has been marked "HOLD" by the Port Orange Police Department cannot be released without prior written authority

from the Police Department. The Towing Company shall require proper proof of ownership or right to possession before releasing a vehicle, and the Towing Company shall obtain a receipt for the vehicle. The Towing Company shall deliver to the **Port Orange Police Department, 4545 Clyde Morris Boulevard, Port Orange, FL 32129** by 9:00 a.m. daily a report of all vehicles released the previous day. The Towing Company shall be required to make the vehicle available for release by either allowing the owner, lienholder, insurance company representative, or their agent to enter the storage lot to retrieve the vehicle or towing the vehicle from its current location to the front gate of the storage lot where the owner or person entitled to possession may take possession of the vehicle. The Towing Company shall not charge the person entitled to possession for retrieving the subject vehicle from the lot or "setting out" the vehicle at the gate of the storage lot or for any other service that may be incidental to releasing said vehicle to the owner, lienholder, insurance company representative, or their agent. This does not prohibit the Towing Company from negotiating a consensual tow to a property other than the Towing Company's storage lot at the request of the owner, lienholder, insurance company representative, or their agent. However, if the person entitled to possession would prefer to have a different towing company provide said service, the Towing Company shall not charge any fee related to releasing the vehicle to another towing company.

15. Posting Charges and Rate Sheets

a. The Towing Company shall prominently post a sign at the storage facility in such a manner that it is conspicuous to the public with one-inch black lettering on a white background, which lists the charges to be imposed upon persons whose vehicles are towed pursuant to this Agreement. As to such persons, the Towing Company shall not impose any charges that exceed the legal maximum rate established for the City of Port Orange.

b. The Towing Company must maintain a rate sheet listing all fees for, or incidental to, the recovery, removal, or storage of a vehicle or vessel and must do all of the following:

1. Make the rate sheet available upon request by the vehicle or vessel owner, lienholder, insurance company, or their agent.

2. Before attaching a vehicle or vessel to a wrecker, furnish the rate sheet to the owner or operator of the vehicle or vessel, if the owner or operator is present at the scene of the disabled vehicle or vessel.

16. Itemized Statements

a. Should any owner, lienholder, insurance company, or their agent entitled to possession of a towed and/or stored vehicle seek to reclaim the same from the Towing Company, the Towing Company shall provide such owner, lienholder, insurance company, or their agent with an itemized statement of

all charges related to the towing and storage of such vehicle. Such statement shall be provided free of charge.

b. An itemized statement must be produced and be available to the vehicle or vessel owner, lienholder, insurance company, or their agent no later than one business day after:
    - The tow is completed; or
    - The towing-storage operator has obtained all necessary information to be included on the invoice, including any charges submitted by subcontractors used by the towing-storage operator to complete the tow and recovery.

The itemized statement shall include, at a minimum a detailed description of the work performed and/or services provided by the Towing Company including the following:

- The date and time the vehicle or vessel was towed and subsequently released from storage;
- The location to which the vehicle or vessel was towed;
- The name, address, and telephone number of the towing-storage operator;
- A description of the towed vehicle or vessel, including the color, make, model, model year, and vehicle identification number of the vehicle or hull identification number of the vessel;
- The license plate number and state of registration for the towed vehicle or vessel;
- The cost of the initial towing service;
- The cost of any storage fees, expressed as a daily rate;
- Other fees, including administrative fees, vehicle or vessel search fees, fees for hazardous material and nonhazardous material cleanup, and fees for labor; and
- A list of the services that were performed under a warranty or that were otherwise performed at no cost to the owner of the vehicle or vessel.

Any services provided by the Towing Company to the patron upon the patron's request shall be identified as such on the itemized statement by using the term "customer request" followed by a description of the work performed at the request of the customer. However, the customer shall not be charged for any services for which a charge has been forbidden by this Agreement even if requested by the customer.

The Towing Company must make the itemized invoice available for inspection and copying no later than 48 hours after receiving a written request to inspect such invoice from:

- A law enforcement agency;
- The Attorney General; or
- The vehicle or vessel owner, lienholder, insurance company, or their agent.

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c. The City shall periodically audit Towing Company billing to ensure compliance with this Agreement. During any twelve (12) month period, failure by the Towing Company to provide itemized billing statements in accordance with this section shall result in a progressive liquidated damages charge (for the City's estimated costs as a result of billing issues) and up to termination, as follows:

First Offense:	$50.00
Second Offense:	$100.00
Third Offense:	$150.00
Fourth Offense:	Suspension and up to termination

17. Indemnification

The Towing Company shall indemnify and hold harmless the City of Port Orange and its agents, officers and employees from and against all claims, damages, losses, and expenses, including but not limited to attorneys' fees incurred prior to the filing of a suit and throughout any court proceeding, arising out of or resulting from the work or services or the performance of operations under this Agreement, provided that the claim, damage, loss and expense is caused in whole or in part by any willful or negligent act or omission of the Towing Company, any subcontractor, anyone directly or indirectly employed by any one of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

18. Insurance

a. Required Insurance:

The Towing Company shall purchase and maintain, at its own expense, the following types and amounts of insurance:

(1) Workers' Compensation Insurance:

Workers' Compensation Insurance for all employees and subcontractors of the Towing Company connected with the work, which is the subject of this Agreement. The insurance required by this provision shall comply fully with the Florida Workers' Compensation Law and include Employers Liability insurance with limits of not less than $500,000 per occurrence or the statutory requirements whichever is greater. No class of employee, including the Towing Company itself, if an individual, shall be excluded from the Workers' Compensation coverage.

(2) Garage-keeper's policy. A garage-keeper's legal liability and direct primary policy covering fire, theft, vandalism, and other insurable perils in the minimum amount of $75,000.00, and a per-vehicle deductible not exceeding $1,000.00.

(3) On Hook/Cargo liability policy with a minimum limit of $75,000.00 and a deductible not exceeding $1,000.00 per towing vehicle.

(4) Automobile liability policy, covering the operation of wrecker's business, equipment, and vehicles with a combined single limit for bodily injury and property damage of no less than $1,000,000.00.

(5) General liability policy. A general liability policy, covering the operation of wrecker's business, equipment and vehicles, with a combined single limit for bodily injury and property damage of no less than $1,000,000.00.

(6) The above insurance coverage shall name the City of Port Orange as additional insured, with the exception of Workers' Compensation Insurance.

b. Proof of Insurance

The Towing Company shall furnish proof of insurance acceptable to the City showing the City as an additional insured within ten (10) days of the City Council award of this Agreement. The Towing Company shall not commence work under this Agreement until it has obtained all the insurance required under this Agreement and such insurance has been filed with and approved by the City. The Towing Company shall furnish evidence of all required insurance in the form of certificates of insurance which shall clearly outline all hazards covered as itemized above, the amounts of insurance applicable to each hazard, the expiration dates, and shall contain the following language as to cancellation:

In the event of cancellation of this policy by the insurer or any insured, this company shall give not less than thirty (30) days advance written notice to:

Port Orange Police Department
ATTN: Towing Contract Manager
City of Port Orange
4545 Clyde Morris Blvd.
Port Orange, Florida 32129

Upon request by the City, the Towing Company shall furnish copies of the insurance contracts to support the certificates of insurance and the Towing Company shall be required to satisfy any revision by the City.

The Towing Company shall file replacement certificates at least seven (7) days prior to expiration or termination of the required insurance occurring prior to the expiration of this Agreement. In the event such insurance shall lapse, the City expressly reserves the right to either declare a breach of this Agreement and terminate or renew the insurance at the Towing Company's expense. The renewal of the insurance shall not waive the City's right to declare a breach of this Agreement.

The Towing Company agrees to comply with all applicable state and federal laws, rules and regulations. Nothing in this Section 18 shall be construed to reduce or limit any commercial insurance required for towing company operation by applicable state or federal laws, rules or regulations.

19. Records, Books and Payment

The City reserves the right, during normal business hours, to inspect and audit the Towing Company records pertaining to services provided under this Agreement. All records shall be maintained at one central location as provided hereinafter. Additionally, the monthly sum payable to the City by the Towing Company shall be submitted to the Office of the City Finance Director on the first day of each month for the duration of this Agreement. Copies of all Towing Company paid invoices for services provided each month as a result of this Agreement shall be submitted to the City on or before the 15th day following the end of the month in which such services were provided. Such invoices may be provided in the form of a computer printout, or in an electronic format approved by the Finance Director, and shall contain the information set forth in Subsection 19.a.(1) below.

a. The Towing Company shall maintain for three (3) years following the towing of any vehicle towed under authority of a representative of the City, the following records of such tow:

(1) Call date and time, dispatch time, arrival time, hooked, dropped and cleared time, where the vehicle was towed from; the date and time towed; the driver who towed the vehicle; where it was towed to; a complete description of the vehicle; the name and address of the registered owner; the disposition of the vehicle; the date and time the vehicle was released or disposed of; and all correspondence and documents sent or received concerning said vehicle, as required by this Agreement; and

(2) All notice publications and certified mailings, the purchase price of any unclaimed vehicle or vessel sold, the names and addresses of persons to which vehicles or vessels were released, the names and addresses of vehicle or vessel purchasers, all fees imposed under s. 713.78, F.S.

20. Right to Cancel Service Call

The City shall have the right to cancel a request for Towing Company services until the time the wrecker arrives on the scene, and there shall be no charge to the City or the vehicle operator/owner. When a wrecker is to be canceled, it shall be canceled over the police radio prior to the wrecker's arrival on the scene. The term "arrives on the scene" is construed to mean that the responding wrecker has arrived within the close physical proximity of the vehicle to be towed and the wrecker has stopped and its operator has exited the wrecker in preparation to perform the towing service.

21. Compliance with Laws and Rules

The Towing Company agrees to and shall comply with all applicable provisions of the Florida Statutes, including Section 316.530, all applicable City ordinances, resolutions, and the equipment requirements and specifications set forth in Rule 15B-9.005, Fla. Adm. Code, as may be amended, unless otherwise provided by ordinance or this Agreement.

22. Surety Performance Bond

Within ten (10) days of city council award of this Agreement by the Port Orange City Council, the Towing Company shall post a surety performance bond or provide a letter of credit. The surety shall be an A-rated or better company. The performance bond or letter of credit shall be in the amount of $50,000.00 (fifty thousand and 00/100 dollars) to be used by the City in the event:

a. The Towing Company fails to provide wrecker service required by this Agreement, for the purpose of defraying costs incurred in making adequate arrangements for towing services, including the City's actual administrative costs.
b. The Towing Company breaches the terms of this Agreement and it is terminated by the City as provided in Section 24, for the purpose of defraying the cost of rebidding this Agreement.

23. Late Response

Liquidated damages for Late Response to emergency response calls. The Towing Company shall respond immediately to all emergency calls for service and shall be at the location within twenty (20) minutes from the time the call is received.

The contractor assumes all liability in meeting the twenty (20) minutes response time including but not limited to any and all damages resulting from traffic accidents caused by the Towing Company's delay in response. During any twelve (12) month period, failure to meet the twenty (20) minute response time shall result in a progressive liquidated damages charge and up to termination, as follows:

First Offense	$50.00
Second Offense	$100.00
Third Offense	$150.00
Fourth Offense	Automatic suspension and up to termination

The Towing Company shall not be assessed a liquidated damages charge for delay or failure in providing service when such delay or failure is the result of fire, flood, strike, act of God, act of government, act of alien enemy or by any circumstances which, in the Police Chief's opinion, is beyond the control of the Towing Company. Act of government shall not include enforcement of Chapter 316, Florida Statutes.

24. Breach of Agreement and Termination

a. It shall be the right of the Chief of Police and any officials of the City which he may designate to observe closely the wrecker service operations and if, in the opinion of the Chief of Police, there has been a breach of contract, the Chief of Police shall so notify the Towing Company, in writing, specifying the manner in which there has been a breach of contract. If termination of the Agreement due to breach is recommended, the Chief of Police may so notify the City Manager and a hearing shall be set for a date within fifteen (15) calendar days of such notice. At that time, the City Manager shall hear the Towing Company and the City representative(s), and shall make a determination as to whether or not there has been a breach of contract, and shall direct what further action shall be taken by the City, including but not limited to termination of this Agreement, as hereinafter provided. Pending the hearing, the Chief of Police has the right to suspend the Towing Company's operations under this Agreement, if he/she deems it necessary to protect health, safety and welfare; and the Towing Company shall have no recourse against the City for the suspension. Any lesser remedial action than termination shall not waive the City's right to further remedial action.

b. In addition to terminating this Agreement, the City may recover from the surety bond all actual administrative costs as provided by Section 22 of this Agreement.

c. The City may, if it so elects, pursue any other remedies provided by law for breach of this Agreement or any of its terms, covenants, conditions, or stipulations.

d. No right or remedy herein conferred upon or reserved to the City or the Towing Company is intended to be exclusive of any other right or remedy, and each and every right and remedy given hereunder, or now or hereafter existing at law or at equity or by statute.

25. Misleading, Dishonest, and Illegal Practices

a. The Towing Company warrants that it shall not engage in any misleading, dishonest, or illegal practices with regard to the vehicles towed pursuant to this Agreement, and shall charge owners of vehicles only those amounts permitted under this Agreement for those services covered by this Agreement. In the event that an overcharge or other violation covered by this section is reported to the City, the City shall promptly notify the Towing Company of the alleged violation.

b. If a satisfactory written explanation is not received by the City within twenty-four (24) hours from the Towing Company, or the violation is not otherwise remedied and assurances given that similar violations shall not occur in the future, within the twenty-four (24) hour period, the violation shall constitute a breach of this agreement that may be reported to the City Manager for termination of this Agreement or other appropriate action as provided by Section 24 herein.

c. The Towing Company shall remedy any overcharge or unauthorized billing immediately by reimbursing the overage or unauthorized amount to the patron billed. In addition to the reimbursement of any overages to the patron, during any twelve (12) month period, any overcharge or unauthorized billing shall result in a progressive liquidated damages charge (for the City's estimated costs as a result of billing issues) and up to termination, as follows:

First Offense	$50.00
Second Offense	$100.00
Third Offense	$150.00
Fourth Offense	Suspension and up to termination

26. Public Records Compliance

a. Towing Company shall comply with public records laws as set forth in Chapter 119, Florida Statutes, and shall specifically:

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

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

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

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

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

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

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27. Legislative Acknowledgement

The City and Towing Company acknowledge the recent creation and adoption of Section 166.04465 of the Florida Statutes. Both parties acknowledge that each monthly payment made to the City by the Towing Company under this Agreement are neither a rate nor fee imposed by ordinance upon the Towing Company. Rather the Towing Company has voluntarily sought to earn the right to perform the services contemplated by this Agreement on behalf of the City through a competitive procurement process. Both parties acknowledge and expressly agree that the monthly payments provided for herein are permissible under state law and in no way violates Section, 166.04465, Florida Statutes.

28. Non-Discrimination

During the performance of this Agreement, Towing Company agrees:

a. Towing Company will not discriminate against any employee or applicant for employment because of race, religion, color, sex, disability, marital status, age or national origin, except where such is a bona-fide occupational qualification reasonably necessary to the normal operation of Towing Company. Towing Company agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause. Towing Company agrees to fully support and comply with the Americans with Disabilities Act of 1990, as amended.
b. Towing Company shall state in all solicitations or advertisements for employees placed by or on behalf of Towing Company that Towing Company is an equal opportunity employer.
c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient compliance with this provision.

29. E-Verify

Towing Company 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 Towing Company during the term of this Agreement and who provide services to the City under this Agreement.

30. 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 or limit 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 by operation of law.

31. Miscellaneous

a. The descriptive headings appearing in this Agreement and by law are for convenience only and are not to be construed either as a part of the terms and conditions hereof or as any interpretation thereof.

b. The bid documents and specifications are made a part of this Agreement by reference, as if fully set forth herein. In the event of a conflict between the bid documents and specifications, and this Agreement, the terms of this Agreement shall control.

c. It is mutually understood and agreed that nothing contained in this Agreement is intended or shall be construed, as in any way creating or establishing the relationship of a partnership or joint ventures between the parties hereto or as constituting the Towing Company as agent or representative of the City for any purpose or in any manner whatsoever.

d. The Towing Company shall not assign this Agreement and its rights hereunder, in whole or in part, except with the prior written consent of the City.

b. In the event of any claim, action, litigation, or proceeding in court under this Agreement or in the event of any settlement of a dispute under this Agreement prior to a proceeding filed in court the prevailing party shall be entitled to an award of reasonable attorneys' fees and costs.

[REMAINDER OF PAGE LEFT BLANK]

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Witnesses:

TOWING COMPANY

_____

_____

Printed Name: _____

By: _____

Printed name/Title: _____

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

_____

Printed Name: _____

Date: _____

At this time the City <u>does not</u> accept electronic/digital signatures. A wet signature is required for this document.

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CITY OF PORT ORANGE

By:_____

Printed name/Title: _____

Date:_____

ATTEST:

By:_____

Robin L. Fenwick, MMC, City Clerk

Date:_____

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EXHIBIT A

MAXIMUM NONCONSENSUAL AND TRESPASS TOW RATES

A. Maximum rates to be charged for the removal and storage of wrecked or disabled vehicles from an accident scene or the removal and storage of vehicles in the event the owner or operator is incapacitated, unavailable, leaves the procurement of wrecker service to the law enforcement officer at the scene, or otherwise does not consent to the removal of the vehicle, when the point of origin of the tow services are within the boundaries of the City of Port Orange shall be:

1. Towing vehicles, Class A (GWVR at 9,999lbs or less or a vehicle carrying a vessel 15 feet or less in length), shall be: $125.00

2. Towing vehicles, Class B (GWVR at 10,000lbs or more but less than 19,500lbs or vehicle carrying a vessel more than 15 feet, but less than 22 feet in length): $250.00

3. Towing vehicles, Class C (GWVR at 19,500 or more pounds, but less than 25,000lbs or vehicle carrying a vessel more than 22 feet in length): $375.00

4. Towing vehicles, Class D, greater than 25,000lbs GWVR: $500.00

5. Innocent Owner Fee (See Sec. 2(h) of the Wrecker Service Agreement) $75.00

6. If a tarp is required, a flat fee of: $15.00

7. If self-adhesive film is required to dry-in the vehicle, a flat fee of: $37.50

8. Additional flat fee per fifteen (15) minute block of extra labor for complicated situations beyond the initial 30 minutes at the scene for nonconsensual tows (i.e., water recovery, extraction of vehicle from pole, tree or house, righting overturned vehicle or clearing away a large amount of debris at an accident scene) shall be permitted as follows:
   - a) Class A $25.00
   - b) Class B $50.00
   - c) Class C $75.00
   - d) Class D $100.00

9. Services charges
   - a) Wrecker on-scene and owner arrives $25.00
   - b) Wrecker not on scene and owner arrives No charge

10. Storage Rates per day:
   - a) Any vehicle at compound under twelve (12) hours No charge
   - b) Class A:
     - Outside Storage $20.00
     - Inside Storage $25.00
   - c) Class B
     - Outside Storage $25.00
     - Inside Storage $30.00
   - d) Class C
     - Outside Storage $55.00
     - Inside Storage $60.00

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e) Class D

- Outside Storage $55.00
- Inside Storage $60.00

11. An additional daily storage fee, as set forth in item 10 above, may be charged for any vessel, trailer or other mobile item, whether motorized or not, which is mounted on wheels and attached to a towed vehicle.

12. After business hours (Monday-Friday, 6:00 p.m.-8:00 a.m., Saturday and Sunday and national holidays) vehicle release fee: $35.00

13. After 48 hours of storage, an administrative fee for lien processing may be imposed for the actual costs of notification(s) so long as the wrecker service has actually complied with the requirements of F.S. 713.78 including execution and mailing of the lien notice or $65.00, whichever is less.

14. No additional charges or fees of any kind, other than those specified and authorized in this schedule's Sections A and B, are allowed for services governed by this Resolution, when towed from a point in the City. By way of illustration, no additional charges or fees may be assessed for:

a) Mileage
b) Special equipment or services such as double hook-up, vehicle entry when locked, dropping transmission linkage, axle or drive shaft removal, dollies, trailer or flat bed, lifts, slim jims, go jacks, removing bumpers, airing up brakes
c) Time spent at the scene of the tow, other than those specified in this schedule
d) Release fees during normal business hours (Monday-Friday, 8:00 a.m.-6:00 p.m.);
e) Access fees to allow the owner or the owner's representative to remove personal property or examine the vehicle
f) Yard fees, set-out fees, or gate fees for allowing the owner or any tow company designated by the owner or his insurance company to take custody of and remove the vehicle from the impound area
g) Fuel surcharge fees
h) Storage for the first twelve hours

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EXHIBIT "B"

15B-9.005 Wrecker Classification and Required Equipment.

(1) Each tow truck owned or maintained by a wrecker operator shall be commercially manufactured and shall conform to the requirements of this rule. The requirements for commercial manufacture of trucks and equipment are waived for those operators who have been on the division's rotation list for one year prior to January 22, 1986. The wrecker and equipment shall be operable.

(2) The tow truck and equipment shall be inspected by the division's local troop commander or his designee and approved by the troop commander before being placed on the rotation list. Thereafter, trucks and equipment shall be subject to periodic checks as necessary to ensure compliance with these rules.

(3) Sirens on wreckers are prohibited.

(4) The wrecker operator shall not represent or imply on any vehicle, building or correspondence an official relationship between the wrecker operator and the division or any other police agency.

(5) It is prohibited for a tow truck or the business establishment maintained by the wrecker operator to have any equipment capable of monitoring messages or signals or frequencies assigned to the division.

(6) All trucks operated pursuant to this rule shall be equipped with a business-type communication radio or mobile telephone or cellular telephone. There shall be one radio or phone for each truck. Such equipment shall be licensed and approved by the Federal Communications Commission. The mobile radio or telephone shall enable the wrecker operator to communicate with his area of operations from any point within the assigned zone. A citizens band radio does not meet the requirements of this section. The troop commander may waive this requirement for all wrecker operators within a zone upon a showing that due to the limited number of operators in a zone that the installation of such communication devices is unnecessary or cost prohibitive or that the service is not readily available.

(7) Specifications and required equipment shall be as follows:

(a) ALL wreckers (All Classifications) shall include the following:

1. A cradle, tow plate or tow sling to pick up vehicles. The cradle, tow plate or tow sling shall be equipped with safety chains and constructed in such a manner that it will not damage the vehicle to be towed.

2. Dual rear wheels.

3. Clearance and marker lights and all other equipment as required by Chapter 316, F.S.

4. A rotor beam or strobe-type light, amber in color, mounted on the wrecker in such a manner that it can be seen from the front, rear, and both sides.

5. The name, address and telephone number of the wrecker operator for the zone in which the operator is qualified must be painted or permanently affixed in a conspicuous place on both sides of the trucks as required by Section 713.78(6), F.S. A unit number shall be painted on both sides of the cab of each wrecker. The same unit number on two or more wreckers qualified to tow within a zone is prohibited. Multiple addresses and telephone numbers are prohibited.

a. The name must be in letters at least three (3) inches in height.

b. The zone address and telephone number must be at least one (1) inch in height.

c. The unit number must be at least three (3) inches in height and in contrasting color.

d. Magnetic or removal signs or placards will not meet these requirements.

6. At least one heavy duty push broom with a minimum width of twenty-four (24) inches.

7. One square shovel.

8. One ax.

9. One crowbar or prybar with a minimum length of thirty (30) inches.

10. Minimum of one (1) five pound CO_2 or dry chemical fire extinguisher or equivalent. Must be approved type and have a current inspection tag attached.

11. One pair of bolt cutters with a minimum opening of 1/2 inch.

12. One set of jumper cables.

13. One four-way lug wrench.

14. One flashlight.

15. Five thirty minute fuses.

16. One snatch block for each winch with manufacturer's rating to match winch.

17. Extra towing chain six to eight feet in length with hooks.

18. At least three (3) safety cones or triangle reflectors.

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19. Fifty pounds of sand or equivalent.

(b) Class "A" Wreckers – For the removal of cars and light duty trucks and vehicles weighing 10,000 pounds gross vehicle weight or less. Specifications and equipment in addition to requirements outlined in paragraph 15B-9.005(7)(a), F.A.C., shall be as follows:

1. A truck chassis with a manufacturer's rated capacity of at least 10,000 pounds gross vehicle weight. A complete, commercially manufactured boom and winch(es) having a manufacturer's combined rating of at least 4 tons must be mounted on the chassis. Hand crank winches do not satisfy these requirements and will not be approved.

2. A minimum of one hundred feet of 3/8-inch cable.

3. Dollies.

4. Flood lights on the hoist.

5. Vehicles which are equipped with wheel lifts or the equivalent may also qualify as Class A tow trucks so long as they are equipped with a boom and all other applicable requirements are met. Wheel lifts shall be rated at a minimum of 3,000 lbs. lift capacity and must utilize wheel safety straps when lifting vehicles by the wheels only.

6. Operators who wish to remove cars and light trucks may have, in addition, a roll-back or slide-back carrier truck/trailer with specifications and equipment as provided in subsection (c) of this rule.

7. HSMV Form 60308 shall be used by the Division for the inspection of Class "A" wreckers.

(c) Class "A" Roll-Back or Slide-Back Wreckers – For the removal of cars and light duty trucks and vehicles weighing 10,000 pounds gross vehicle weight or less. Specifications and equipment for roll-back or slide-back carriers in addition to the requirements outlined in subparagraphs 15B-9.005(7)(a)2.-20., F.A.C., shall include the following:

1. A truck chassis with a manufacturer's rated capacity of at least 10,000 pounds gross vehicle weight with a minimum of a sixteen (16) foot bed, dual rear wheels and a winch with at least 8,000 pound capacity.

2. A minimum of 50 feet of 3/8-inch cable.

3. A minimum of two safety tie-down chains of at least ten (10) feet each in length.

4. Two spot (flood) lights mounted on the rear of the carrier.

5. A roll-back or slide-back carrier trailer shall meet the following requirements:

a. A commercially manufactured carrier trailer with a rated capacity of at least 8,000 pounds gross vehicle weight with a minimum sixteen (16) foot bed. A winch with at least 8,000 pound capacity.

b. A minimum of 50 feet of 3/8 inch cable.

c. Brakes and trailer lights which meet the minimum statutory requirements of Florida law.

d. Safety chains.

e. Must be towed by and used in conjunction with an approved wrecker that meets or exceeds the class of the vehicle to be towed.

6. HSMV Form 60305 shall be used by the Division for the inspection of roll-back and slide-back carriers.

(d) Class "B" Wreckers – For removal of medium duty trucks or vehicles weighing 20,000 pounds gross vehicle weight or less. Specifications and equipment in addition to the requirements outlined in paragraph 15B-9.005(7)(a), F.A.C., shall be as follows:

1. A truck chassis with a manufacturer's rated capacity of at least 20,000 pounds gross vehicle weight. A complete, twin-winch, commercially manufactured boom and winches having a manufacturer's combined rating of at least ten (10) ton capacity mounted on the chassis. Class B wreckers that were previously approved at 15,000 pounds gross vehicle weight may continue in use within this class, even if sold to another approved rotation operator.

2. A minimum of one hundred feet of at least 1/2-inch cable on each drum.

3. One set of scotch blocks for wheels or hydraulic rear-extendable scotch blocks.

4. Flood lights on the hoist.

5. HSMV Form 60307 shall be used by the Division for the inspection of Class "B" wreckers.

(e) Class "C" Wreckers – For the removal of heavy duty trucks, house trailers, buses, etc., weighing over 20,000 pounds gross vehicle weight. Specifications and equipment in addition to the requirements outlined in paragraph 15B-9.005(7)(a), F.A.C., shall be as follows:

1. A truck chassis with a manufacturer's rated capacity of at least 30,000 pounds gross vehicle weight and 50,000 pounds gross vehicle weight for tandem axle trucks. A complete, twin-winch, commercially manufactured boom and winches having a manufacturer's combined rating of at least 25 ton capacity mounted on the chassis.

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2. A minimum of two hundred feet of at least 5/8-inch cable on each drum.
3. Air brakes so constructed as to lock the rear wheels automatically upon failure.
4. External air hookup and hoses, to supply air to disabled vehicles.
5. One set of scotch blocks for wheels or hydraulic rear-extendable scotch blocks.
6. Flood lights on the hoist.
7. HSMV Form 60306 shall be used by the Division for the inspection of Class “C” wreckers.

Rulemaking Authority 321.051 FS. Law Implemented 321.051, 321.05(1) FS. History–New 1-22-86, Formerly 15B-9.05, Amended 10-15-92, 10-2-95.

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End of Solicitation Documents

CITY OF PORT ORANGE
PURCHASING DIVISION
1000 CITY CENTER CIRCLE
PORT ORANGE, FLORIDA 32129
TELEPHONE 386-506-5718
purchdiv@port-orange.org

ADDENDUM #1
February 7, 2025

RFP #25-05 WRECKER SERVICES

To All Respondents:
The following changes, clarifications and additions are hereby made part of the RFP for the above referenced project dated January 17, 2025 and prepared by the City of Port Orange Purchasing Division as fully and completely as if the same were fully set forth therein. It is the sole responsibility of the respondent to confirm that all addenda have been received prior to submitting a proposal and acknowledge such in the RFP documents.

A. CLARIFICATIONS:
None

B. CHANGES TO RFP DOCUMENT:
None

C. QUESTIONS AND ANSWERS:

Question #1
Is there a reason that the City of Port Orange is not following the new rates established by the County of Volusia or the State of Florida?
Answer #1
A check of Municode for Volusia County, section 118-98 with latest update being Dec 4, 2024, shows our rates for non-consensual tows are the same as County Ordinance for Class A, B, C, D tows and storage fees for both inside and outside, the same for additional fees beyond the initial 30 minutes, after hours fee and tarp fees.

Question #2
Can you please provide the number of tows that were performed for the City in years past?
Answer #2
788 in 2024.

Question #3
Have you performed an audit on any prior wrecker service that have/has had an agreement with the City to see what the average towing bills have been?
Answer #3
No, not for the average bill.

Question #4

If no to question 3, would you be able to do an audit on the current wrecker service and provide the results?

Answer #4

No.

Question #5

Will there be a Pre-bid meeting? If so, what will the Date/Time/Location be?

Answer #5

No, there will not be a Pre-bid meeting.

Question #6

Regarding the Dun & Bradstreet report, they (D&B) are advising it will cost $599.00 to purchase this report. Is this something we can supply after potentially being awarded the bid? Or is there another report you would prefer?

Answer #6

The information requested is required to be submitted with respondent's proposal package as stated in Tab D: *All Respondents shall provide a financial statement with their proposal, preferably a certified audit of the last available fiscal year. A third party prepared financial statement, **and** the latest Dun & Bradstreet report will be accepted in lieu thereof.*

In all other respects, except as specifically stated herein, the subject RFP #25-05 Wrecker Services remains unchanged.

END OF ADDENDUM #1

Evaluation Ranking Summary

Date: March 4, 2025

RFP #25-05 Wrecker Services

Company Name	Total Weighted Score (Maximum 30)
Arrow Service & Towing	23.30
Universal Towing, Inc.	17.85

Comments
On March 4, 2025 a Proposal Evaluation Committee scored the proposals received from the companies listed above for RFP #25-05 Wrecker Services. The committee agreed by consensus to recommend for award Arrow Service & Towing based on a combination of overall scores and their ability to best meet the needs of the City.

"Failure to file a protest within the time prescribed in section 120.57(3), Florida Statutes, or failure to post the bond or other security required by law within the time allowed for filing a bond shall constitute a waiver of proceedings under chapter 120, Florida Statutes." The 72 hour posting requirement will elapse on March 7, 2025 at 4:00 PM EST

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1. Statement of Interest

2. Tab A - Required Documents
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   - Form 9.3
   - Form 9.4
   - Form 9.5
   - Form 9.6
   - Form 9.7
   - Form 9.8
   - Form 9.9
   - Form 9.10
   - Form 9.11
   - Form 9.12
   - Appendix A
   - License-Florida (sunbiz)
   - Bond Certificate

3. Tab B – Company history, qualifications, and related experience of respondent

4. Tab C – Management Plan

5. Tab D – Financial History, contract, litigation & debarment history
   - Certified third party financial audit

6. Tab E – References

7. Tab F – Billing practices

J & A Balboa Enterprises, Inc
DBA
Arrow Service & Towing
541 Carswell Ave Holly Hill, FL 32117
(386) 255-2138 Office@arrowflorida.com

STATEMENT OF INTEREST

RFP #25-05
Wrecker Services

Arrow Service & Towing is pleased to submit this statement of interest in providing towing and recovery services for the Port Orange Police Department. As an established and highly respected leader in the towing and recovery industry, we have the experience, expertise, and resources necessary to meet and exceed the requirements outlined in the Request for Proposal.

With a team of highly skilled and certified operators, Arrow Service & Towing is committed to delivering professional, efficient, and reliable services. Our fleet is equipped with state-of-the-art towing and recovery equipment, ensuring we can handle a full range of scenarios, from light-duty to ultra-heavy-duty recoveries. We operate 24/7 to provide immediate response, prioritizing safety, compliance, and seamless coordination with law enforcement.

Arrow Service & Towing is dedicated to upholding the highest standards of service and professionalism. We welcome the opportunity to support the Port Orange Police Department with prompt, dependable, and expertly executed towing and recovery services.

We appreciate your consideration and look forward to the opportunity to partner with you. Please do not hesitate to reach out for any further information or discussions regarding our qualifications and capabilities.

Contract Manager Contact:
Amanda Balboa
(386) 255-2138 Office
(386) 233-5127 Cell
Amanda@arrowflorida.com

Respectfully submitted,

ABalboa

Amanda Balboa
Treasurer

SECTION 9 – REQUIRED FORMS

FORM 9.1 – PROPOSAL SUBMITTAL CHECKLIST

✓ Form 9.2 – Respondent's Acknowledgement

✓ Form 9.3 – Addendum and Change Order Procedure Acknowledgement

✓ Form 9.4 – Drug Free Preference Statement

✓ Form 9.5 – Public Entity Crimes Statement

✓ Form 9.6 – Anti-Collusion Form

✓ Form 9.7 – Statement of Qualifications

✓ Form 9.8 – Professional References for Previous Experience

✓ Form 9.9 – Scrutinized Companies Certification

✓ Form 9.10 – E-Verify Affidavit

✓ Form 9.11 – Debarment, Suspension and Other Responsibility Matters

✓ Form 9.12 – Affidavit of Compliance With Section 287.138, Florida Statutes

N/A Form 9.13 – Non-Disclosure Agreement for Confidential Material

N/A Exhibit "A" – Description of Confidential Material

N/A Form 9.14 – No Submittal Request Form

✓ Appendix A, 44. C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING Certification for Contracts, Grants, Loans, and Cooperative Agreements

✓ Provide a copy of license to do business in the State of Florida Sunbiz report showing your company registered as "Active".

✓ Bonding Capacity Letter (as outlined in Section 6)

N/A If applicable – copy of county business license of primary business operations

✓ Submission of one (1) original marked "ORIGINAL', five (5) copies and one (1) digital (USB flash drive) version in PDF format

BY: Arrow Service & Towing
Name of Business

ABalloa
Authorized Signature

1/27/2025
Date

This document must be completed and returned with your Submittal

FORM 9.2 – RESPONDENT'S ACKNOWLEDGEMENT FORM

I have carefully examined the Request for Proposal (RFP), Instructions to Respondents, General and/or Special Conditions, Specifications and any other documents accompanying or made a part of this request.

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

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

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

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

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

NO EXCEPTIONS ALLOWED AFTER THE PROPOSAL IS SUBMITTED:

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

_____

_____

Arrow Service & Towing
Name of Business

ABalboa
Authorized Signature

Amanda Balboa, Treasurer
Printed Name and Title

59-2491843
Federal Identification No.

P.O. Box 250072
Mailing Address

Holly Hill, Fl 32125
City, State & Zip Code

(386) 255-2138
Telephone Number

Office@arrowflorida.com
E-mail Address

STATE OF: Florida COUNTY OF: Volusia

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

27th day of January, 2025, by Amanda Balboa and who:

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

Amanda Barlow Notary Public, State of Florida

Printed, typed or stamped name, commission and expiration:

AMANDA BARLOW
Notary Public
State of Florida
Comm# HH192582
Expires 10/31/2025

This document must be completed and returned with your submittal

FORM 9.3 – ADDENDUM AND CHANGE ORDER PROCEDURE ACKNOWLEDGEMENT

ADDENDUM ACKNOWLEDGEMENT

I have carefully examined the Request for Proposal (RFP), Instructions to Respondents, General and/or Special Conditions, Specifications and any other documents accompanying or made a part of this RFP.

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

Addendum# 1 Date: 2/7/25 Addendum#_____ Date:_____

Addendum#_____ Date:_____ Addendum#_____ Date:_____

CHANGE ORDER PROCEDURE ACKNOWLEDGEMENT

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

I acknowledge the above statement regarding Addendum Acknowledgement and Change Orders Procedures:

Arrow Service & Towing
Name of Business

ABalboa
Authorized Signature

Amanda Balboa, Treasurer
Printed Name and Title

STATE OF: Florida COUNTY OF: Volusia

The foregoing instrument was acknowledged before me by means of ☒physical presence or ☐online notarization, this 8th day of February, 2025, by Amanda Balboa and who:

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

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

This document must be completed and returned with your Submittal

AMANDA BARLOW
Notary Public
State of Florida
Comm# HH192582
Expires 10/31/2025

FORM 9.4 – DRUG-FREE PREFERENCE STATEMENT

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

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

1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.

2. Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation and employee assistance programs and the penalties that may be imposed upon employees for drug abuse violations.

3. Give each employee engaged in providing the commodities or contractual services that are under a proposal a copy of the statement specified in subsection (1).

4. In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under the proposal, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of chapter 893 or of any controlled substance the law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.

5. Impose a sanction on or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by an employee who is so convicted.

6. Make a good faither effort to continue to maintain a drug-free workplace through implementation of Section 287.087, Florida Statutes.

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

Arrow Service & Towing
Name of Business

aBalboa
Authorized Signature

Amanda Balboa, Treasurer
Printed Name and Title

STATE OF: Florida COUNTY OF: Volusia

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 27th day of January, 2025, by Amanda Balboa and who:

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

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

This document must be completed and returned with your Submittal

AMANDA BARLOW
Notary Public
State of Florida
Comm# HH192582
Expires 10/31/2025

FORM 9.5 – SWORN STATEMENT ON PUBLIC ENTITY CRIMES
UNDER SECTION 287.133(3)(A), FLORIDA STATUTES
(To be signed in the presence of a notary public or other authorized to administer oaths.)

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

1. The business address of Arrow Service & Towing (name of Offeror or business) is 541 Carswell Ave Holly Hill, Fl 32117.

2. My relationship to Arrow Service & Towing (name of Offeror or business) is Treasurer (relationship such as sole proprietor, partner, president, vice president.)

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

Arrow Service & Towing
Name of Business

Abalboa
Authorized Signature

Amanda Balboa, Treasurer
Printed Name and Title

STATE OF: Florida

COUNTY OF: Volusia

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 27th day of January, 2025, by Amanda Balboa and who:

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

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

This document must be completed and returned with your Submittal

AMANDA BARLOW
Notary Public
State of Florida
Comm# HH192582
Expires 10/31/2025

FORM 9.6 – ANTI-COLLUSION FORM

ANTI-COLLUSION STATEMENT PROPOSAL FORM:

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

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

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

NAME OF FIRM: Arrow Service & Towing

SIGNED BY: ABalboa

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

PRINTED SIGNATURE: Amanda Balboa

TITLE: Treasurer

ADDRESS: 541 Carswell Ave

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

TELEPHONE: (386) 255-2138

F.E.I.N.: 59-2491843

This document must be completed and returned with your Submittal

FORM 9.7 STATEMENT OF RESPONDENT'S QUALIFICATIONS

The undersigned warrants that he or she is duly authorized to complete this document, and hereby affirms that the information contained in Form 9.7 is complete, true and correct to the best of his or her knowledge and belief. If necessary, questions may be answered on separate paper and attached with any additional information that may be pertinent.

A. Name of Respondent: Arrow Service & Towing

B. Permanent main office address: 541 Carswell Ave Holly Hill, Fl 32117

C. Date organized: Nov. 2nd, 1980

D. If a corporation, where incorporated: Daytona Beach, Florida

E. How many years have you been engaged in the business under your present firm or trade name? 45 years

F. Contracts on hand: (List these, showing amount of each contract and the approximate anticipated dates of completion.) **USE SEPARATE SHEET & ATTACH TO SUBMITTAL.**

G. Have you ever failed to complete any work awarded to you? If so, where and why? No

H. Have you ever defaulted on a contract? If so, where and why? No

I. List your major equipment currently owned or leased: **USE SEPARATE SHEET & ATTACH TO SUBMITTAL.**

J. List the more important projects recently completed by your company, stating the approximate cost for each and the month and year completed: **USE SEPARATE SHEET & ATTACH TO SUBMITTAL.**

K. Background and experience of the principal members of your organization, including the officers: **USE SEPARATE SHEET & ATTACH TO SUBMITTAL**

L. Credit currently available: $ $1,332,000.00

M. Give bank name, contact name and phone number: Barwick Bank, Matt Stietzel (386) 310-8605

Will you, upon request, fill out a detailed financial statement and furnish any other information that may be required by the Owner? ☒Yes ☐No

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

Arrow Service & Towing
Name of Business

ABalboa
Authorized Signature

Amanda Balboa, Treasurer
Printed Name and Title

STATE OF: Florida

COUNTY OF: Volusia

The foregoing instrument was acknowledged before me by means of ☒physical presence or ☐online notarization, this 27th day of January, 2025, by Amanda Balboa and who:

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

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

This document must be completed and returned with your Submittal

AMANDA BARLOW
Notary Public
State of Florida
Comm# HH192582
Expires 10/31/2025

FORM 9.7 STATEMENT OF RESPONDENT'S QUALIFICATIONS
"USE SEPARATE SHEET & ATTACH TO SUBMITTAL"

F. Contracts on hand. (list these, showing amount of each contract and the approximate anticipated dates of completion)

1. Holly Hill Police Department. Amont $24,064.92, per year. Completion date September 1st, 2025.

2. Volusia County Sheriffs Office. Amount $18,000.00, per year. Price varies as we pay per vehicle towed. Completion date August 31st 2027.

3. Florida Highway Patrol. No Cost associated with this contract. On-going contract with yearly renewal.

4. Daytona Beach Shores Police Department. Amount $13,500, per year. Price varies as we pay per vehicle towed. Completion date January 30th 2030.

5. Florida Department of Transportation. No Cost Association with this contract. Completion date June 1st, 2025.

6. Port Orange Police Department. Amount $60,000.00, per year. Completion Date May 9th 2025.

FORM 9.7 STATEMENT OF RESPONDENT'S QUALIFICATIONS
"USE SEPARATE SHEET & ATTACH TO SUBMITTAL"

I. List your major equipment currently owned or leased:

Light Duty:

Unit# 72	2011 Ford F450 Super Duty 4X4 Wrecker
Unit# 95	2015 Ford F450 Super Duty Wrecker
Unit# 30	2022 Dodge Ram 5500 Wrecker
Unit# 601	2018 Dodge Ram 5500 4X4 Wrecker
Unit# 15	2016 Peterbilt 337 Flatbed(rollback)
Unit# 320	2019 Peterbilt 337 Flatbed(rollback)
Unit# 51	2018 Peterbilt 337 Flatbed(rollback)
Unit# 98	2020 Peterbilt 337 Flatbed(rollback)
Unit# 55	2008 Peterbilt 335 Flatbed(rollback)
Unit# 17	2019 International 4300 Flatbed(rollback)

Medium Duty:

Unit# 52	2006 Kenworth T300 Wrecker
Unit# 97	2013 Caterpillar CT660 Flatbed

Heavy Duty:

Unit#34	2020 Kenworth T800 50ton Rotator Wrecker
Unit# 67	2004 Kenworth T800 50Ton Wrecker
Unit# 68	2014 Kenworth T800 75Ton Rotator Wrecker
Unit# 360	2001 Peterbilt 385 50Ton Rotator Wrecker
Unit# 49	2009 Freightliner Columbia
Unit# 50	2017 Landoll 440 Tilt trailer
Unit# 43	2012 Peterbilt 367 Road tractor
Unit# 44	2004 Talbert RGN Lowboy
Unit# 45	2014 Trailking 80SA-502 Tilt
Unit# 105	2005 Kenworth W900
Unit# 106	2013 Globe 110DTG Trailer
Unit #782	2016 Western Star 4900EX
Unit #783	2015 Towmaster 10 Axle Trailer

Utility/All-Terrain:

2004 International 4400 Service truck
2016 Isuzu NPR Hazmat Response truck
2009 International 4700 Grapple Truck
2003 20 yard Dump Trailer
2017 Wanco Sign Board (arrow-directional)
2003 Bobcat T-190 Skid Steer
2013 Kubota 1KX71-3 Loader
2007 Hyster Forklift
2018 Clark Forklift
UNK SN20 Pallet Jack
2005 Laymor SM300 Street Sweeper
2020 Simpson Pressure Washer Trailer

FORM 9.7 STATEMENT OF RESPONDENT'S QUALIFICATIONS
"USE SEPARATE SHEET & ATTACHED TO SUBMITTAL"

J. List the more important projects recently completed by your company, stating the approximate cost for each and the month and year completed.

Arrow Service & Towing does not have any recently completed projects, as most contracts are still currently on-going. The last completed contract was The City of Ormond Beach in January 2019, there is no cost associated with the City of Ormond Beach to render requested services.

Arrow Service & Towing is currently under contracts with The City of Port Orange, The City of Daytona Beach Shores, Volusia Sheriffs Office, Florida Highway Patrol, Volusia County Transit, Volusia Beach Patrol, and Florida Department of Transportation working to the satisfaction of all parties.

FORM 9.7 STATEMENT OF RESPONDENT'S QUALIFICATIONS
"USE SEPARATE SHEET & ATTACHED TO SUBMITTAL"

K. Background and experience of principal members of your organization, including the officers.

Al Balboa: Corporate President, and founder. Over 45 years experience in towing & recovery.

Laura Balboa: Corporate Vice President, and founder. Over 45 years experience in industry. HAZWOPER certified.

Adam Balboa: Corporate Vice President. General manager over-seeing day to day operations. Certifications: CDL Class A (hazmat), Wreck-Master, Ashley Sling Certified, Miller Certified Rotator operator, SSTA & landoll corp Landoll trailer certified, SSTA Ultra-Heavy certified, Certified Diver, TWIC card holder, United Academy hauler safety, Responder Safety network Temporary Traffic Device usage & safety, FDOT Traffic Incident Management, Level 2 M.O.T. certified. Adam has 24 years experience in towing & recovery.

Mitchell Balboa: Corporate Secretary. Wrecker Manager over-seeing daily fleet operations. Certifications: CDL Class A, FDOT Ultra-Heavy wreck & recovery specialist, FDOT Traffic Incident Management, National Highway Safety Traffic Incident Response Mgmt, United Academy hauler safety. Miller Certified Rotator operator, SSTA Ultra-Heavy Duty trained & certified, Mitchell has 21 years experience in towing & recovery.

Amanda Balboa: Operations manager, over-seeing daily operations of staff and compliance. Certifications: FDOT Traffic Incident Mgmt, SHRP2, level 2 M.O.T. certified, OSHA HAZWOPER, FEMA National Incident Management Certified, National Highway Safety Incident Mgmt Response, ERSI Blocking procedures & roadway incident, ERSI Advanced warning, OSHA first responder & spill training, FEMA-ICS-100, ERSI Traffic Incident Response & Mgmt, FDOT Maintenance of traffic for incident responders trained. Responder Safety network Temporary Traffic Device usage & safety. Amanda is the Vice President of The Sunshine State Towing Association, and is also an active member in the Women of the towing & recovery association. Amanda has 17 years of incident response management as directly applied to towing & recovery.

Brett Cretens: Heavy Wrecker Operator
Certifications: Class A CDL(Doubles, Triples, Tanker, Haz) FDOT Traffic Incident Management, National Highway Safety Traffic Incident Response Mgmt, FDOT Maintenance of traffic for incident responders trained, United Academy hauler safety, United Academy defensive driving, Sunshine State Towing Association Light Duty & Ultra-Heavy Recovery, Motorcycle, Landoll Certified. Brett has 11 years of commercial driving experience with an additonal 6 years of towing experience.

Dana Katz: Heavy Wrecker Operator
Certifications: Class A CDL, (Doubles, Triples, Tanker, Haz), TWIC cardholder, Wreckmaster Level 6 certified, FDOT Traffic Incident Management, National Highway Safety Traffic Incident Response Mgmt, FDOT Maintenance of traffic for incident responders trained, United Academy hauler safety, Sunshine State Towing Association Light Duty & Ultra-Heavy Recovery, FEMA ICS-100, 200, 700 & 800. Dana has 13 years of commercial driving experience, 11 of those years in towing.

Heather Edwards: Light Duty Towing & Equipment Transportation Specialist
Certifications: Class A CDL (Doubles, triples), FDOT Traffic Incident Management, National Highway Safety Traffic Incident Response Mgmt, FDOT Maintenance of traffic for incident responders trained, United Academy hauler safety, Sunshine State Towing Association Ultra-Heavy Recovery, Motorcycle, FNA light & intro to medium certified. Heather has over 20 years of commercial driving experience, with an additonal 10 years of towing experience.

Karoly Nemeth: Light & Heavy Duty Wrecker Operator
Certifications: Class A CDL, Sunshine State Towing Association Light Duty & Heavy Duty Towbaility certified, FDOT Maintenance of traffic for incident responders trained. Karoly has 16 years of commercial driving experience.

Jose Camacho: Light Duty Wrecker Operator & Recovery Specialist
Certifications: SSTA Light Duty Certified, Orange County tow badge, United Academy hauler safety, United Academy defensive driving course, FDOT Maintenance of traffic for incident responders trained. Jose has 31 year experience in the towing and recovery industry,

Steven Yeager: Heavy Duty Equipment Transportation Specialist
Certifications: Class A CDL (Tankers, Triples, Doubles, Hazmat), TWIC, JAX pass-port entry, United Academy Hauler Safety, FDOT Traffic Incident Mgmt, National Highway Safety Incident Response. Steve has 30 years of commercial driving experience, specifically with Over-sized specialty loads.

Charles Lawson: Heavy Duty Incident Response Operator
Certifications: CDL Class A(Double-Triples, Tankers) Wreck-Master, TWIC, level 2 M.O.T. certified, FDOT Ultra-Heavy wreck & recovery specialist, SHRP2, FDOT Traffic Incident Mgmt, National Highway Safety Incident Responder training, Responder Safety network Temporary Traffic Device usage & safety. Charles has 30 years towing & recovery experience.

Andy Holmes: Light Duty Flatbed Operator
Certifications: United Academy Safety Hauler, Sunshine State Towing Assoc. Light Duty Towing Certification, FDOT Maintenance of traffic for incident responders trained, FDOT Traffic Incident Mgmt. Andrew has 26 years of towing experience.

William Kumm Jr.: Light Duty Flatbed Operator
Certifications: Class E Repossession license, United Academy Safety Hauler, Sunshine State Towing Assoc. Light Duty Towing Certification, FDOT Maintenance of traffic for incident responders trained, FDOT Traffic Incident Mgmt. William has 16 years of towing experience.

Aaron Nerschook: Heavy Duty Wrecker Operator & Transport Driver
National Highway Safety Incident Responder training, United Academy safety hauler, FDOT Maintenance of traffic for incident responders trained. 4 years of commercial driving experience.

Jeffrey Wilson: Heavy Duty Wrecker Operator & Transport Driver
National Highway Safety Incident Responder training, United Academy safety hauler, FDOT Maintenance of traffic for incident responders trained. 7 years of commercial driving experience.

Cadey Azzarello: Office Manager
Certifications: FDOT Traffic Incident Management Responder Course. Blocking procedures & roadway Incidents from the responder safety network, Advanced Warning from ERSI. Cadey is advanced in tag & title operations and reviews daily functionality of drivers and dispatchers.

Kris Maness: Lead Dispatcher
Kris has completed FDOT & Highway Safety online courses, Blocking procedures & roadway Incidents from the responder safety network, Advanced Warning from ERSI. Kris has successfully dispatched over 75,000 calls while at Arrow Service & Towing.

FORM 9.8 – PROFESSIONAL REFERENCES FOR PREVIOUS EXPERIENCE

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

1. Company Name: Volusia Sheriffs Office
   Contact Person: Jessica Novak
   City, State: Daytona Beach, Florida
   Telephone Number: (386) 822-5096
   Email Address: JNovak@volusiasheriff.gov
   Description of goods/services provided: 24 hour towing & roadside assistance
   Contract Amount: $90,000.00 (varies, priced per car towed)
   Start/End Date of Contract: 08/31/2022-08/31/2027
2. Company Name: Florida Department of Transportation
   Contact Person: Mike Hudson
   City, State: Volusia County, Florida
   Telephone Number: 321-257-7346
   Email Address: Michael.Hudson@dot.state.fl.us
   Description of goods/services provided: 24 hour towing & roadside assistance
   Contract Amount: N/A
   Start/End Date of Contract: 05/2019-06/2026
3. Company Name: Holly Hill Police Department
   Contact Person: Chief Byron Williams
   City, State: Holly Hill, Florida
   Telephone Number: 386-248-9475
   Email Address: Bwilliams@hollyhillfl.org
   Description of goods/services provided: 24 hour towing & roadside assistance
   Contract Amount: $108,292.14
   Start/End Date of Contract: 03/2021-09/2025

This document must be completed and returned with your Submittal.

(Form 9.8 – Professional References for Previous Experience Page 2)

LISTING OF PREVIOUS EXPERIENCE
COMMERCIAL CLIENT LIST

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

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

1. Contact Name: Eric Sherridan, P & S Paving

   Phone: 386-675-3134

   Current Client: ☒Yes ☐ No

   Number of years of service provided: 20+

   Description of service: Light, medium & heavy duty towing & transport, accident recovery.

2. Contact Name: John, S.R. Perrott

   Phone: 386-295-4778

   Current Client: ☒Yes ☐ No

   Number of years of service provided: 30+

   Description of service: Light, medium & heavy duty towing & transport, accident recovery

3. Contact Name: Don or Darrell, Penske Daytona

   Phone: 386-239-3501

   Current Client: ☒Yes ☐ No

   Number of years of service provided: 25+

   Description of service: Light, medium & heavy duty towing & transport, accident recovery

This document must be completed and returned with your Submittal

FORM 9.9 SCRUTINIZED COMPANIES CERTIFICATION

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

SCRUTINIZED COMPANIES CERTIFICATION PURSUANT TO SECTION 287.135, FLORIDA STATUTES

I, Amanda Balboa, Treasurer, on behalf
(Print Name and Title)

of Arrow Service & Towing ("Company"), certify that Arrow Service & Towing
(Company Name) (Company Name)

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

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

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

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

Arrow Service & Towing
COMPANY NAME

ABalboa
SIGNATURE

Amanda Balboa
PRINT NAME

Treasurer
TITLE

STATE OF FLORIDA

COUNTY OF: Volusia

The foregoing instrument was acknowledged before me by means of ☒physical presence or ☐online notarization, this 27th day of January, 2025, by Amanda Balboa and who:

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

Amanda Barlow Notary Public, State of Florida

Printed, typed or stamped name, commission and expiration:

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Notary Public
State of Florida
Comm# HH192582
Expires 10/31/2025

FORM 9.10 - E-VERIFY AFFIDAVIT

CITY OF PORT ORANGE

CONTRACTOR E-VERIFY AFFIDAVIT
IN ACCORDANCE WITH SECTION 448.095, FLORIDA STATUTES

Project Name: Request for Proposal Wrecker Services

Solicitation Number: RFP #25-05

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

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

A true and correct copy of Arrow Service & Towing (insert contractor company name) proof of registration in the E-Verify system is attached to this Affidavit.

By affixing my signature below, I hereby affirm that I am duly authorized to bind the company reference herein and I will comply with all applicable E-Verify requirements.

Amanda Balboa, Treasurer
Print or Type Name, Title

ABalboa
Signature of Affiant

59-2491843
Federal Employer ID Number (FEIN)

2616739
E-Verify Number

STATE OF FLORIDA

COUNTY OF: Volusia

The foregoing instrument was acknowledged before me by means of ☒physical presence or ☐online notarization, this 27th day of January, 2025, by Amanda Balboa and who:

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

Amanda Barlow
Notary Public, State of Florida

Printed, typed or stamped name, commission and expiration:

AMANDA BARLOW
Notary Public
State of Florida
Comm# HH192582
Expires 10/31/2025

This document to be completed and returned with your Submittal

An official website of the United States government Here's how you know

New

E-Verify+™

Modernize the employment eligibility verification process today!

Learn More

Enable E-Verify+

My Company Profile

Company Information

Company Name
J & A Balboa Enterprises, Inc

Doing Business As (DBA) Name
Arrow Service & Towing

Company ID
2616739

Enrollment Date
Jan 30, 2025

Employer Identification Number (EIN)
592491843

Unique Entity Identifier (UEI)
aws541jabalb

DUNS Number
146716519

Total Number of Employees
20 to 99

NAICS Code

Sector

484

Transportation and Warehousing

Subsector

Truck Transportation

Edit Company Information

Employer Category

Employer Category

None of these categories apply

Edit Employer Category

Company Addresses

Physical Address

541 Carswell Ave
Holly Hill, FL 32117

Mailing Address

PO BOX 250072
Holly Hill, FL 32125

Edit Company Addresses

Hiring Sites

Number of Sites

1

Edit Hiring Sites

Company Access

My Company is configured to:

Verify Its Own Employees

Memorandum of Understanding

View Current MOU

FORM 9.11 - CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY

Matter Primary Covered Transactions

(To be completed by Prime Contractor)

1. The prospective participant certifies to the best of its knowledge and belief that it and its principals:

   (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by and Federal department or agency;

   (b) Have not within a three-year period preceding this proposal bee convicted for had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft forgery, bribery, falsification or destruction of records, making false statement or receiving stolen property.

   (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1. (b) of this certification;

   (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Arrow Service & Towing	RFP #25-05
Organization Name	Proposal Number
Amanda Balboa, Treasurer	ABalboa 2/3/25
Name and Title of Authorized Representative	Signature Date

This document must be completed and returned with your Submittal

FORM 9.12 – AFFIDAVIT OF COMPLIANCE WITH SECTION 287.138, FLORIDA STATUTES

AFFIDAVIT OF COMPLIANCE WITH SECTION 287.138, FLORIDA STATUTES CONTRACTING WITH FOREIGN ENTITIES OF CONCERN

The undersigned ("Affiant"), on behalf of the entity listed below ("Entity"), hereby attests under penalty of perjury as follows:

1. Affiant is the Treasurer (Title) of Arrow Service & Towing (Business Name) which does business in the State of Florida, hereinafter called the "Entity".
2. Entity is not owned by the government of a foreign country of concern, as defined in Section 287.138 (1)(c), Florida Statutes.
3. The government of a foreign country of concern does not have a controlling interest in Entity, as defined in Section 287.138 (1)(a), Florida Statutes.
4. Entity is not organized under the laws of, and does not have a principal place of business in, a foreign country of concern.
5. Entity is not owned or controlled by the government of a foreign country of concern.
6. For purposes of this affidavit, a foreign country of concern means the People's Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolas Maduro, or the Syrian Arab Republic, including any agency of or any other entity of significant control of such foreign country of concern, as defined in Section 287.138(1)(c), Florida Statutes.

The undersigned is authorized to execute this affidavit on behalf of the Entity.

Date: January 27th, 2025 Signed: ABalboa

Entity: Arrow Service & Towing Name: Amanda Balboa

Title: Treasurer

STATE OF: Florida COUNTY OF: Volusia

The foregoing instrument was acknowledged before me by means of ☒physical presence or ☐online notarization, this 27th day of January, 2025, by Amanda Balboa and who:

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

Amanda Barlow

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

My commission expires: 10/31/2025

AMANDA BARLOW
Notary Public
State of Florida
Comm# HH192582
Expires 10/31/2025

This document must be completed and returned with your Submittal

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING Certification for Contracts, Grants, Loans, and Cooperative Agreements

(Required for each bid or offer exceeding $100,000)

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

4. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

The Contractor, Arrow Service & Towing, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

ABalboa

Signature of Contractor's Authorized Official

Amanda Balboa, Treasurer

Name & Title of Contractor's Authorized Official

Date: 01/27/2025

Detail by Entity Name

Florida Profit Corporation
J & A BALBOA ENTERPRISES, INC.

Filing Information

Document Number	G92390
FEI/EIN Number	59-2491843
Date Filed	03/21/1984
State	FL
Status	ACTIVE
Last Event	AMENDMENT
Event Date Filed	03/04/2015
Event Effective Date	NONE

Principal Address

541 CARSWELL AVENUE
HOLLY HILL, FL 32117-4411

Changed: 02/09/2009

Mailing Address

P.O. BOX 250072
HOLLY HILL, FL 32125

Changed: 01/05/2010

Registered Agent Name & Address

EBBETS, CHOBEE
138 Live Oak St
DAYTONA BCH, FL 32114

Name Changed: 02/18/1993

Address Changed: 02/01/2016

Officer/Director Detail

Name & Address

Title P

BALBOA, ADOLPH
541 CARSWELL AVENUE
HOLLY HILL, FL 32117-4411

Title VP

BALBOA, LAURA JEAN
541 CARSWELL AVENUE
HOLLY HILL, FL 32117-4411

Title V

BALBOA, ADAM J
541 CARSWELL AVE.
HOLLY HILL, FL 32117

Title S

BALBOA, MITCHELL A
541 CARSWELL AVE.
HOLLY HILL, FL 32117

Title T

BALBOA, AMANDA J
541 CARSWELL AVENUE
HOLLY HILL, FL 32117-4411

Annual Reports

Report Year	Filed Date
2023	03/01/2023
2024	02/13/2024
2025	01/27/2025

Document Images

01/27/2025 -- ANNUAL REPORT	View image in PDF format
02/13/2024 -- ANNUAL REPORT	View image in PDF format
03/01/2023 -- ANNUAL REPORT	View image in PDF format
02/11/2022 -- ANNUAL REPORT	View image in PDF format
01/11/2021 -- ANNUAL REPORT	View image in PDF format
01/27/2020 -- ANNUAL REPORT	View image in PDF format
02/11/2019 -- ANNUAL REPORT	View image in PDF format
01/09/2018 -- ANNUAL REPORT	View image in PDF format
01/16/2017 -- ANNUAL REPORT	View image in PDF format
02/01/2016 -- ANNUAL REPORT	View image in PDF format
03/04/2015 -- Amendment	View image in PDF format
01/12/2015 -- ANNUAL REPORT	View image in PDF format
01/13/2014 -- ANNUAL REPORT	View image in PDF format

2025 FLORIDA PROFIT CORPORATION ANNUAL REPORT

FILED
Jan 27, 2025
Secretary of State
7462537867CC

DOCUMENT# G92390

Entity Name: J & A BALBOA ENTERPRISES, INC.

Current Principal Place of Business:

541 CARSWELL AVENUE
HOLLY HILL, FL 32117-4411

Current Mailing Address:

P.O. BOX 250072
HOLLY HILL, FL 32125 US

FEI Number: 59-2491843

Certificate of Status Desired: No

Name and Address of Current Registered Agent:

EBBETS, CHOBEE
138 LIVE OAK ST
DAYTONA BCH, FL 32114 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	P	Title	VP
Name	BALBOA, ADOLPH	Name	BALBOA, LAURA JEAN
Address	541 CARSWELL AVENUE	Address	541 CARSWELL AVENUE
City-State-Zip:	HOLLY HILL FL 32117-4411	City-State-Zip:	HOLLY HILL FL 32117-4411
Title	V	Title	S
Name	BALBOA, ADAM J	Name	BALBOA, MITCHELL A
Address	541 CARSWELL AVE.	Address	541 CARSWELL AVE.
City-State-Zip:	HOLLY HILL FL 32117	City-State-Zip:	HOLLY HILL FL 32117
Title	T		
Name	BALBOA, AMANDA J		
Address	541 CARSWELL AVENUE		
City-State-Zip:	HOLLY HILL FL 32117-4411		

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: LAURA JEAN BALBOA VICE PRESIDENT 01/27/2025

Electronic Signature of Signing Officer/Director Detail — Date



Previous on List Next on List Return to List
Filing History
Fictitious Name Search
Submit

Fictitious Name Detail

Fictitious Name

ARROW SERVICE & TOWING

Filing Information

Registration Number	G10000077919
Status	ACTIVE
Filed Date	08/24/2010
Expiration Date	12/31/2025
Current Owners	1
County	VOLUSIA
Total Pages	3
Events Filed	2
FEI/EIN Number	59-2491843

Mailing Address

P.O. BOX 250951
HOLLY HILL, FL 32125

Owner Information

J & A BALBOA ENT. INC.
541 CARSWELL AVE
HOLLY HILL, FL 32117
FEI/EIN Number: 59-2491843
Document Number: G92390

Document Images

08/24/2010 -- Fictitious Name Filing — View image in PDF format

01/08/2020 -- Fictitious Name Renewal Filing — View image in PDF format

07/01/2015 -- Fictitious Name Renewal Filing — View image in PDF format

Previous on List Next on List Return to List
Filing History
Fictitious Name Search
Submit

Liberty Mutual. SURETY

CONTINUATION CERTIFICATE

The Ohio Casualty Insurance Company Surety upon:

a certain Bond No.: **964117947**

Cross Ref Bond No.:

dated effective: May 10, 2021

on behalf of: J & A BALBOA ENTERPRISES, INC

and in favor of: City of Port Orange

does hereby continue said bond in force for the further period:

beginning on: May 10, 2024

and ending on: May 10, 2025

Amount of bond: $50,000.00

Description of bond: Wrecker Service

PROVIDED: That this continuation certificate does not create a new obligation and is executed upon the express condition and provision that the Surety's liability under said bond and this and all Continuation Certificates issued in connection therewith shall not be cumulative and that the said Surety's aggregate liability under said bond and this and all such Continuation Certificates on account of all defaults committed during the period (regardless of the number of years) said bond had been and shall be in force, shall not in any event exceed the amount of said bond as hereinbefore set forth.

Signed and dated on: April 22, 2024

Surety Name: The Ohio Casualty Insurance Company

THE OHIO CASUALTY INSURANCE COMPANY INCORPORATED 1919 NEW HAMPSHIRE

By: Timothy A. Mikolajewski

Timothy A. Mikolajewski, Assistant Secretary

Agency Name: Caton-Hosey Insurance

Agency Address: 3731 S Nova Road, Port Orange, FL 32129-4233

Agency Telephone: 386-767-3174

This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Liberty Mutual SURETY

The Ohio Casualty Insurance Company

POWER OF ATTORNEY

Principal: J & A BALBOA ENTERPRISES, INC
Agency Name: Caton-Hosey Insurance Bond Number: 964117947
Obligee: City of Port Orange
Bond Amount: ($50,000.00) Fifty Thousand Dollars And Zero Cents

KNOW ALL PERSONS BY THESE PRESENTS: that The Ohio Casualty Insurance Company, a corporation duly organized under the laws of the State of New Hampshire (herein collectively called the "Company"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint **Timothy A. Mikolajewski** in the city and state of **Seattle, WA**, each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Company in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Company and the corporate seal of the Company has been affixed thereto this 28th day of March, 2021.

THE OHIO CASUALTY INSURANCE COMPANY INCORPORATED 1919 NEW HAMPSHIRE

The Ohio Casualty Insurance Company

By: _____
David M. Carey, Assistant Secretary

STATE OF PENNSYLVANIA
COUNTY OF MONTGOMERY ss

On this 28th day of March, 2021, before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of The Ohio Casualty Insurance Company and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at Plymouth Meeting, Pennsylvania, on the day and year first above written.

TERESA PASTELLA COMMONWEALTH OF PENNSYLVANIA NOTARY PUBLIC

Commonwealth of Pennsylvania - Notary Seal
Teresa Pastella, Notary Public
Montgomery County
My commission expires March 28, 2025
Commission number 1126044
Member, Pennsylvania Association of Notaries

By: _____
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-law and Authorizations of The Ohio Casualty Insurance Company, which is now in full force and effect reading as follows:

ARTICLE IV – OFFICERS: Section 12. Power of Attorney.
Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

Certificate of Designation – The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization – By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature or electronic signatures of any assistant secretary of the Company or facsimile or mechanically reproduced or electronic seal of the Company, wherever appearing upon a certified copy of any power of attorney or bond issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, of The Ohio Casualty Insurance Company do hereby certify that this power of attorney executed by said Company is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Company this 22nd day of April, 2024.

THE OHIO CASUALTY INSURANCE COMPANY INCORPORATED 1919 NEW HAMPSHIRE

By: _____
Renee C. Llewellyn, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

For bond and/or Power of Attorney (POA) verification inquiries, please call 610-832-8240 or email HOSUR@libertymutual.com.

Liberty Mutual.
SURETY
Southeast Region-Commercial Transactional
Tracy Alessi
Senior Surety Underwriter
407-201-0044

February 18, 2025

RE: J & A Balboa Enterprises, Inc.

To Whom It May Concern:

Please allow this bondability and/or bid letter to confirm that Ohio Casualty Insurance Company a Division of Liberty Mutual Insurance Company, is currently handling the bond needs of J & A Balboa Enterprises, Inc. Currently, Ohio Casualty Insurance Company is an A.M. Best "A" rated company.

Given the company's financial strength and credit worthiness, we are willing to entertain an aggregate bonding aggregate program in the $250,000 range.

Please be advised that J & A Balboa Enterprises, Inc. is in good standing with the surety. Should J & A Balboa Enterprises, Inc. be a successful bidder, the surety will favorably consider performance and payment bonds, provided, J & A Balboa Enterprises, Inc. accepts an award of the contract and makes an application to us on or about the time the work is to commence, and we are satisfied with the prevailing underwriting conditions, including but not limited to acceptable contract terms and job specifications, acceptable bond forms, and confirmation of financing.

If you have any questions or require further clarification of the above, please feel free to contact our office or you can reach me on my direct line.

Sincerely,

Tracy Alessi
Senior Surety Underwriter
Liberty Mutual Surety

Barwick Banking Company
EST 1907

For Locals. By Locals.

February 18, 2025

City of Port Orange
Attn: Jill Poolman
1000 City Center Circle
Port Orange, FL. 32129

RE: J & A Balboa Enterprises, Inc d/b/a Arrow Service & Towing / Letter of Credit

Dear Jill,

Please accept this letter as confirmation that the above-mentioned client has been approved for a Letter of Credit in the amount of $50,000, if necessary. If needed, said Letter of Credit shall list the City of Port Orange as beneficiary and will be valid for 1 year from the date of issuance.

Please let me know if you have any questions.

Sincerely,

Matt Stietzel
Senior Vice President

TAB B-COMPANY HISTORY, QUALIFICATIONS AND RELATED EXPERIENCE OF RESPONDENT

Established in 1980, Arrow Service & Towing is the oldest family-owned and operated towing company in Volusia County. With over four decades of dedicated service, we have built a reputation for reliability, professionalism, and industry-leading expertise. Arrow is now led by the second generation of The Balboa Family; all which were born and raised in the City of Port Orange. Mr. Al Balboa founded Arrow Service & Towing alongside his wife Laura forty-five years ago.

Our corporate headquarter is conveniently located at 541 Carswell Ave, Holly Hill, FL 32117, just off US-1, we are strategically positioned to provide prompt and efficient towing and recovery services across the county.

At Arrow, we are committed to staying at the forefront of the industry by continuously updating our equipment and integrating the latest technology. Our fleet is equipped with onboard GPS tracking with advanced AI technology, allowing us to provide accurate ETAs and ensure accountability for arrival times. Arrow Service & Towing is open 24 hours a day, 7 days a week. We have our own in house dispatchers that will be able to assist you at any hour of the day or night. Our office staff is well versed in the towing and recovery industry, being able to facilitate the appropriate wrecker to fit your needs as quickly as possible. We strive to keep wait times to a minimum, but can always insure you will receive an accurate ETA.

Training and safety are at the core of our operations. Our drivers undergo continuous education to master the most efficient and safest towing and recovery practices. Arrow employs WreckMaster® Certified operators, PWOF & SSTA certified operators, TWIC card holders, FDOT & TIMS Certified operators, EV-certified, Hazmat CDL Operators, Certified divers and recovery specialists, and Federally Certified HAZWOPER Hazmat response technicians.

All employees are subject to FDLE background checks, ensuring the highest level of professionalism and trustworthiness. Additionally, we uphold the industry's highest standards in workers' compensation, general liability, and on-hook cargo insurance, providing peace of mind to our customers and partners.

The Arrow team has a copious amount of experience directly relating to the City of Port Orange's RFP for Wrecker Services. We currently tow for several municipalities, including The City of Holly Hill, The City of Daytona Beach Shores, The City of Port Orange, Volusia Sheriffs Office, Florida Highway Patrol, and Florida Department of Transportation. We have previously provided service to The City of Ormond Beach, and The City of South Daytona. We provide expedited services for light, medium, heavy & ultra-heavy duty towing and recovery. Arrow has completed each contract successfully and exceeded expectations for all services provided.

As you will see on the "major equipment list" (Form 9.7, Item I) we have over twenty-five vehicular assets ready to deploy, and nearly thirty-five employees staffed around the clock to provide safe & efficient dispatching. Currently Arrow keeps a truck stationed in the City of Port Orange, at all times to respond to all calls to action placed by the police department.

Arrow Service & Towing remains committed to excellence, safety, and superior service, making us the trusted choice for all towing, recovery, and specialized transport needs in Volusia County.

TAB C-MANAGEMENT PLAN

Objective: Arrow Service & Towing is committed to providing reliable, efficient, and professional towing and roadside assistance services to the City of Port Orange. Our goal is to ensure rapid response times, maintain a high level of service quality, and effectively manage resources to accommodate excellent towing and wrecker services for the City.

Service Availability & Response Strategy:

- A dedicated tow truck will be stationed within the city limits at all times.
- Our goal is to maintain a response time of 20 minutes or less.
- Keep common-sized tires in stock for the expedited response to complimentary services provided to police cruisers, assisting fleet maintenance.
- Arrow implemented a tire exchange process at the Police Department property for an even faster response and minimizing down time for officers.

Staffing & Scheduling:

- We operate three shifts to provide 24/7 service coverage.
- Each shift includes a Shift Lead to oversee operations and ensure seamless service.
- Every shift is staffed for each class of service: light, medium, heavy-duty & hazmat.
- A supervisor is always on staff and available to communicate with city representatives when needed.

Peak Hour & Event-Based Staffing:

- Historical data indicates that the highest call volumes occur during the 7:00am-8:00am and 4:00pm-5:00pm hours; therefore, we schedule additional staff to cover these peak periods.
- We implement over-staffing during major local events and seasonal periods of high demand, including:
    - Back-to-school time
    - Race Week
    - Spring break
    - Bike Week

Communication & Coordination:

- Our dispatch team is available 24/7 to coordinate service requests and ensure efficient deployment of resources.
- All team members are equipped with real-time communication devices for seamless coordination and immediate response.
- In the event of escalated concerns or special service requests, a supervisor is always available to collaborate with city officials, facilitating coordination between both teams to ensure the best possible resolution.

Amanda Balboa is the proposed manager responsible for day-to-day tasks as set forth by the City. She brings extensive experience in managing contracts of a similar nature, ensuring efficient execution and compliance. Amanda has nearly 20 years of experience in this field, and more specifically with police contracts and service requests. As you will see in Form 9.7 section K, attachment 2 she is highly certified to handle this contract and more. Amanda had the opportunity to work with The City of Port Orange during their most recent contract term, and we believe all parties would agree it was a harmonious coexistence.

Amanda's experience with contracts of similar scope include: The City of Holly Hill, The City of South Daytona, The City of Daytona Beach Shores, The City of Ormond Beach, Volusia Sheriffs Office, The Florida Department of Transportation, The Florida Department of Environmental Protection, and The Florida Highway Patrol.

Furthermore, Amanda Balboa is the Vice President of The Sunshine State Towing Association, and the Training coordinator for the entire State of Florida. Amanda is the representative for Traffic Incident Management FHP Troop D and attends all after-action meetings along with preventative quarterly meetings. Her personal certifications extend from D.O.T. Certifications, Federal Administration of highway safety, Maintenance of Traffic, HAZWOPER hazmat certifications, OSHA, FEMA, light/medium/Ultra-Heavy Towing Certifications, Traffic Incident Management.

Arrow Service & Towing is fully dedicated to serving the City of Port Orange with professionalism, efficiency, and reliability. Our structured management plan ensures that we are prepared to meet service demands while maintaining the highest industry standards.

TAB D – FINANCIAL HISTORY, CONTRACT, LITIGATION AND DEBARMENT HISTORY

Attachment 1 is our certified third party financial audit for the last available fiscal year.

In the last five (5) years, no court or administrative agency has ruled against Arrow Service & Towing in any matter related to the professional activities of the firm. Arrow has never been in any class actions, or investigated by the attorney general.

In the last five (5) years Arrow Service & Towing has not had any debarment, or proceedings against the firm in any matter related to the professional activities of the firm. Arrow has never had any debarment actions against our company by the City or any other public entity.

Arrow Service & Towing has never been terminated on any contract awarded by any government agency.

Arrow Service & Towing did, in error, charge a fee to have a vehicle towed out of our storage facility. The City of Port Orange attorney spoke with us in regards to it, and advised of the error. A $50.00 penalty was imposed, which we immediately paid the City, the vehicle owner was reimbursed as well.

Sonya L. Laney C.P.A., P.A.

Certified Public Accountant

Accounting
Tax Preparation
Small Business Consultant

January 27, 2025

Compilation—S Corporation on the Tax Basis

To Management
J&A Balboa Enterprises Inc.
Holly Hill, FL

Management is responsible for the accompanying financial statements of J&A Balboa Enterprises Inc (an S corporation), which comprise the statement of assets, liabilities, and equity—tax basis as of December 31, 2023, and the related statement of revenues, expenses, and retained earnings—tax basis for the year then ended, and the related notes to the financial statements in accordance with the tax basis of accounting, and for determining that the tax basis of accounting is an acceptable financial reporting framework. I have performed a compilation engagement in accordance with Statements on Standards for Accounting and Review Services promulgated by the Accounting and Review Services Committee of the AICPA. I did not audit or review the financial statements nor was I required to perform any procedures to verify the accuracy or completeness of the information provided by management. I do not express an opinion, a conclusion, nor provide any assurance on these financial statements.

The financial statements are prepared in accordance with the tax basis of accounting, which is a basis of accounting other than accounting principles generally accepted in the United States of America.

Sonya L Laney CPA
Port Orange, FL 32127
January 27, 2025

AC39458

(386)761-8500 Fax: (386)761-8955
5131 S Ridgewood Ave Ste. F Port Orange, FL 32127-5168
Http://sonyalaney.com

J A Balboa Enterprises Inc.
d/b/a Arrow Service Towing
Balance Sheet ending December 31, 2023

ASSETS

Current Assets		
Cash and Equivalents	$ 280,861	
Accounts Receivable	15,210	
Inventory	77,405	
Notes Receivable Shareholder	107,800	
Total Current Assets		481,276
Fixed Assets		
Property, Plant and Equipment	4,164,323	
Accumulated Depreciation	(4,090,713)	
Total Fixed Assets		73,610
Other Assets		
Arrow Heavy Haul	74,121	
Intangible Assets	3,467	
Accumulated Amortization	(3,467)	
Total Other Assets		74,121
TOTAL ASSETS		**$ 629,007**

AC 39458

J A Balboa Enterprises Inc.
d/b/a Arrow Service Towing
Balance Sheet ending December 31, 2023

LIABILITIES AND EQUITY

Liabilities		
Current Liabilities		
Accounts Payable	$ 114,612	
Other Current Liabilities		
Sales Tax	2,233	
Total Current Liabilities		$ 116,845
Long Term Liabilities		
Note Payable Shareholder	167,184	
Notes Payable - Loan	373,336	
Total Long Term Liabilities		540,520
Equity		
Capital Stock	100	
Additional Paid In Capital	-	
Retained Earnings	(28,458)	
Total Equity		(28,358)
TOTAL LIABILITIES AND EQUITY		**$ 629,007**

AC 39458

Read Accountants' Compilation Report - CPA does not provide any assurances

J A Balboa Enterprises Inc.
d/b/a Arrow Service Towing
Profit and Loss for year ending December 31, 2023

Revenue		
Revenue	$ 4,149,455	
Misc. Income	101,777	
Gains on Sales of Equipment	3,200	
Less: Returns and allowances	(8,402)	
Total Revenue		$ 4,246,030
Cost of Good Sold		
Parts and Materials	859,519	
Labor	899,878	
Workers Comp.	96,357	
Sublet Costs	57,324	
Contract Labor	86,378	
Document Stamps	106	
Shop Expenses	64,979	
Freight and Delivery	5,306	
Fuel	371,610	
Contract Fees	89,065	
Small Tools	12,429	
Titles and Registrations	56,324	
Tolls	10,969	
Outside Service	11,120	
Trade Expenses	74,676	
Total Cost of Goods Sold		2,696,040
Gross Profit		$ 1,549,990
Administrative and Overhead		
Officer Salaries	294,700	
Repairs and Maintenance	84,553	
Rent	138,000	
Taxes and Licenses	146,712	
Advertising	39,066	
Employee Benefits	81,628	
Meals and Entertainment	5,652	
Bldg Insurance	28,481	
Payroll Leasing Expenses	54,202	
Office Expense	102,911	
Travel	19,335	
Uniform and Laundry	27,094	

J A Balboa Enterprises Inc.
d/b/a Arrow Service Towing
Profit and Loss for year ending December 31, 2023

Utilities	25,070	
Bank and Merchant Fees	37,861	
Labor Burden	36,925	
Liability Insurance	102,677	
Office and Admin. Exp	73,630	
Total Administrative Expenses		$ 1,298,497
Depreciation & Interest Expense		
Depreciation	206,925	
Interest Expense	12,712	
Total Depreciation & Interest		$ 219,637
Net Profit		**$ 31,856**

TAB E -REFERENCES

Professional referenced from form 9.8 (to be provided in Tab A only)

page added, as to not skip Tab E which is listed as required document, but also states references should be provided in Tab A only.

TAB F – BILLING PRACTICES

For each scenario below, please provide a detailed breakdown of the invoice your company would provide for the services described herein under the terms of the attached agreement and considering the maximum fees established by the City of Port Orange. Your response to these scenarios will directly impact your ranking as part of this solicitation. Furthermore, the responses will set an expectation regarding your billing practices that you will be bound to in the performance of the services under this agreement in the event that you are the successful proposer.

1. A wrecker is called for a Class A vehicle involved in a crash at Clyde Morris Blvd. and Herbert St. on a Monday night. The wrecker arrives at 9:00pm. Driver spent 57 minutes on scene due to having to clear a large amount of debris. The wrecker leaves the scene at 9:57pm. The vehicle, with heavy front-end damage and not drivable, arrives at the storage yard at 10:20pm. Oil is leaking from vehicle on arrival at the wrecker yard. Vehicle is stored outside. On Tuesday, the following day, at 11:00am, owner shows up and requests personal items from the vehicle. On Wednesday of that same week at 4:30pm, a properly authorized wrecker from another company shows up to retrieve the vehicle at the owner's request. The vehicle is towed from the storage lot out to the front gate for the other wrecker to take possession of the vehicle.

Arrow Service & Towing
541 Carswell Ave
Holly Hill, FL 32117
Ph: 3862552138 Fax: 386-252-8469
acct@arrowflorida.com
Lic No. FL

Invoice #P-131027

Date: 2/2/2025

For:
PORT ORANGE POLICE
4545 CLYDE MORRIS BLVD
PORT ORANGE, FL 32129

Due Date	Terms	Case No.
	Due upon receipt	Billing Scenario #1

Authorized By: PORT ORANGE POLICE
Badge No.:

From: Clyde Morris Blvd & Herbert St, Port Orange, FL 32129
To: NORTH YARD, 600 CARSWELL, HOLLY HILL , FL 32117
Owner:

Service Date: 1/27/2025 10:20:00 PM

Ticket #:
Reason for Tow: Accident
Total Time On Scene: 00 hrs 57 mins 00 secs

Vehicle	VIN	Veh #	Tag	State	Odometer
"Class A Vehicle"					

Qty	Service	Rate	Adjustment	Tax	Amount
1.00	Police Hook	$125.00	$0.00	$0.00	$125.00
1.00	Labor A (Per 15min) "cleared large amount of debris, heavy front end damage and not driveable"	$25.00	$0.00	$0.00	$25.00
1.00	Storage Outdoors (1/27/2025 10:20 PM) through (1/29/2025 4:30 PM)	$20.00	$0.00	$0.00	$20.00
			Total		**$170.00**

Requested	Arrive Scene	Leave Scene	Destination Arrive
01/27/2025 20:50	01/27/2025 21:00	01/27/2025 21:57	01/27/2025 22:20

Received By: **Date:**

I hereby authorize Arrow Wrecker Service to tow my vehicle. I release them from all responsibility to the vehicle or property and approve and/or authorize your disposal of my vehicle or property to the insurance company, dealer or salvage company. I further agree that should it be necessary for Arrow Wrecker Service to obtain legal counsel to enforce this agreement, that I shall be responsible for Arrow's attorney's fees, together with any court cost Arrow expends.

TAB F – BILLING PRACTICES

For each scenario below, please provide a detailed breakdown of the invoice your company would provide for the services described herein under the terms of the attached agreement and considering the maximum fees established by the City of Port Orange. Your response to these scenarios will directly impact your ranking as part of this solicitation. Furthermore, the responses will set an expectation regarding your billing practices that you will be bound to in the performance of the services under this agreement in the event that you are the successful proposer.

2. On Wednesday, a single, undriveable Class A vehicle is towed after an accident. The wrecker arrives on scene at 11:53am, must pull the vehicle apart from a trailer that is connected to a Class B truck. The Class B truck with the trailer attached is then able to leave the scene without further assistance. The wrecker leaves the scene 12:33 with the undriveable Class A vehicle and arrives to the wrecker yard at 1:00pm and vehicle is stored outside. On Saturday of that same week, at 11am, owner arrives on site of the wrecker office and calls to have their vehicle set out so another wrecker company can take possession of the vehicle to bring it to their own body repair shop.

Arrow Service & Towing
541 Carswell Ave
Holly Hill, FL 32117
Ph: 3862552138 Fax: 386-252-8469
acct@arrowflorida.com
Lic No. FL

Invoice #131028-1

Date: 1/29/2025

For:
PORT ORANGE POLICE
4545 CLYDE MORRIS BLVD
PORT ORANGE, FL 32129

Due Date	Terms	Case No.
1/29/2025	Due upon receipt	Billing Scenario #2

Authorized By: PORT ORANGE POLICE
Badge No.:

From:
To: NORTH YARD, 600 CARSWELL, HOLLY HILL , FL 32117
Owner:

Service Date: 1/29/2025 1:00:00 PM

Ticket #:
Reason for Tow: Accident
Total Time On Scene: 00 hrs 40 mins 00 secs

Vehicle	VIN	Veh #	Tag	State	Odometer
"Class A Vehicle"					

Qty	Service	Rate	Adjustment	Tax	Amount
1.00	Police Hook pulled vehicle off trailer, towed to secure storage facility.	$125.00	$0.00	$0.00	$125.00
2.00	Storage Outdoors (1/29/2025 1:00 PM) through (2/1/2025 11:00 AM)	$20.00	$0.00	$0.00	$40.00
1.00	After Hours Release	$35.00	$0.00	$0.00	$35.00
			Total		**$200.00**

Requested	Arrive Scene	Leave Scene	Destination Arrive
01/29/2025 11:40	01/29/2025 11:53	01/29/2025 12:33	01/29/2025 13:00

Received By: **Date:**

I hereby authorize Arrow Wrecker Service to tow my vehicle. I release them from all responsibility to the vehicle or property and approve and/or authorize your disposal of my vehicle or property to the insurance company, dealer or salvage company. I further agree that should it be necessary for Arrow Wrecker Service to obtain legal counsel to enforce this agreement, that I shall be responsible for Arrow's attorney's fees, together with any court cost Arrow expends.

TAB F – BILLING PRACTICES

For each scenario below, please provide a detailed breakdown of the invoice your company would provide for the services described herein under the terms of the attached agreement and considering the maximum fees established by the City of Port Orange. Your response to these scenarios will directly impact your ranking as part of this solicitation. Furthermore, the responses will set an expectation regarding your billing practices that you will be bound to in the performance of the services under this agreement in the event that you are the successful proposer.

3. On Sunday afternoon, the wrecker arrives at 8:15pm for a Class D semi-truck involved in a crash that will require a tow to the wrecker yard. The wrecker is on scene for 1 hour 10 min. The wrecker arrives at the tow yard at 9:55pm and the semi-truck is stored outside. On Monday at 8:30am the owner shows up to retrieve the truck

Arrow Service & Towing
541 Carswell Ave
Holly Hill, FL 32117
Ph: 3862552138 Fax: 386-252-8469
acct@arrowflorida.com
Lic No. FL

Invoice #P-131029

Date: 2/2/2025

For:
PORT ORANGE POLICE
4545 CLYDE MORRIS BLVD
PORT ORANGE, FL 32129

Due Date	Terms	Case No.
	Due upon receipt	Billing Scenario #3

Authorized By: PORT ORANGE POLICE
Badge No.:

From:
To: NORTH YARD, 600 CARSWELL, HOLLY HILL , FL 32117
Owner:

Service Date: 2/2/2025 9:55:00 PM

Ticket #:
Reason for Tow:
Total Time On Scene: 01 hrs 10 mins 00 secs

Vehicle	VIN	Veh #	Tag	State	Odometer
"Class D semi-truck"					

Qty	Service	Rate	Adjustment	Tax	Amount
1.00	Police Hook D	$500.00	$0.00	$0.00	$500.00
2.00	Labor D (Per 15min) time on scene beyond initial 30 complimentry minutes.	$100.00	$0.00	$0.00	$200.00
1.00	Storage Heavy (2/2/2025 9:55 PM) through (2/3/2025 8:30 AM)	$0.00	$0.00	$0.00	$0.00
			Total		**$700.00**

Requested	Arrive Scene	Leave Scene	Destination Arrive
02/02/2025 19:58	02/02/2025 20:15	02/02/2025 21:25	02/02/2025 21:55

Received By: **Date:**

I hereby authorize Arrow Wrecker Service to tow my vehicle. I release them from all responsibility to the vehicle or property and approve and/or authorize your disposal of my vehicle or property to the insurance company, dealer or salvage company. I further agree that should it be necessary for Arrow Wrecker Service to obtain legal counsel to enforce this agreement, that I shall be responsible for Arrow's attorney's fees, together with any court cost Arrow expends.

TAB F – BILLING PRACTICES

For each scenario below, please provide a detailed breakdown of the invoice your company would provide for the services described herein under the terms of the attached agreement and considering the maximum fees established by the City of Port Orange. Your response to these scenarios will directly impact your ranking as part of this solicitation. Furthermore, the responses will set an expectation regarding your billing practices that you will be bound to in the performance of the services under this agreement in the event that you are the successful proposer.

4. On Tuesday at 11pm, a Class B vehicle drives off the roadway and into a retention pond. Two (2) tow trucks are required to remove safely. Both drivers are on scene for 1 hour 50 minutes. The undrivable vehicle is then towed to the wrecker yard and arrives at 1:30am and stored outside. On Friday at noon, the owner arrives and requests to retrieve items from the vehicle. Owner also needs documents notarized to release the vehicle to a third party. On Monday of the following week at 12pm, a wrecker arrives at the request of the insurance company to tow the undriveable vehicle to another location

Arrow Service & Towing
541 Carswell Ave
Holly Hill, FL 32117
Ph: 3862552138 Fax: 386-252-8469
acct@arrowflorida.com
Lic No. FL

Invoice #131030-1

Date: 1/29/2025

For:
PORT ORANGE POLICE
4545 CLYDE MORRIS BLVD
PORT ORANGE, FL 32129

Due Date	Terms	Case No.
1/29/2025	Due upon receipt	Billing Scenario #4

Authorized By: PORT ORANGE POLICE
Badge No.:

From: Off Roadway into retention pond, PORT ORANGE, FL 32127
To: NORTH YARD, 600 CARSWELL, HOLLY HILL , FL 32117
Owner:

Service Date: 1/29/2025 1:30:00 AM
Ticket #:
Reason for Tow: Accident
Total Time On Scene: 01 hrs 50 mins 00 secs

Vehicle	VIN	Veh #	Tag	State	Odometer
"Class B vehicle"					

Qty	Service	Rate	Adjustment	Tax	Amount
1.00	Police Hook B	$250.00	$0.00	$0.00	$250.00
5.00	Labor B (Per 15min) 1st truck, time on scene beyond initial 30 complimentry minutes	$50.00	$0.00	$0.00	$250.00
5.00	Labor B (Per 15min) 2nd truck, time on scene beyond initial 30 complimentry minutes	$50.00	$0.00	$0.00	$250.00
5.00	Storage Medium (1/29/2025 1:30 AM) through (2/3/2025 12:00 PM)	$25.00	$0.00	$0.00	$125.00
1.00	Administraton Fee F.S. 713.78, (price based on average cost for example)	$24.26	$0.00	$0.00	$24.26
			Total		**$899.26**

Requested	Arrive Scene	Leave Scene	Destination Arrive
01/28/2025 22:50	01/28/2025 23:00	01/29/2025 00:50	01/29/2025 01:30

Received By: **Date:**

NOTICE OF INTENT TO AWARD

RFP #25-05 Wrecker Services

March 4, 2025

On March 4, 2025, a Proposal Evaluation Committee comprised of City of Port Orange staff, scored in a publicly noticed meeting, two (2) proposals received for ***RFP #25-05 Wrecker Services.***

After reviewing and scoring the responses, City Staff has made a recommendation to award to:

Arrow Service & Towing

Respectfully Submitted,

Jill Poolman, NIGP-CPP, CPPO, CPPB, FCCM
Purchasing Manager

"Failure to file a protest within the time prescribed in section 120.57(3), Florida Statutes, or failure to post the bond or other security required by law within the time allowed for filing a bond shall constitute a waiver of proceedings under chapter 120, Florida Statutes." The 72-hour posting requirement will elapse on March 7, 2025 at 4:00 PM EST.

WRECKER SERVICE AGREEMENT

THIS AGREEMENT entered into this _____ day of _____, 20__, by and between the City of Port Orange, Florida, a municipal corporation, located at 1000 City Center Circle, Port Orange, Florida 32129, hereinafter referred to as "City," and _____ _____, a _____, with a principal address of _____ _____, hereinafter referred to as "Towing Company," in consideration of the mutual covenants contained herein, and subject to the terms and conditions listed below:

W I T N E S S E T H

1. Definitions. The following words and terms, as used in this Agreement, shall have the meaning respectively ascribed:

Immobilization shall mean the installation of a boot or similar device on a vehicle on private property for the purpose of making it unmovable.

Nonconsensual towing shall mean the removal and storage of wrecked or disabled vehicles from an accident scene or the removal and storage of a vehicle in the event the owner or operator is incapacitated, unavailable, leaves the procurement of wrecker service to the law enforcement officer at the scene, or otherwise does not consent to the removal of the vehicle, excepting, however, all incidents of "trespass towing" as hereinbelow defined.

Property owner shall mean that person who exercises dominion and control over a parcel of real property, including but not limited to the legal title holder, lessee, a resident manager, a property manager or other agent who has legal authority to bind the owner. A person providing a towing service may not be appointed as an agent for a property owner.

Tow shall mean to haul, carry, pull along, or otherwise transport or remove a vehicle by means of another vehicle.

Trespass towing shall mean towing or removal of a vehicle, without the consent of the vehicle's owner or operator, as such is authorized by F.S. § 715.07, when that vehicle is parked on private real property.

Wrecker shall mean any truck or other vehicle which is used to carry, tow or otherwise transport vehicles and which is equipped for that purpose with a boom, winch, car carrier, or similar equipment. "Wrecker" shall include the person or firm owning, operating, and/or controlling the wrecker vehicles.

2. The Towing Company shall provide the following services including those outlined in the Request for Proposal 25-05, Addenda (if any), and Contractor's Proposal, all of which are incorporated and made a part hereof by reference:

a. When so authorized by a representative of the City, the Towing Company shall provide for the towing and storage, when required, of motor vehicles and trailers from public or private property lying within the City of Port Orange.

b. When authorized by a representative of the City, the Towing Company shall provide for the towing and storage of any motor vehicle, trailer, motorcycle, or motor scooter which is towed under the provisions of Chapter 70 or other applicable provisions of the Code of the City of Port Orange covering the removal and/or impounding of illegally parked or disabled vehicles, applicable State Statutes, or which is otherwise impounded or required to be moved by or at the direction of a police officer, from the point of origin to the place of business of the Towing Company, and provide for the towing and storage of any vehicle or trailer from the scene of an accident to a location within the City, as designated by the owner of the vehicle (which may be a place of business other than the place of business of the Towing Company).

c. When authorized by a representative of the City, the Towing Company shall tow, service, and/or provide temporary storage for the following vehicles at no charge to the City: (1) Police Department or Fire Department vehicles, owned or leased; (2) vehicles seized under the Florida Contraband Forfeiture Act, Chapter 932, Florida Statutes; and (3) Vehicles initially towed to the police department or city owned impound yard that are held for evidence to include THI vehicles. If one of the vehicles listed in this subsection (2) or (3) above is subsequently released by an authorized representative of the City, the Towing Company will tow the vehicle to its storage yard within 24 hours. Under these circumstances, the owner of the vehicle shall only incur a single flat-rate tow, and shall not be responsible for the initial tow to the police department or city-owned impound. Likewise, the owner of the vehicle shall not incur storage fees unless or until the vehicle has been moved to the Towing Company's storage yard.

All other City owned or leased disabled vehicles shall be towed and/or serviced at no charge excluding refuse collection vehicles and vehicles leased by the City where the Lessor is responsible for the towing/servicing.

Any vehicle towed at the direction of the City or any disabled City owned or leased vehicle that shall be towed shall be removed from its location or point of disability (within a fifty (50) mile radius of the City limits to any point within the City) as may be directed by the City. Mileage in excess of the 50 mile radius shall be reimbursed by the City at the rate of $3.00 per full extra mile for Class A vehicles; $4.00 per full extra mile for Class B vehicles; $5.00 per full extra mile for Class C vehicles; and $6.00 per full extra mile for Class D vehicles.

In addition, the Towing Company shall change the flat tire(s) of any City Class "A" vehicles within Volusia County at no charge to the City.

d. The Towing Company shall, at no cost to the City, promptly clean all debris off the public streets, ways, sidewalks, parks, avenues, and property of the City, and remove the same to a proper place away from the scene of any motor vehicle accident if the accident scene is to be, is being, or has been serviced by the Towing Company.

e. The Towing Company guarantees that wrecker service shall be rendered at any and all times, as required by this Agreement, twenty-four (24) hours a day, seven (7) days a week, including holidays, and that personnel shall be subject to call at any and all times. The Towing Company further guarantees that, for all emergency response calls, it shall be at the requested location within the City limits within twenty (20) minutes from the time the Towing Company, its representative, or answering service receives a call requesting that a wrecker be dispatched. The time shall not exceed twenty (20) minutes even during special times (bike week, speed week, spring break, etc.) Wrecker vehicles shall not be parked at private residences within the municipal boundaries of the City of Port Orange. A call for emergency response shall include existing or potential conditions at a scene requiring that vehicles be removed and or roadways cleared as soon as possible in the judgment of the requesting police officer.

f. The Towing Company shall answer expeditiously all calls from the Port Orange Police Department, or other City representative, for on-scene service at accidents and shall immediately remove all debris and obstructions caused by accidents even if actual towing is not required (clean-ups only).

g. Upon request, the Towing Company shall provide the Port Orange Police Department with reasonable assistance in the examination of vehicles stored by the Towing Company. Such assistance shall include the availability and use of a wrecker at the storage site for the moving of vehicles to be examined by the police.

h. An "Innocent Owner's" vehicle may be towed and stored as a result of a crime. The Chief of Police or his designee shall identify these vehicles to the Towing Company. An "Innocent Owner" is an owner or other person authorized to possess the vehicle who is not the perpetrator of a crime or civil infraction. "Innocent Owner" vehicles include, but are not limited to, the following:

1) Recovered stolen vehicles;

2) Vehicles that are seized for forensic testing (i.e., sexual batteries, abductions, homicides, etc.) when the owner/operator was not the perpetrator;
3) Vehicles damaged by stop-sticks when the owner/operator of the vehicle was not the intended target;
4) Vehicles damaged in crashes caused by or resulting from the pursuit of a criminal or a criminal flight from apprehension where the owner/operator was not involved.

NOTE: "Innocent Owners" shall not include those persons whose vehicles are determined by the Chief of Police or his designee to have been stolen by an immediate family member, where it is reasonably believed that the vehicle was exchanged by the owner/operator for illegal controlled substances, or where the vehicle is used in the commission of a crime, and the suspect is operating the vehicle with the implied or actual consent of the owner.

i. If a victim meets the definition of an "Innocent Owner" and has no insurance or has a deductible of seventy-five ($75.00) dollars or more, the Towing Company shall charge the "Innocent Owner" a fee not to exceed seventy-five ($75.00) dollars. The Towing Company can charge additional costs to the "Innocent Owner's" insurance carrier or to some other insurance company who is liable for those costs, but in no event will the "Innocent Owner" be responsible to pay more than seventy-five ($75.00) dollars out-of-pocket for the cost of towing and the first seventy-two (72) hours of storage. The rate for subsequent storage shall be as stated in Section 5 (Rate Charged Owners and the City). The "per tow" fee shall not apply to "Innocent Owner" tows.

j. All services rendered by the Towing Company under this Section 2 shall be at no expense to the City, unless specifically provided otherwise.

3. Payment to the City

In consideration of the Towing Company being called by the City for the term as provided in Section 4 below, the Towing Company shall pay the City the prorated amount of Three Thousand Three Hundred Eighty-Seven and 10/100 Dollars ($3,387.10), on May 10, 2025. Thereafter, on the first of every month, beginning June 1, 2025, the Towing Company shall pay monthly to the City, the sum of Five Thousand and 00/100 Dollars ($5,000.00) per month, so long as this Agreement is in effect.

4. Term

a. The term of this Agreement shall begin May 10, 2025 at midnight, and end on

May 9, 2026 at 11:59 p.m., unless extended.

b. Extension - The City shall have the option of extending this Agreement for three (3) consecutive twelve-month periods: (1) The first extension period beginning on May 10, 2026 at midnight, and ending on May 9, 2027 at 11 :59 p. m.: (2) The second extension beginning on May 10, 2027 at midnight, and ending on May 9, 2028 at 11 :59 p.m.; and (3) The third extension period beginning on May 10, 2028 at midnight, and ending on May 9, 2029 at 11 :59 p.m.

c. It is further understood by the parties to this Agreement that in the event the Towing Company is unable to respond to a call with one of its own wreckers, it is still responsible for providing a wrecker during the term of this Agreement. It may utilize a wrecker from any other wrecker company licensed in the City, the County, or any other municipality located in Volusia County. In such cases, the substitute wrecker shall comply with the terms agreed upon herein.

5. Rate Charged Owners and the City

a The Towing Company shall not charge for towing or storage of any vehicle that is the subject of a non-consensual tow or trespass tow originating within the City of Port Orange in excess of the maximum rates as established by Resolution of the City Council of the City of Port Orange, No. 19-15(a copy of the Resolution is attached as Exhibit “A”). The maximum rates set forth herein are subject to amendment at any time by Resolution of City Council.

b. All limitations contained herein on the rate or fee that may be charged by the Towing Company for services contemplated by this Agreement shall be inclusive of any applicable taxes including but limited to sales tax. By way of example, if the towing charge for a “Class A” vehicle is limited to a maximum of $125.00, then the service charge invoiced by the Towing Company shall not exceed $125.00 inclusive of tax. Assuming that sales tax is 6.5% of the sale price, the maximum the Towing Company would be able to charge in this example would be $117.37 for the service and an additional $7.63 for the sales tax totaling $125.00. This limitation in no way relieves the Towing Company from collecting and remitting all applicable taxes to the appropriate taxing authorities.

c. The City shall not be responsible for any fees or charges resulting from nonpayment by the owner of the vehicle being towed.

d. Charging rates in excess of the legal maximum rate, shall be considered a

breach of this Agreement and shall be grounds for termination as provided in Section 24.

e. The rates for towing/servicing of City owned/leased vehicles shall be as outlined previously herein at Section 2.c. The City shall not be charged for any services rendered to it under this Agreement except as specifically provided under this Agreement.

f. Towing Company agrees to tow abandoned or junked vehicles at no charge to the City, and City shall surrender all salvage rights to the vehicle to Towing Company and shall retain no liens upon the vehicle.

g. The services specified in Section 2 of this Agreement shall be provided at no cost to the owner of the towed vehicle whenever the City determines that the vehicle was towed in error at the request of the City. The City, in such a case, shall notify the Towing Company of the error as soon as practicable and shall not be responsible for payment of towing charges or storage costs.

h. One day of storage shall equal twenty-four (24) hours at the storage facility except that the first twelve (12) hours of storage shall be provided free of charge to the customer. On the first day of storage only, a vehicle that is stored at the storage facility between twelve (12) hours and twenty-four (24) hours shall be charged for one (1) day of storage. Thereafter, the customer may be billed for an additional day of storage for each twenty-four (24) hour period the vehicle remains in storage at the storage facility beyond the first twenty-four (24) hours of storage. By way of example, a vehicle that is at the storage facility for forty-seven (47) hours shall be charged for one (1) day of storage, while a vehicle that is at the storage facility for forty-nine (49) hours shall be charged for two (2) days of storage.

i. Acceptable forms of payment shall include any two of the following groupings:
   1. Cash, cashier's check, money order, or traveler's check;
   2. Bank, debit, or credit card; or
   3. Mobile payment service, digital wallet or other.

6. Salvage Rights

In consideration for the services to be provided by the Towing Company, under the terms of this Agreement, the City hereby grants the Towing Company all salvage rights that may be permitted by law on any vehicle which may be towed pursuant to this Agreement and as specifically outlined herein at Section 5.e, excluding those vehicles seized and held for possible forfeiture by the City.

7. Storage Facilities and Office

a. The Towing Company shall maintain an office and a storage garage and/or outside storage facility complying with applicable building, zoning and land use regulations. Such storage facility shall:

(1) Contain a minimum of one hundred (100) spaces in an area which is completely secured and fenced at all times.

(2) Have available a minimum of two (2) spaces inside a building affixed to a permanent foundation for storing vehicles which require police processing. Moveable storage facilities are not acceptable. These spaces shall be maintained to provide protection from the weather and security to preserve the evidence and legal chain of custody for vehicles which require police processing. These spaces shall consist of sufficient space and access for police processing of a vehicle stored therein.

(3) Be located within a **seven (7) mile radius** from the City of Port Orange limits, on the same premises as the office.

b. The Towing Company shall own or lease the property where the office and storage facility are located. In the event that the property is leased, the term of said lease shall be not less than the term of this Agreement or any extension thereof as set forth in Section 4. The Towing Company shall provide a copy of the current lease or deed for prequalification and upon request by the City and upon any extension of the Agreement by the City. The Towing Company shall furnish copies of subsequently effective leases and deeds to the City and shall notify the City within three (3) business days upon receiving notice of cancellation, termination, or non-renewal of any lease or any change in ownership. The City reserves the right to terminate this Agreement in the event of expiration, cancellation, termination, or non-renewal of any lease for the property or any change in ownership.

c. The Towing Company shall have an employee on duty at said storage facility from 8:00 A.M. to 6:00 P.M. Monday through Friday, excluding legal holidays and shall have an employee available on-call for Police Department access to said facility or to facilitate the redemption or inspection of a vehicle by its owner, lienholder, insurance company representative, or their agent after-hours and on holidays.

d. The Towing Company shall prominently post a sign indicating a telephone number where the operator of the site can be reached at all times. Upon receipt of a telephoned request from the owner, lienholder, insurance

company representative, or their agent to open the site to redeem a vehicle or the personal property therein, the Towing Company shall return to the site within one hour for redemption of the vehicle or return of personal property therein. Upon payment of the authorized towing and storage fees, the vehicle shall be released to the owner or authorized representative immediately whenever possible, but in no event more than 30 minutes after an acceptable method of payment is made.

e. The Towing Company must release to the renter of a rental vehicle or vessel all personal property belonging to the renter which is not affixed to the rental vehicle or vessel within one hour after the renter's arrival.

f. An employee of the Towing Company shall be on call twenty-four (24) hours a day and able to respond to any call with arrival at the requested location within twenty (20) minutes.

g. Storage facilities shall be in compliance with all state, local and federal regulations. The facility shall be free from trash, rodents, insects and any other cause for contamination of vehicles. The facility shall have comprehensive security to protect property and public that enters the premises. Failure to maintain a clean, safe and secure facility, in the sole discretion of the Chief of Police, shall subject this Agreement to termination as provided herein at Section 24.

h. Storage facilities shall be subject to inspection upon 24 hours notice by the City and shall be required to obtain approval from the City prior to the award of Agreement or any extensions thereto. Storage facilities shall be subject to periodic inspections at any time by the Chief of Police or his designee during the term of this Agreement when deemed necessary by the City to ensure compliance with this Agreement.

i. Vehicles that have been marked “HOLD” for investigative or forfeiture purposes by the Police Department shall be held at the storage facility at no charge to the City for up to 5 days, excluding weekends and holidays, unless an extension is authorized in writing, to properly process the vehicle and finish the investigation,. If the hold is to continue beyond 5 days, excluding holidays and weekends, the Police Department may request the vehicle be removed to its designated impound lot, in which event the Police Department will not release the vehicle to the owner or lienholder of the vehicle until proof of payment of the towing and storage charges incurred by the Towing Company is presented to the Police Department. If the Police Department chooses to have the vehicle remain at the Towing Company’s storage facility beyond 5 days, excluding holidays and weekends, pursuant to the written

notification, the Police Department is responsible for payment of the storage charges incurred by the Towing Company for the requested extended period. The owner or lienholder is responsible for payment of accrued towing and storage charges for the first 5 days, excluding holidays and weekends, or any period less than the first 5 days, excluding holidays and weekends, when the Policy Department either moves the vehicle from the Towing Company's storage facility to a designated impound lot or provides written notification to extend the hold on the vehicle prior to the expiration of the 5 days, excluding holidays and weekends. Personnel of the Police Department shall be permitted access to such vehicles at any time. Vehicles marked "HOLD" shall be secured and stored in locked enclosed areas with no access by any person except as authorized by the Police Department. The Towing Company shall maintain comprehensive security to protect all stored vehicles and their contents from theft and damage. At such time the City releases the "HOLD", storage fees may begin to accrue against the owner of the vehicle.

8. Wrecker Equipment and Wrecker Company Personnel

a. The Towing Company shall, during the term of this Agreement, own or lease a minimum of four (4) wreckers to provide the services specified in this Agreement. The wreckers shall include: three (3) Class "A" wreckers, one (1) of which shall have four-wheel drive; and one (1) Class "C" wrecker. The wreckers of the Towing Company shall meet the equipment requirements and specifications set forth in Rule 15B-9.005, Fla. Adm. Code, as the same now exists and as may be amended from time to time. A copy of said Rule, as it currently exists, is attached hereto as Exhibit "B", and incorporated by reference herein.

b. No employee or agent of the Towing Company who provides services to the City under this Agreement shall have been:

(1) Convicted of any felony within the last ten (10) years.

(2) For the purposes of this section, a conviction shall mean an adjudication of guilt by a court of competent jurisdiction; a plea of guilty or nolo contendere; or a judge's finding or a jury verdict of guilty when adjudication is withheld and the accused is placed on probation, within the last ten (10) years.

c. The Towing Company shall not hire or retain any wrecker driver, permanently or temporarily, who has been convicted of the offense of driving under the influence of alcohol or any controlled substance or chemical substance to the extent that normal faculties are impaired or driving with an unlawful blood alcohol level, or of any criminal traffic offense, within the last ten (10) years.

d. Prior to any extension of this Agreement and within five business (5) days of hiring any new employees, the Towing Company shall provide written notice to the Police Department of the names, addresses and drivers license numbers of all new employees, owners, partners or agents of the Towing Company.

9. Telephone Communications

The Towing Company shall provide cellular telephone communication system between the office and all tow trucks operated by the Towing Company. The Towing Company shall maintain a direct telephone line for incoming police calls.

DIRECT LINE _____
ON-CALL Phone _____

10. Non-Exclusiveness of Service

The Towing Company agrees that the owner or person in possession of any vehicle that has been incapacitated shall have the opportunity of contacting a wrecker or tow company of his/her own choice if the disabled vehicle does not create a hazardous condition and a reasonable response time can be expected. Said person, at the accident or place of incapacity, shall be given the opportunity of having such vehicle towed to a location other than the storage facility of the Towing Company.

11. Benefits from Repairs

The Towing Company shall not benefit directly or indirectly without the express written consent of the owner of the vehicle, or the owner's designated representative, from any motor vehicle repair or painting with respect to vehicles towed and/or stored by the Towing Company under the terms and provisions of any Agreement between the City and the Towing Company. Any such agreement between the Towing Company and the owner, or between the Towing Company and a repair facility, shall state the repairs/painting to be done as well as the price and terms of payment therefor.

12. Liability of Towing Company

The liability of the Towing Company for any towed vehicle and all property contained therein shall commence at the time a wrecker is hooked to any vehicle to be towed. The Towing Company or its employee, representative, or agent shall inventory all personal property contained in the vehicle to be towed or endorse the inventory prepared by the police officer in charge.

13. Personal Property in Vehicles

To the extent provided by law, the Towing Company shall be accountable and liable for damage or loss to all personal property in the vehicles towed and for all vehicle accessories. Personal property situated in a vehicle stored by the Towing Company shall not be disposed of to defray any charges for storage or towing of the vehicle, except as provided by law. All such personal property shall be returned at once, unless directed otherwise by the City, to the owner or person entitled to legal possession thereof upon proper proof of ownership or right to possession, as provided by law. The determination of the owner or person entitled to legal possession shall be made by the Towing Company. Should the Towing Company release any personal property, the Towing Company shall obtain a receipt for the property from the owner or person entitled to possession thereof. The Towing Company shall provide reasonable access to the owner or person entitled to legal possession of the vehicle to retrieve all personal property from the vehicle. Said access shall include towing the vehicle to a location in the storage yard or near the gate of the storage yard where the vehicle may be accessed. The Towing Company shall not charge the owner or person entitled to legal possession of the personal property for accessing the vehicle in which the personal property is located or any other service that may be incidental to allowing the individual to retrieve the personal property from the vehicle.

14. Release of the Vehicle

a. The Towing Company must accept an original or a copy of any of the following documents as evidence of a person's interest in a vehicle or vessel:
   (1) An electronic title;
   (2) A paper title;
   (3) A contract between a lender and the owner of the vehicle or vessel;
   (4) A contract between the lessor and the lessee of the vehicle or vessel;
   (5) Credentials establishing the person as an employee or contract agent of an insurance company along with documentation identifying the vehicle by the vehicle identification number or vessel by the hull identification number; or
   (6) A written agreement evidencing that the person is an agent of the vehicle or vessel owner or lienholder.

b. Presenting one form of current government-issued photo identification constitutes sufficient identity for verification purposes under this Agreement.

c. The Towing Company agrees to release any vehicle, which has not been marked "HOLD" to the proper owner, lienholder, insurance company representative, or their agent. Any vehicle that has been marked "HOLD" by the Port Orange Police Department cannot be released without prior written authority

from the Police Department. The Towing Company shall require proper proof of ownership or right to possession before releasing a vehicle, and the Towing Company shall obtain a receipt for the vehicle. The Towing Company shall deliver to the **Port Orange Police Department, 4545 Clyde Morris Boulevard, Port Orange, FL 32129** by 9:00 a.m. daily a report of all vehicles released the previous day. The Towing Company shall be required to make the vehicle available for release by either allowing the owner, lienholder, insurance company representative, or their agent to enter the storage lot to retrieve the vehicle or towing the vehicle from its current location to the front gate of the storage lot where the owner or person entitled to possession may take possession of the vehicle. The Towing Company shall not charge the person entitled to possession for retrieving the subject vehicle from the lot or "setting out" the vehicle at the gate of the storage lot or for any other service that may be incidental to releasing said vehicle to the owner, lienholder, insurance company representative, or their agent. This does not prohibit the Towing Company from negotiating a consensual tow to a property other than the Towing Company's storage lot at the request of the owner, lienholder, insurance company representative, or their agent. However, if the person entitled to possession would prefer to have a different towing company provide said service, the Towing Company shall not charge any fee related to releasing the vehicle to another towing company.

15. Posting Charges and Rate Sheets

a. The Towing Company shall prominently post a sign at the storage facility in such a manner that it is conspicuous to the public with one-inch black lettering on a white background, which lists the charges to be imposed upon persons whose vehicles are towed pursuant to this Agreement. As to such persons, the Towing Company shall not impose any charges that exceed the legal maximum rate established for the City of Port Orange.

b. The Towing Company must maintain a rate sheet listing all fees for, or incidental to, the recovery, removal, or storage of a vehicle or vessel and must do all of the following:

1. Make the rate sheet available upon request by the vehicle or vessel owner, lienholder, insurance company, or their agent.

2. Before attaching a vehicle or vessel to a wrecker, furnish the rate sheet to the owner or operator of the vehicle or vessel, if the owner or operator is present at the scene of the disabled vehicle or vessel.

16. Itemized Statements

a. Should any owner, lienholder, insurance company, or their agent entitled to possession of a towed and/or stored vehicle seek to reclaim the same from the Towing Company, the Towing Company shall provide such owner, lienholder, insurance company, or their agent with an itemized statement of

all charges related to the towing and storage of such vehicle. Such statement shall be provided free of charge.

b. An itemized statement must be produced and be available to the vehicle or vessel owner, lienholder, insurance company, or their agent no later than one business day after:
• The tow is completed; or
• The towing-storage operator has obtained all necessary information to be included on the invoice, including any charges submitted by subcontractors used by the towing-storage operator to complete the tow and recovery.

The itemized statement shall include, at a minimum a detailed description of the work performed and/or services provided by the Towing Company including the following:
• The date and time the vehicle or vessel was towed and subsequently released from storage;
• The location to which the vehicle or vessel was towed;
• The name, address, and telephone number of the towing-storage operator;
• A description of the towed vehicle or vessel, including the color, make, model, model year, and vehicle identification number of the vehicle or hull identification number of the vessel;
• The license plate number and state of registration for the towed vehicle or vessel;
• The cost of the initial towing service;
• The cost of any storage fees, expressed as a daily rate;
• Other fees, including administrative fees, vehicle or vessel search fees, fees for hazardous material and nonhazardous material cleanup, and fees for labor; and
• A list of the services that were performed under a warranty or that were otherwise performed at no cost to the owner of the vehicle or vessel.

Any services provided by the Towing Company to the patron upon the patron's request shall be identified as such on the itemized statement by using the term "customer request" followed by a description of the work performed at the request of the customer. However, the customer shall not be charged for any services for which a charge has been forbidden by this Agreement even if requested by the customer.

The Towing Company must make the itemized invoice available for inspection and copying no later than 48 hours after receiving a written request to inspect such invoice from:
• A law enforcement agency;
• The Attorney General; or
• The vehicle or vessel owner, lienholder, insurance company, or their agent.

c. The City shall periodically audit Towing Company billing to ensure compliance with this Agreement. During any twelve (12) month period, failure by the Towing Company to provide itemized billing statements in accordance with this section shall result in a progressive liquidated damages charge (for the City's estimated costs as a result of billing issues) and up to termination, as follows:

First Offense	$50.00
Second Offense	$100.00
Third Offense	$150.00
Fourth Offense	Suspension and up to termination

17. Indemnification

The Towing Company shall indemnify and hold harmless the City of Port Orange and its agents, officers and employees from and against all claims, damages, losses, and expenses, including but not limited to attorneys' fees incurred prior to the filing of a suit and throughout any court proceeding, arising out of or resulting from the work or services or the performance of operations under this Agreement, provided that the claim, damage, loss and expense is caused in whole or in part by any willful or negligent act or omission of the Towing Company, any subcontractor, anyone directly or indirectly employed by any one of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

18. Insurance

a. Required Insurance:

The Towing Company shall purchase and maintain, at its own expense, the following types and amounts of insurance:

(1) Workers' Compensation Insurance:

Workers' Compensation Insurance for all employees and subcontractors of the Towing Company connected with the work, which is the subject of this Agreement. The insurance required by this provision shall comply fully with the Florida Workers' Compensation Law and include Employers Liability insurance with limits of not less than $500,000 per occurrence or the statutory requirements whichever is greater. No class of employee, including the Towing Company itself, if an individual, shall be excluded from the Workers' Compensation coverage.

(2) Garage-keeper's policy. A garage-keeper's legal liability and direct primary

policy covering fire, theft, vandalism, and other insurable perils in the minimum amount of $75,000.00, and a per-vehicle deductible not exceeding $1,000.00.

(3) On Hook/Cargo liability policy with a minimum limit of $75,000.00 and a deductible not exceeding $1,000.00 per towing vehicle.

(4) Automobile liability policy, covering the operation of wrecker's business, equipment, and vehicles with a combined single limit for bodily injury and property damage of no less than $1,000,000.00.

(5) General liability policy. A general liability policy, covering the operation of wrecker's business, equipment and vehicles, with a combined single limit for bodily injury and property damage of no less than $1,000,000.00.

(6) The above insurance coverage shall name the City of Port Orange as additional insured, with the exception of Workers' Compensation Insurance.

b. Proof of Insurance

The Towing Company shall furnish proof of insurance acceptable to the City showing the City as an additional insured within ten (10) days of the City Council award of this Agreement. The Towing Company shall not commence work under this Agreement until it has obtained all the insurance required under this Agreement and such insurance has been filed with and approved by the City. The Towing Company shall furnish evidence of all required insurance in the form of certificates of insurance which shall clearly outline all hazards covered as itemized above, the amounts of insurance applicable to each hazard, the expiration dates, and shall contain the following language as to cancellation:

In the event of cancellation of this policy by the insurer or any insured, this company shall give not less than thirty (30) days advance written notice to:

Port Orange Police Department
ATTN: Towing Contract Manager
City of Port Orange
4545 Clyde Morris Blvd.
Port Orange, Florida 32129

Upon request by the City, the Towing Company shall furnish copies of the insurance contracts to support the certificates of insurance and the Towing Company shall be required to satisfy any revision by the City.

The Towing Company shall file replacement certificates at least seven (7) days prior

to expiration or termination of the required insurance occurring prior to the expiration of this Agreement. In the event such insurance shall lapse, the City expressly reserves the right to either declare a breach of this Agreement and terminate, or renew the insurance at the Towing Company's expense. The renewal of the insurance shall not waive the City's right to declare a breach of this Agreement.

The Towing Company agrees to comply with all applicable state and federal laws, rules and regulations. Nothing in this Section 18 shall be construed to reduce or limit any commercial insurance required for towing company operation by applicable state or federal laws, rules or regulations.

19. Records, Books and Payment

The City reserves the right, during normal business hours, to inspect and audit the Towing Company records pertaining to services provided under this Agreement. All records shall be maintained at one central location as provided hereinafter. Additionally, the monthly sum payable to the City by the Towing Company shall be submitted to the Office of the City Finance Director on the first day of each month for the duration of this Agreement. Copies of all Towing Company paid invoices for services provided each month as a result of this Agreement shall be submitted to the City on or before the 15th day following the end of the month in which such services were provided. Such invoices may be provided in the form of a computer printout, or in an electronic format approved by the Finance Director, and shall contain the information set forth in Subsection 19.a.(1) below.

a. The Towing Company shall maintain for three (3) years following the towing of any vehicle towed under authority of a representative of the City, the following records of such tow:

(1) Call date and time, dispatch time, arrival time, hooked, dropped and cleared time, where the vehicle was towed from; the date and time towed; the driver who towed the vehicle; where it was towed to; a complete description of the vehicle; the name and address of the registered owner; the disposition of the vehicle; the date and time the vehicle was released or disposed of; and all correspondence and documents sent or received concerning said vehicle, as required by this Agreement; and

(2) All notice publications and certified mailings, the purchase price of any unclaimed vehicle or vessel sold, the names and addresses of persons to which vehicles or vessels were released, the names and addresses of vehicle or vessel purchasers, all fees imposed under s. 713.78, F.S.

20. Right to Cancel Service Call

The City shall have the right to cancel a request for Towing Company services until the time the wrecker arrives on the scene, and there shall be no charge to the City or the vehicle operator/owner. When a wrecker is to be canceled, it shall be canceled over the police radio prior to the wrecker's arrival on the scene. The term "arrives on the scene" is construed to mean that the responding wrecker has arrived within the close physical proximity of the vehicle to be towed and the wrecker has stopped and its operator has exited the wrecker in preparation to perform the towing service.

21. Compliance with Laws and Rules

The Towing Company agrees to and shall comply with all applicable provisions of the Florida Statutes, including Section 316.530, all applicable City ordinances, resolutions, and the equipment requirements and specifications set forth in Rule 15B-9.005, Fla. Adm. Code, as may be amended, unless otherwise provided by ordinance or this Agreement.

22. Surety Performance Bond

Within ten (10) days of city council award of this Agreement by the Port Orange City Council, the Towing Company shall post a surety performance bond or provide a letter of credit. The surety shall be an A-rated or better company. The performance bond or letter of credit shall be in the amount of $50,000.00 (fifty thousand and 00/100 dollars) to be used by the City in the event:

a. The Towing Company fails to provide wrecker service required by this Agreement, for the purpose of defraying costs incurred in making adequate arrangements for towing services, including the City's actual administrative costs.

b. The Towing Company breaches the terms of this Agreement and it is terminated by the City as provided in Section 24, for the purpose of defraying the cost of rebidding this Agreement.

23. Late Response

Liquidated damages for Late Response to emergency response calls. The Towing Company shall respond immediately to all emergency calls for service, and shall be at the location within twenty (20) minutes from the time the call is received.

The contractor assumes all liability in meeting the twenty (20) minutes response time including but not limited to any and all damages resulting from traffic accidents caused by the Towing Company's delay in response. During any twelve (12) month

period, failure to meet the twenty (20) minute response time shall result in a progressive liquidated damages charge and up to termination, as follows:

First Offense	$50.00
Second Offense	$100.00
Third Offense	$150.00
Fourth Offense	Automatic suspension and up to termination

The Towing Company shall not be assessed a liquidated damages charge for delay or failure in providing service when such delay or failure is the result of fire, flood, strike, act of God, act of government, act of alien enemy or by any circumstances which, in the Police Chief's opinion, is beyond the control of the Towing Company. Act of government shall not include enforcement of Chapter 316, Florida Statutes.

24. Breach of Agreement and Termination

a. It shall be the right of the Chief of Police and any officials of the City which he may designate to observe closely the wrecker service operations and if, in the opinion of the Chief of Police, there has been a breach of contract, the Chief of Police shall so notify the Towing Company, in writing, specifying the manner in which there has been a breach of contract. If termination of the Agreement due to breach is recommended, the Chief of Police may so notify the City Manager and a hearing shall be set for a date within fifteen (15) calendar days of such notice. At that time, the City Manager shall hear the Towing Company and the City representative(s), and shall make a determination as to whether or not there has been a breach of contract, and shall direct what further action shall be taken by the City, including but not limited to termination of this Agreement, as hereinafter provided. Pending the hearing, the Chief of Police has the right to suspend the Towing Company's operations under this Agreement, if he/she deems it necessary to protect health, safety and welfare; and the Towing Company shall have no recourse against the City for the suspension. Any lesser remedial action than termination shall not waive the City's right to further remedial action.

b. In addition to terminating this Agreement, the City may recover from the surety bond all actual administrative costs as provided by Section 22 of this Agreement.

c. The City may, if it so elects, pursue any other remedies provided by law for breach of this Agreement or any of its terms, covenants, conditions, or stipulations.

d. No right or remedy herein conferred upon or reserved to the City or the Towing Company is intended to be exclusive of any other right or remedy,

and each and every right and remedy given hereunder, or now or hereafter existing at law or at equity or by statute.

25. Misleading, Dishonest, and Illegal Practices

a. The Towing Company warrants that it shall not engage in any misleading, dishonest, or illegal practices with regard to the vehicles towed pursuant to this Agreement, and shall charge owners of vehicles only those amounts permitted under this Agreement for those services covered by this Agreement. In the event that an overcharge or other violation covered by this section is reported to the City, the City shall promptly notify the Towing Company of the alleged violation.

b. If a satisfactory written explanation is not received by the City within twenty-four (24) hours from the Towing Company, or the violation is not otherwise remedied and assurances given that similar violations shall not occur in the future, within the twenty-four (24) hour period, the violation shall constitute a breach of this agreement that may be reported to the City Manager for termination of this Agreement or other appropriate action as provided by Section 24 herein.

c. The Towing Company shall remedy any overcharge or unauthorized billing immediately by reimbursing the overage or unauthorized amount to the patron billed. In addition to the reimbursement of any overages to the patron, during any twelve (12) month period, any overcharge or unauthorized billing shall result in a progressive liquidated damages charge (for the City's estimated costs as a result of billing issues) and up to termination, as follows:

First Offense	$50.00
Second Offense	$100.00
Third Offense	$150.00
Fourth Offense	Suspension and up to termination

26. Public Records Compliance

a. Towing Company shall comply with public records laws as set forth in Chapter 119, Florida Statutes, and shall specifically:
   (1) Keep and maintain public records required by the City to perform the service.
   (2) Upon request from the City's custodian of public records, provide the City with a copy of the requested record or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Section 119, Florida Statutes, or as otherwise provided by law.

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

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

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

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

27. Legislative Acknowledgement

The City and Towing Company acknowledge the recent creation and adoption of Section 166.04465 of the Florida Statutes. Both parties acknowledge that each monthly payment made to the City by the Towing Company under this Agreement are neither a rate nor fee imposed by ordinance upon the Towing Company. Rather the Towing Company has voluntarily sought to earn the right to perform the services contemplated by this Agreement on behalf of the City through a competitive procurement process. Both parties acknowledge and expressly agree that the monthly payments provided for herein are permissible under state law and in no way violates Section, 166.04465, Florida Statutes.

28. Non-Discrimination

During the performance of this Agreement, Towing Company agrees:

a. Towing Company will not discriminate against any employee or applicant for employment because of race, religion, color, sex, disability, marital status, age or national origin, except where such is a bona-fide occupational qualification reasonably necessary to the normal operation of Towing Company. Towing Company agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the

provisions of this non-discrimination clause. Towing Company agrees to fully support and comply with the Americans with Disabilities Act of 1990, as amended.

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

c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient compliance with this provision.

29. E-Verify

Towing Company 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 Towing Company during the term of this Agreement and who provide services to the City under this Agreement.

30. 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 or limit 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 by operation of law.

31. Miscellaneous

a. The descriptive headings appearing in this Agreement and by law are for convenience only and are not to be construed either as a part of the terms and conditions hereof or as any interpretation thereof.

b. The bid documents and specifications are made a part of this Agreement by reference, as if fully set forth herein. In the event of a conflict between the bid documents and specifications, and this Agreement, the terms of this Agreement shall control.

c. It is mutually understood and agreed that nothing contained in this

Agreement is intended or shall be construed, as in any way creating or establishing the relationship of a partnership or joint ventures between the parties hereto or as constituting the Towing Company as agent or representative of the City for any purpose or in any manner whatsoever.

d. The Towing Company shall not assign this Agreement and its rights hereunder, in whole or in part, except with the prior written consent of the City.

b. In the event of any claim, action, litigation, or proceeding in court under this Agreement or in the event of any settlement of a dispute under this Agreement prior to a proceeding filed in court the prevailing party shall be entitled to an award of reasonable attorneys' fees and costs.

[REMAINDER OF PAGE LEFT BLANK]

Witnesses:

TOWING COMPANY

_____

_____

Printed Name: _____

By: _____

Printed name/Title: _____

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

_____

Printed Name: _____

Date: _____

At this time the City <u>does not</u> accept electronic/digital signatures. A wet signature is required for this document.

CITY OF PORT ORANGE

By:_____

Printed name/Title: _____

Date:_____

ATTEST:

By:_____

Robin L. Fenwick, MMC, City Clerk

Date:_____

EXHIBIT A

MAXIMUM NONCONSENSUAL AND TRESPASS TOW RATES

A. Maximum rates to be charged for the removal and storage of wrecked or disabled vehicles from an accident scene or the removal and storage of vehicles in the event the owner or operator is incapacitated, unavailable, leaves the procurement of wrecker service to the law enforcement officer at the scene, or otherwise does not consent to the removal of the vehicle, when the point of origin of the tow services are within the boundaries of the City of Port Orange shall be:

1. Towing vehicles, Class A (GVWR at 9,999lbs or less or a vehicle carrying a vessel 15 feet or less in length), shall be: $125.00

2. Towing vehicles, Class B (GVWR at 10,000lbs or more but less than 19,500lbs or vehicle carrying a vessel more than 15 feet, but less than 22 feet in length): $250.00

3. Towing vehicles, Class C (GVWR at 19,500 or more pounds, but less than 25,000lbs or vehicle carrying a vessel more than 22 feet in length): $375.00

4. Towing vehicles, Class D, greater than 25,000lbs GVWR: $500.00

5. Innocent Owner Fee (See Sec. 2(h) of the Wrecker Service Agreement) $75.00

6. If a tarp is required, a flat fee of: $15.00

7. If self-adhesive film is required to dry-in the vehicle, a flat fee of: $37.50

8. Additional flat fee per fifteen (15) minute block of extra labor for complicated situations beyond the initial 30 minutes at the scene for nonconsensual tows (i.e., water recovery, extraction of vehicle from pole, tree or house, righting overturned vehicle or clearing away a large amount of debris at an accident scene) shall be permitted as follows:
   - a) Class A $25.00
   - b) Class B $50.00
   - c) Class C $75.00
   - d) Class D $100.00

9. Services charges
   - a) Wrecker on-scene and owner arrives $25.00
   - b) Wrecker not on scene and owner arrives No charge

10. Storage Rates per day:
   - a) Any vehicle at compound under twelve (12) hours No charge
   - b) Class A:
     - Outside Storage $20.00
     - Inside Storage $25.00
   - c) Class B
     - Outside Storage $25.00
     - Inside Storage $30.00
   - d) Class C
     - Outside Storage $55.00
     - Inside Storage $60.00

e) Class D

- Outside Storage $55.00
- Inside Storage $60.00

11. An additional daily storage fee, as set forth in item 10 above, may be charged for any vessel, trailer or other mobile item, whether motorized or not, which is mounted on wheels and attached to a towed vehicle.

12. After business hours (Monday—Friday, 6:00 p.m.—8:00 a.m., Saturday and Sunday and national holidays) vehicle release fee: $35.00

B. After 48 hours of storage, an administrative fee for lien processing may be imposed for the actual costs of notification(s) so long as the wrecker service has actually complied with the requirements of F.S. 713.78 including execution and mailing of the lien notice or $65.00, whichever is less.

C. No additional charges or fees of any kind, other than those specified and authorized in this schedule's Sections A and B, are allowed for services governed by this Resolution, when towed from a point in the City. By way of illustration, no additional charges or fees may be assessed for:

a) Mileage
b) Special equipment or services such as double hook-up, vehicle entry when locked, dropping transmission linkage, axle or drive shaft removal, dollies, trailer or flat bed, lifts, slim jims, go jacks, removing bumpers, airing up brakes
c) Time spent at the scene of the tow, other than those specified in this schedule
d) Release fees during normal business hours (Monday—Friday, 8:00 a.m.—6:00 p.m.);
e) Access fees to allow the owner or the owner's representative to remove personal property or examine the vehicle
f) Yard fees, set-out fees, or gate fees for allowing the owner or any tow company designated by the owner or his insurance company to take custody of and remove the vehicle from the impound area
g) Fuel surcharge fees
h) Storage for the first twelve hours

EXHIBIT "B"

15B-9.005 Wrecker Classification and Required Equipment.

(1) Each tow truck owned or maintained by a wrecker operator shall be commercially manufactured and shall conform to the requirements of this rule. The requirements for commercial manufacture of trucks and equipment are waived for those operators who have been on the division's rotation list for one year prior to January 22, 1986. The wrecker and equipment shall be operable.

(2) The tow truck and equipment shall be inspected by the division's local troop commander or his designee and approved by the troop commander before being placed on the rotation list. Thereafter, trucks and equipment shall be subject to periodic checks as necessary to ensure compliance with these rules.

(3) Sirens on wreckers are prohibited.

(4) The wrecker operator shall not represent or imply on any vehicle, building or correspondence an official relationship between the wrecker operator and the division or any other police agency.

(5) It is prohibited for a tow truck or the business establishment maintained by the wrecker operator to have any equipment capable of monitoring messages or signals or frequencies assigned to the division.

(6) All trucks operated pursuant to this rule shall be equipped with a business-type communication radio or mobile telephone or cellular telephone. There shall be one radio or phone for each truck. Such equipment shall be licensed and approved by the Federal Communications Commission. The mobile radio or telephone shall enable the wrecker operator to communicate with his area of operations from any point within the assigned zone. A citizens band radio does not meet the requirements of this section. The troop commander may waive this requirement for all wrecker operators within a zone upon a showing that due to the limited number of operators in a zone that the installation of such communication devices is unnecessary or cost prohibitive or that the service is not readily available.

(7) Specifications and required equipment shall be as follows:

(a) ALL wreckers (All Classifications) shall include the following:

1. A cradle, tow plate or tow sling to pick up vehicles. The cradle, tow plate or tow sling shall be equipped with safety chains and constructed in such a manner that it will not damage the vehicle to be towed.

2. Dual rear wheels.

3. Clearance and marker lights and all other equipment as required by Chapter 316, F.S.

4. A rotor beam or strobe-type light, amber in color, mounted on the wrecker in such a manner that it can be seen from the front, rear, and both sides.

5. The name, address and telephone number of the wrecker operator for the zone in which the operator is qualified must be painted or permanently affixed in a conspicuous place on both sides of the trucks as required by Section 713.78(6), F.S. A unit number shall be painted on both sides of the cab of each wrecker. The same unit number on two or more wreckers qualified to tow within a zone is prohibited. Multiple addresses and telephone numbers are prohibited.

a. The name must be in letters at least three (3) inches in height.

b. The zone address and telephone number must be at least one (1) inch in height.

c. The unit number must be at least three (3) inches in height and in contrasting color.

d. Magnetic or removal signs or placards will not meet these requirements.

6. At least one heavy duty push broom with a minimum width of twenty-four (24) inches.

7. One square shovel.

8. One ax.

9. One crowbar or prybar with a minimum length of thirty (30) inches.

10. Minimum of one (1) five pound CO_2 or dry chemical fire extinguisher or equivalent. Must be approved type and have a current inspection tag attached.

11. One pair of bolt cutters with a minimum opening of 1/2 inch.

12. One set of jumper cables.

13. One four-way lug wrench.

14. One flashlight.

15. Five thirty minute fuses.

16. One snatch block for each winch with manufacturer's rating to match winch.

17. Extra towing chain six to eight feet in length with hooks.

18. At least three (3) safety cones or triangle reflectors.

19. Fifty pounds of sand or equivalent.

(b) Class "A" Wreckers – For the removal of cars and light duty trucks and vehicles weighing 10,000 pounds gross vehicle weight or less. Specifications and equipment in addition to requirements outlined in paragraph 15B-9.005(7)(a), F.A.C., shall be as follows:

1. A truck chassis with a manufacturer's rated capacity of at least 10,000 pounds gross vehicle weight. A complete, commercially manufactured boom and winch(es) having a manufacturer's combined rating of at least 4 tons must be mounted on the chassis. Hand crank winches do not satisfy these requirements and will not be approved.

2. A minimum of one hundred feet of 3/8-inch cable.

3. Dollies.

4. Flood lights on the hoist.

5. Vehicles which are equipped with wheel lifts or the equivalent may also qualify as Class A tow trucks so long as they are equipped with a boom and all other applicable requirements are met. Wheel lifts shall be rated at a minimum of 3,000 lbs. lift capacity and must utilize wheel safety straps when lifting vehicles by the wheels only.

6. Operators who wish to remove cars and light trucks may have, in addition, a roll-back or slide-back carrier truck/trailer with specifications and equipment as provided in subsection (c) of this rule.

7. HSMV Form 60308 shall be used by the Division for the inspection of Class "A" wreckers.

(c) Class "A" Roll-Back or Slide-Back Wreckers – For the removal of cars and light duty trucks and vehicles weighing 10,000 pounds gross vehicle weight or less. Specifications and equipment for roll-back or slide-back carriers in addition to the requirements outlined in subparagraphs 15B-9.005(7)(a)2.-20., F.A.C., shall include the following:

1. A truck chassis with a manufacturer's rated capacity of at least 10,000 pounds gross vehicle weight with a minimum of a sixteen (16) foot bed, dual rear wheels and a winch with at least 8,000 pound capacity.

2. A minimum of 50 feet of 3/8-inch cable.

3. A minimum of two safety tie-down chains of at least ten (10) feet each in length.

4. Two spot (flood) lights mounted on the rear of the carrier.

5. A roll-back or slide-back carrier trailer shall meet the following requirements:

a. A commercially manufactured carrier trailer with a rated capacity of at least 8,000 pounds gross vehicle weight with a minimum sixteen (16) foot bed. A winch with at least 8,000 pound capacity.

b. A minimum of 50 feet of 3/8 inch cable.

c. Brakes and trailer lights which meet the minimum statutory requirements of Florida law.

d. Safety chains.

e. Must be towed by and used in conjunction with an approved wrecker that meets or exceeds the class of the vehicle to be towed.

6. HSMV Form 60305 shall be used by the Division for the inspection of roll-back and slide-back carriers.

(d) Class "B" Wreckers – For removal of medium duty trucks or vehicles weighing 20,000 pounds gross vehicle weight or less. Specifications and equipment in addition to the requirements outlined in paragraph 15B-9.005(7)(a), F.A.C., shall be as follows:

1. A truck chassis with a manufacturer's rated capacity of at least 20,000 pounds gross vehicle weight. A complete, twin-winch, commercially manufactured boom and winches having a manufacturer's combined rating of at least ten (10) ton capacity mounted on the chassis. Class B wreckers that were previously approved at 15,000 pounds gross vehicle weight may continue in use within this class, even if sold to another approved rotation operator.

2. A minimum of one hundred feet of at least 1/2-inch cable on each drum.

3. One set of scotch blocks for wheels or hydraulic rear-extendable scotch blocks.

4. Flood lights on the hoist.

5. HSMV Form 60307 shall be used by the Division for the inspection of Class "B" wreckers.

(e) Class "C" Wreckers – For the removal of heavy duty trucks, house trailers, buses, etc., weighing over 20,000 pounds gross vehicle weight. Specifications and equipment in addition to the requirements outlined in paragraph 15B-9.005(7)(a), F.A.C., shall be as follows:

1. A truck chassis with a manufacturer's rated capacity of at least 30,000 pounds gross vehicle weight and 50,000 pounds gross vehicle weight for tandem axle trucks. A complete, twin-winch, commercially manufactured boom and winches having a manufacturer's combined rating of at least 25 ton capacity mounted on the chassis.

2. A minimum of two hundred feet of at least 5/8-inch cable on each drum.
3. Air brakes so constructed as to lock the rear wheels automatically upon failure.
4. External air hookup and hoses, to supply air to disabled vehicles.
5. One set of scotch blocks for wheels or hydraulic rear-extendable scotch blocks.
6. Flood lights on the hoist.
7. HSMV Form 60306 shall be used by the Division for the inspection of Class "C" wreckers.

Rulemaking Authority 321.051 FS. Law Implemented 321.051, 321.05(1) FS. History–New 1-22-86, Formerly 15B-9.05, Amended 10-15-92, 10-2-95.

CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 4/15/2025

SUBJECT: (C7b) Approval to Award RFSQ #24-03 for Construction Manager at Risk for Construction of the Force & Water Main River Crossing to Wharton-Smith, Inc.

DEPARTMENT: Engineering

GOAL: 2 - Infrastructure

RECOMMENDED MOTION: Move to approve award of RFSQ #24-03 Construction Manager at Risk (CMAR) for Construction of the Force & Water Mains River Crossing and Pre-construction Service Phase Scope to Wharton-Smith, Inc.; authorize the city manager and city attorney to review and approve final terms and conditions of the contract prior to execution; and authorize Mayor and City Clerk to execute all final documents.

SUMMARY: The Engineering Department requests approval to award RFSQ #24-03 Construction Manager at Risk (CMAR) for Construction of the Force & Water Main River Crossing and approve the Pre-construction Phase Scope to Wharton-Smith, Inc.

On October 22, 2024, the City received two (2) Statement of Qualifications for RFSQ #24-03. On November 5, 2024, the Statement of Qualifications Evaluation Committee scored submittals from the following firms:

Prime Construction Group, Inc	Score: 42.78
Wharton-Smith, Inc	Score: 47.42

The committee agreed by consensus to recommend awarding to Wharton-Smith, Inc, based on a combination of overall scores and their ability to best meet the needs of the City.

The Engineering Department is also requesting approval of Phase 1 – CMAR Pre-construction Services Proposal for the amount of $131,534.00. During the pre-construction phase, the Construction Manager will work with the Engineer to develop preliminary cost estimates, complete a constructability review, conduct bidding and procurement of the different work packages, and ultimately prepare a Guaranteed Maximum Price (GMP) for the project.

When the Pre-construction phase is complete, the CMAR will deliver an executed Exhibit “A” Guaranteed Maximum Price (GMP) Amendment which, if accepted by the City, states the GMP with allowances, the completion date, unit prices and other pertinent information needed for construction.

If the City does not agree with the GMP, completion date and other matters included in the Amendment, it is not bound to proceed with construction with the CMAR. Instead, the City can attempt to negotiate with the CMAR for a better deal or proceed with soliciting bids from General Contractors for a standard Owner-General Contractor Agreement.

The following is a list of recently completed Central Florida projects that used the CMAR process:

Volusia County Medical Examiner's Office
City of Ocoee City Hall
Seminole State Center for Public Safety

Wharton-Smith, Inc. is the current CMAR for the construction of the Public Utilities Field Operations Facility.

This project is being partially funded by a $2,500,000 Legislative Appropriation in the form of a Florida Department of Environmental Protection (FDEP) grant.

PRESENTER: Junos Reed

ATTACHMENTS:

1.	Wharton-Smith, Inc. EJCDC DIS-CMAR525-Agreement RFSQ 24-03 20 inch Force Main and 16 inch Water Main Crossing Entire Agmt	Wharton-Smith, Inc. EJCDC DIS-CMAR525-Agreement RFSQ 24-03 20 inch Force Main and 16 inch Water Main Crossing Entire Agmt.pdf
2.	Force & Water Mains River Crossing - Preconstruction Services Proposal 02.06.25	Force & Water Mains River Crossing - Preconstruction Services Proposal 02.06.25.pdf
3.	RFSQ24~3 - Wharton-Smith Submittal	RFSQ24~3.pdf
4.	RFSQ #24-03 Evaluation Ranking Summary	RFSQ #24-03 Evaluation Ranking Summary.pdf
5.	RFSQ #24-03 Notice of Intent to Award	RFSQ #24-03 Notice of Intent to Award.pdf
6.	RFSQ #24-03 Notice of Public Meeting	RFSQ #24-03 Notice of Public Meeting.pdf
7.	RFSQ24~2 Construction Manager at Risk for the Force and Water Main River Crossing	RFSQ24~2.pdf
8.	RFSQ #24-03 Pre-Submittal Sign-In Sheet	RFSQ #24-03 Pre-Submittal Sign-In Sheet.pdf

Julia Wiggins	Created/Initiated - 2/18/2025
Richard Colby	Approved - 2/18/2025
Junos Reed	Approved - 3/20/2025

Linda Truitt	Approved - 3/24/2025
Matthew Jones	Approved - 4/4/2025
Wayne Clark	Final Approval - 4/4/2025

AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER AT RISK

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AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER AT RISK

This Agreement is by and between **City of Port Orange, 1000 City Center Circle, Port Orange, Florida 32129** ("Owner") and **Wharton-Smith, Inc. 750 Monroe Road, Sanford, Florida 32771** ("Construction Manager at Risk" or "CMAR").

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

Owner and CMAR hereby agree as follows:

ARTICLE 1—THE PROJECT

1.01 The Project, of which the CMAR Services and the Work under the Contract Documents are a part, is generally described as follows:

RFSQ 24-03 Construction of Force & Water Mains (River Crossing)

ARTICLE 2—OWNER'S ADVISOR AND ENGINEER; OWNER'S PROJECT TEAM

2.01 The Owner has retained **Kimley-Horn and Associates** (Owner's Advisor or OA) to act as Owner's representative, assume all duties and responsibilities of advisor to Owner and construction contract administrator on behalf of Owner, and have the rights and authority assigned to Owner's Advisor in the Contract.

2.02 The Owner has retained **Kimley Horn and Associates** (Engineer) to design the Project, to assume all duties and responsibilities of Engineer during the construction of the Project, and to have the rights and authority assigned to Engineer in the CMAR Contract.

ARTICLE 3—CMAR SERVICES

3.01 Scope of CMAR Services

A. CMAR will perform the CMAR Services set forth in Exhibit A, Scope of CMAR Services, as authorized, and other specified CMAR Services as expressly set forth in a Contract Amendment. Services rendered by CMAR to meet its general construction and management obligations are not CMAR Services, and are not compensated as CMAR Services, unless expressly designated as such.

B. CMAR Services are categorized in Exhibit A as Basic Preconstruction Services; Additional Preconstruction Services; Basic Procurement Services; Additional Procurement Services; and Special Services.

C. In Exhibit A and in scope of CMAR Services provisions in Contract Amendments, imperative sentences with respect to the performance of services are directives to CMAR, unless expressly indicated otherwise.

3.02 Basic Services, Additional Services, and Special Services

A. Basic Services are CMAR Services (categorized as Preconstruction or Procurement) that are identified as Basic Services in Exhibit A.

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B. In addition to Basic Services, CMAR shall provide specific Additional Preconstruction Services and Additional Procurement Services within the scope set forth in Exhibit A, if Owner authorizes CMAR to do so. Owner or Owner's Advisor will authorize the specified Additional Services in a Contract Amendment. The Contract Amendment will describe the tasks to be performed, the compensation to be paid, the time for performance, the deliverables to be provided, and other applicable terms, if any. If a specific Additional Service has been priced during the CMAR selection process, such price will be binding on CMAR and Owner unless modified by mutual agreement.

C. In addition to the services identified as Basic Services and Additional Services, after the Effective Date of the Contract the Owner and CMAR may identify Project-related services that were not contemplated at the time the Agreement was executed, are necessary to the Project, and should be added to the scope of CMAR Services. If Owner and CMAR mutually agree, a Contract Amendment will be issued that specifies the scope of such Special Services, the compensation to be paid, the time for performance, the deliverables to be provided, and other applicable terms. Any amount included in the Agreement for Special Services will serve as the Owner's contingency for Special Services, if authorized by the Owner.

3.03 Authorization to Provide CMAR Services

A. CMAR is authorized by the execution of this Agreement to begin providing Basic Preconstruction Services set forth in Article 1 in Exhibit A, Scope of CMAR Services, as of the Effective Date of the Contract.

B. CMAR shall provide Basic Procurement Services set forth in Article 3 in Exhibit A, Scope of CMAR Services, upon receipt of notice to commence such services from Owner or the Owner's Advisor, or in a Contract Amendment establishing the scope and compensation for Procurement Services.

C. All other CMAR Services, including Additional Preconstruction Services, Additional Procurement Services, and Special Services, if any, must be authorized by Owner or Owner's Advisor.

3.04 Compensation for Basic CMAR Services

A. ~~Basic Preconstruction Services—Owner will compensate CMAR for Basic Preconstruction Services, provided per Article 1, Exhibit A—Scope of Work for CMAR Services, the lump sum (stipulated price) for the Price for CMAR Basic Preconstruction Services shown in Exhibit B Table 1, Compensation for CMAR Services.~~

B. Basic Preconstruction Services—Owner will compensate CMAR for Basic Preconstruction Services, provided per Article 1, Exhibit A—Scope of Work for CMAR Services, for each hour earned at the Billing Rates shown in Exhibit B—Table 4, Compensation for CMAR Services. Such compensation is subject to the not-to-exceed limit shown for Price for CMAR Basic Preconstruction Services in Table 1.

C. ~~Basic Procurement Services—Owner will compensate CMAR for CMAR Procurement Services, provided per Article 3, Exhibit A—Scope of Work for CMAR Services, the lump sum (stipulated price) for the Price for CMAR Basic Procurement Services shown in Exhibit B Table 1, Compensation for CMAR Services.~~

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D. Basic Procurement Services—Owner will compensate CMAR for CMAR Procurement Services, provided per Article 3, Exhibit A—Scope of Work for CMAR Services, for each hour earned at the Billing Rates shown in Exhibit B—Table 4, Compensation for CMAR Services. Such compensation is subject to the not-to-exceed limit shown for Price for CMAR Basic Procurement Services in Table 1.

E. ~~The compensation amount for Basic Procurement Services will be determined in a Contract Amendment for Procurement Services based on the Billing Rates shown in Exhibit B—Table 4, Compensation for CMAR Services. The scope and compensation for these services will be based on the Procurement Strategy Plan developed in accordance with Exhibit A—Scope of Work for CMAR Services, Paragraph 1.13.~~

3.05 Compensation for Additional CMAR Services

A. For Additional Preconstruction Services and Additional Procurement Services, Owner will compensate CMAR for each hour earned at the Billing Rates shown in Exhibit B—Table 4, Compensation for CMAR Services.

3.06 Compensation for Special Services

A. Owner will compensate CMAR for Special Services pursuant to the specific compensation terms in the Contract Amendment establishing and authorizing such Special Services.

3.07 Payment for CMAR Services

A. Preparation and Submittal of Invoices

1. CMAR will prepare and submit invoices for CMAR Services to Owner's Advisor on a monthly basis in a format acceptable to Owner's Advisor.

2. CMAR may not submit invoices and is not entitled to compensation for Additional Services or Special Services unless Owner has authorized such services through execution of a Contract Amendment.

3. CMAR will provide documentation acceptable to the Owner to allow Owner to verify CMAR's charges included in invoices.

B. Payments

1. ~~Payment for CMAR Services compensated on a Lump Sum (stipulated price) basis:~~

a. ~~The Lump Sum amount includes compensation for CMAR's services, and services of CMAR Subconsultants, if any. Appropriate amounts are to be incorporated in the Lump Sum to account for labor costs, overhead, profit, expenses, and other cost.~~

b. ~~The amount invoiced each billing period will be based on the CMAR's estimate of the percentage of the total CMAR Services completed during the billing period.~~

c. ~~The compensation paid to CMAR for Basic Services will not exceed the Lump Sum amount unless duly authorized by a Contract Amendment.~~

2. Payment for CMAR Services compensated using Hourly Billing Rate basis:

a. Owner shall pay CMAR an amount equal to the cumulative hours charged to the Project by CMAR's personnel times Hourly Billing Rates for each applicable Classification.

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b. Hourly Billing Rates include all of the following—salaries and wages paid to personnel in each billing classification; the cost of customary and statutory benefits; general and administrative overhead; non-project operating costs; and operating margin or profit.

c. Hourly Billing Rates are to include all expenses related to providing CMAR Services including the following categories:

1) Transportation and subsistence;

2) Technology charges and data charges associated with the use of computers and tablets;

3) Printing and reproduction of documents;

4) Health and safety related equipment and training; and

5) Special equipment used for CMAR Services.

3. The amounts paid to CMAR under this Article are deemed to include full compensation for CMAR's overhead and profit associated with such labor and expenses.

C. Time of Payment

1. Owner will make payments for CMAR Services within 10 days after receiving an approved invoice from the Owner's Advisor.

2. If Owner fails to make any payment due CMAR for CMAR Services within 30 days after receipt of CMAR's invoice, then:

a. Amounts due CMAR will be increased at the rate of 1.0% per month, or the maximum rate of interest permitted by law, if less, from said thirtieth day; and

b. CMAR may, after giving 7 days' written notice to Owner, suspend services under this Agreement until Owner has paid all amounts due for services, expenses, and other related charges in full. Owner waives any and all claims against CMAR for this suspension.

3. Owner may withhold only the contested portions of an invoice and must pay the undisputed portion of the invoice.

D. Compensation for CMAR Services discussed in Article 3 is not compensation for the Work and is not included in the GMP. No retainage will be withheld from payments of CMAR Services; however, such payments are subject to the set-off provisions in General Conditions Article 15.

ARTICLE 4—COMPENSATION FOR PERFORMANCE AND COMPLETION OF THE WORK

4.01 Owner shall compensate CMAR for performance and completion of the Work in accordance with the Contract Documents. Payment for Work will consist of the following:

A. Payment for Construction Support Costs in accordance with Article 5, and as set forth in Exhibit B Table 1 lines 6-9;

B. Payment for Cost of the Work as provided in Article 6; and

C. Payment of a CMAR Fee as set forth in Article 7 and in Exhibit B Table 1.

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4.02 This Agreement establishes a CMAR Contingency Allowance for use in paying for unforeseen costs as set forth in Article 8.

4.03 The amounts for CMAR's compensation summarized in Paragraph 4.01 are subject to additions and deletions as provided in the Contract, up to limitations established in the Guaranteed Maximum Price (GMP) as provided in Article 11.

ARTICLE 5—CONSTRUCTION SUPPORT COSTS

5.01 Construction Support Costs

A. Construction Support Costs (field overhead or "general conditions" costs) are those costs associated with and in support of construction that are not directly related to specific construction activities. Construction Support Costs are not compensable as Cost of the Work and must not be included by CMAR in proposed Work Authorizations submitted to the Owner for approval and issuance. Construction Support Costs include without limitation:

1. CMAR project management costs, including project managers, superintendents, field engineering staff, and clerical support located at the Site;
2. Management of Subcontractors and Suppliers;
3. Management of delegated professional design services, if any;
4. Costs associated with safety programs, including safety managers and safety representatives;
5. Quality management not specifically designated to be covered in a Work Authorization;
6. Costs associated with obtaining permits, or paying patent fees or royalties, if not specifically designated to be covered in a Work Authorization;
7. Costs for permit inspections, and other inspections required by Laws and Regulations not specifically designated to be covered in a Work Authorization;
8. Compliance with Laws and Regulations;
9. Taxes, other than those specifically designated to be covered in a Work Authorization;
10. Contract administration costs, including costs for:
    a. Meetings, reporting, notifications, and other communications and coordination,
    b. Document management,
    c. Submittals, record data, and other documentation,
    d. Creating and maintaining Project schedules per Article 4 of the General Conditions,
    e. Changes to the CMAR Contract per Article 11 of the General Conditions,
    f. Applications for Payment per Article 15 of the General Conditions,
    g. Maintenance of Record Documents, and
    h. Other contract administration costs included in the Contract Documents;

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11. Performance, payment, and warranty bonds, if any, provided to cover the construction of the entire Project;

12. General insurance costs, excluding Builder's Risk or other coverage that applies specifically to Work and specifically designated to be covered in a Work Authorization, and Worker's Compensation Insurance which is to be included in payroll cost per Paragraph 6.02.A.1;

13. Costs associated with CMAR temporary facilities and temporary infrastructure at the Site;

14. The cost of purchasing, renting, or furnishing small tools and hand tools. These are defined as any tool or equipment whose current price, if purchased new at retail would be less than **$1,000.00**;

15. Costs for site maintenance, storage of materials, waste disposal, environmental controls, management of water, protection of site and adjacent property, cleaning during construction and final cleaning;

16. Costs associated with startup and commissioning of the Work, including training of Owner's personnel, temporary operation of facilities by the CMAR; and performance acceptance testing, if any;

17. Costs associated with substantial completion, partial utilization, and final completion; and

18. Costs associated with general warranty, guarantees and correction of defective work during the Correction Period.

B. The organization of the Work into Work Packages will not result in changes to the CMAR's compensation for Construction Support Costs.

5.02 Fixed Construction Support Costs

A. Fixed Construction Support Costs are those costs which are not time sensitive and will not increase if the performance of the Work extends beyond the Construction Period designated for Substantial Completion of the Work described in Article 13. The amount for Fixed Construction Support Cost is shown in Exhibit B, Table 2–Basis of Compensation for Fixed Construction Support Costs.

5.03 Time-Sensitive Construction Support Costs

A. Time-Sensitive Construction Support Costs are those costs which will increase if the performance of the Work extends beyond the Construction Period designated for Substantial Completion described in Article 13. The amount for Time-Sensitive Construction Support Costs based on the Construction Period is shown in Exhibit B, Table 3–Basis of Compensation for Time-Sensitive Construction Support Costs.

B. The Construction Support Costs Extended Rate is determined by dividing the Time-Sensitive Construction Support Costs by the projected number of days in the Construction Period. CMAR will be entitled to additional compensation for Time-Sensitive Construction Support Costs at the Construction Support Extended Rate shown in Exhibit B, Table 3–Basis of Compensation for Time-Sensitive Construction Support Cost if the extended time is associated with a compensable delay under the provisions of the General Conditions.

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5.04 Changes in Construction Support Costs

A. Owner and CMAR acknowledge that the Construction Support Costs stipulated amounts set forth in this Agreement's Exhibit B, Table 1, lines 7, 8, and 9 (Construction Support Costs Contract Amounts) and the Construction Support Costs Extended Rate (determined as set forth in Paragraph 5.03.B) are approximations of actual costs intended to liquidate and stipulate CMAR's compensation for Construction Support Costs, encourage efficiency and cost control, and reduce Owner's and CMAR's administrative and accounting effort. The Construction Support Costs Contract Amounts and the Construction Support Costs Extended Rate will not be increased except in cases in which CMAR demonstrates:

1. An excessive and unanticipated increase in Construction Support Costs resulting from scope changes in the Work or other causes directly attributable to Owner; and

2. Such increase in costs has not otherwise been compensated in a Work Authorization, Contract Amendment, or Change Order.

5.05 Compensation for Construction Support Costs

A. Payments for Fixed Construction Support Costs will be made in equal monthly increments determined by dividing the Fixed Construction Support Costs Contract Amount by the projected number of months in the Construction Period. No payment will be made for Fixed Construction Support Costs in excess of the Fixed Construction Support Costs Contract Amount unless this Amount is adjusted in accordance with provisions in Paragraph 5.04.

B. Payments for Time-Sensitive Construction Support Costs will be made in equal monthly increments determined by dividing the Time-Sensitive Construction Support Costs Contract Amount by the projected number of months in the Construction Period. No payment will be made for Time-Sensitive Construction Support Costs in excess of the Time-Sensitive Construction Support Contract Amount unless this Amount is adjusted in accordance with provisions in Paragraph 5.04.

C. Payments will be made for Time-Sensitive Construction Support Costs associated with compensable delays under the provisions of the General Conditions at the Construction Support Costs Extended Rate as described in Paragraph 5.03.B.

ARTICLE 6—COST OF THE WORK

6.01 Purposes for Determination of Cost of the Work

A. The term Cost of the Work is defined in the General Conditions, Article 1, as the sum of eligible costs incurred by CMAR for the performance of the Work, as allowed by the Cost of the Work provisions set forth in the Agreement; such provisions are set forth in this Article 6. Cost of the Work is determined for each Work Authorization, subject to any limits described in this Article. The provisions of this Article are used for two distinct purposes:

1. To determine Cost of the Work for purposes of CMAR's base compensation for construction under this Contract; or

2. When needed to determine the value of a Change Proposal, Change Order, Claim, set-off, or other adjustment to the Guaranteed Maximum Price. When the value of any such adjustment is determined based on Cost of the Work, CMAR is entitled only to

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those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.

B. For purposes of determining CMAR's base compensation, Cost of the Work applies only to Work that has been duly authorized in a Work Authorization.

C. The Cost of the Work will include only those items identified in Paragraph 6.02.

6.02 Cost of the Work

A. Payroll Cost—Payroll costs for employees in the direct employ of CMAR performing Work described in Work Authorizations, and excluding those efforts covered in Construction Support costs per Paragraph 5.01. Payroll costs will be based on actual amounts paid as indicated on Certified Payroll reports. Payroll costs are to include salaries and wages plus the cost of fringe benefits, which include social security contributions, unemployment, excise, and payroll taxes, workers' compensation insurance, health and retirement benefits, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturdays, Sundays, or legal holidays, will be included in the above to the extent authorized by Owner.

B. Incorporated Equipment and Material Cost—Cost of all materials and equipment furnished or incorporated in the Work, including costs for transportation and storage prior to delivery to the site. Cost for proper storage at the Site is to be included in Construction Support Cost per Paragraph 5.01. Cost for equipment is to include Suppliers' services for submittals, factory and field testing and inspections, installation checks, start-up assistance, and training, if any. All cash discounts accrue to CMAR unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts will accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment will accrue to Owner, and CMAR shall make provisions so that they may be obtained.

C. Consumable Equipment and Material Cost—Cost, including transportation and maintenance, of all materials, supplies, equipment, tools, and machinery at the Site, which are consumed in the performance of the Work, less market value of such items used but not consumed which remain the property of CMAR. In establishing costs for materials such as scaffolding, plating, or sheeting, consideration will be given to the actual or estimated life of the material for use on other projects; or rental rates may be established on the basis of purchase or salvage value of such items, whichever is less. CMAR will not be eligible for compensation for such items in an amount that exceeds the purchase cost of such items.

D. Subcontractor Cost–Payments made by CMAR to Subcontractors for Work performed by Subcontractors. CMAR shall obtain competitive bids from subcontractors acceptable to Owner and CMAR and shall deliver such bids to Owner, which will then determine, with the advice of Owner's Advisor, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee will be determined in the same manner as CMAR's Cost of the Work and fee as provided in this Article 6.

E. Construction Equipment Cost—Cost of providing construction equipment and machinery to construct the Work described in the Work Authorization.

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1. Include all the costs for transporting, loading, unloading, assembly, dismantling, and removal of the equipment and machinery with Consumable Equipment and Material Cost per Paragraph 6.02.C.

2. Construction equipment and machinery cost will be billed at rates approved by the Owner's Advisor as part of each Work Authorization.

    a. All operating costs will include costs for fuel, maintenance, parts, and associated labor. Billing rates for equipment fueling and maintenance do not include payroll costs for equipment operators, which will be included in Payroll cost per Paragraph 6.02.A.

    b. Costs for equipment and machinery owned by CMAR or a Subcontractor cannot exceed the rates shown for equipment in the EquipmentWatch Cost Recovery Rental Rate Blue Book, (https://equipmentwatch.com/blue-book-cost-recovery) An hourly rate will be computed by dividing the monthly rates by 176. These rates will include all operating costs per Paragraph 6.02.E.2.a.

    c. Payment for rented equipment will be in accordance with rental agreements as to price, including any surcharge or special rates applicable to overtime use of the construction equipment or machinery, and all such costs will be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts must cease when the use thereof is no longer necessary for the Work.

    d. No markup is allowed on equipment rented or leased from any company owned in total or in part by CMAR or a Subcontractor, or is owned by the same holding company or a company with a close legal affiliation to CMAR or Subcontractor, since markups are included in rental or lease rates.

    e. Equipment used for site maintenance is to be included in Construction Support Costs. Equipment used for multiple Work Authorizations must be billed on the basis of time worked on each Work Authorization.

3. With respect to Work that is the result of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Guaranteed Maximum Price (changed Work), included costs will be based on the time the equipment or machinery is in use on the changed Work and the costs of transportation, loading, unloading, assembly, dismantling, and removal when directly attributable to the changed Work. The cost of any such equipment or machinery, or parts thereof, must cease to accrue when the use thereof is no longer necessary for the changed Work.

F. Supplemental Costs which consist of the following:

1. The proportion of necessary transportation, travel, and subsistence expenses of CMAR's employees incurred in the discharge of duties connected with the Work Authorization.

2. Costs of special consultants including engineers, architects, testing laboratories, and surveyors, employed or retained for services specifically related to the Work Authorization and expressly excluding costs incurred by consultants performing CMAR Services.

3. Sales, consumer, use, and other similar taxes related to the Work, and for which CMAR is liable, as imposed by Laws and Regulations.

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4. Deposits lost for causes other than the negligence of CMAR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable.

5. Royalty payments and fees for permits, patents, and licenses directly related to a Work Authorization.

6. The cost of premiums for performance, payment, and warranty bonds obtained by CMAR as a requirement of a Work Authorization, in addition to the bonds purchased for the construction as a whole within the scope of Construction Support Costs per Paragraph 5.01.A.11. Final compensation for such premium costs will be based on reconciled costs at the conclusion of the Work.

7. Cost for any Subcontractor bonds that must be required to protect Owner's and CMAR's interests in the event of a Subcontractor default associated with a Work Authorization. Final compensation for such premium costs will be based on reconciled costs at the conclusion of the Work.

8. The cost of premiums for Builder's Risk insurance and other Work Authorization–specific insurance that CMAR is required by the Contract Documents to purchase and maintain, but not including costs of commercial general liability, automobile liability, and contractor's pollution liability insurance which are covered as Construction Support Costs per Article 5. The compensation for worker's compensation is included as part of payroll costs per Paragraph 6.01.A.1. Final compensation for such premium costs will be based on reconciled costs at the conclusion of the Work.

6.03 Specific Exclusions from Cost of the Work

A. The following items are not included in the Cost of the Work. This express itemization does not confer Cost of the Work or compensable status to otherwise ineligible items not listed here. Cost for any items not included in the Cost of the Work are to be included in the CMAR Fee unless specifically itemized at Construction Support Costs described in Article 5.

1. Payroll costs and other compensation of CMAR's officers, executives, principals, general managers, project managers, superintendents, safety managers, safety representatives, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expediters, timekeepers, clerks, and other personnel employed by CMAR, whether at the Site or in CMAR's principal or branch office for general administration of the Work. The payroll costs and other compensation excluded here are to be considered administrative costs covered by Construction Support Cost or the CMAR Fee.

2. Expenses of CMAR's principal and branch offices.

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

4. Costs due to the negligence of CMAR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable.

5. Cost for the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property not paid from CMAR's Contingency per Article 8.

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6. Expenses incurred in preparing and advancing Claims.

7. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 6.03.

8. Costs recovered or reimbursed under other Construction Support Cost or Cost of the Work provisions.

6.04 Compensation for the Cost of the Work

A. Compensation for the Cost of the Work is based on the amount earned for Work completed for each Work Authorization.

ARTICLE 7—CONSTRUCTION MANAGER AT RISK FEE

7.01 The CMAR Fee will be determined as follows:

A. The CMAR Fee is a specified percentage of the Cost of the Work as shown in Exhibit B Table 1. No fee will be payable on the basis of costs itemized as excluded in Paragraph 6.03.

B. ~~The CMAR Fee is a set of specified percentages, each applied to a specific portion of the Cost of the Work, as shown in Exhibit B Table 1. No fee will be payable on the basis of costs itemized as excluded in Paragraph 6.03.~~

C. ~~The CMAR Fee is a lump sum fee as shown in Exhibit B Table 1. This CMAR Fee is subject to increases or decreases for changes in the Work as provided in General Conditions Paragraph 11.01.~~

ARTICLE 8—CMAR CONTINGENCY ALLOWANCE

8.01 CMAR Contingency Allowance

A. The CMAR Contingency Allowance funds, shown in Exhibit B Table 1—Estimated Guaranteed Maximum Price, are for the exclusive use of CMAR while executing the Work, to reimburse CMAR for costs due to unforeseen causes, unintentional errors, or events which cannot specifically be anticipated at the time Work Authorizations are issued.

B. The CMAR Contingency Allowance funds may be used by CMAR for costs sustained by either CMAR itself or a Subcontractor, at CMAR's discretion. The CMAR contingency funds may not be used for costs which are reimbursable or recoverable under other provisions of the Contract.

C. Without excluding other possible uses of the CMAR Contingency Allowance, the following uses are expressly acknowledged as eligible uses of the CMAR Contingency Allowance funds:

1. Losses and damages, and related expenses, caused by damage to the Work, not compensated by insurance or otherwise, sustained by CMAR or a Subcontractor in connection with the performance of the Work;

2. Corrective work, regardless of fault if non-conformance is unintended;

3. Subcontractor defaults;

4. Overruns in Construction Support Costs;

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5. Builder's Risk deductibles;

6. Verified excusable errors in estimates; or

7. Non-compensable overtime and other acceleration costs.

D. CMAR shall replenish the CMAR Contingency Allowance by restoring money withdrawn with money recovered (1) from bonds and insurance coverage payments for such expenditures, and (2) from defaulting Subcontractors or Suppliers.

E. The CMAR Contingency Allowance will not be used to fund Owner-directed changes in the Work. Such changes will be administered through the contractual procedures established for changes in the scope of the Work, including expenditures from the Owner's Contingency Allowance, if any, Work Authorizations as modified by Change Order, and Contract Amendments or other modifications that impact the Guaranteed Maximum Price.

F. The CMAR Contingency Allowance will not be used to recover the cost of items that are compensable as a Cost of the Work.

G. The CMAR Fee does not apply to expenditures from the CMAR Contingency Allowance. CMAR will not be entitled to any additional overhead, profit, or other markup on any CMAR Contingency Allowance expenditure.

H. The designated CMAR Contingency Allowance, as duly replenished, is the maximum amount available to CMAR to recover eligible costs under this Article; Owner will not increase the CMAR Contingency Allowance or otherwise reimburse CMAR for eligible costs incurred in excess of the CMAR Contingency Allowance.

I. CMAR will submit applications for reimbursement from the CMAR Contingency Allowance to Owner's Advisor, in a format acceptable to Owner's Advisor, together with appropriate documentation. Payments from the CMAR Contingency Allowance will be recorded in the Application for Payment.

ARTICLE 9—WORK AUTHORIZATIONS

9.01 General Provisions Regarding Work Authorizations

A. Work Authorizations will be based on Work Packages prepared by Owner's Advisor and Engineer describing equipment and materials to be purchased for installation or Work to be performed in accordance with the approved Work Authorization.

B. All Work to be provided by CMAR must be authorized by the issuance of a Work Authorization specifying or referencing the scope of Work to be conducted.

C. Owner's Advisor will issue each Work Authorization using the Work Authorization form provided by the Owner's Advisor.

D. The Work Authorization will indicate the compensation to which CMAR is entitled for providing the authorized Work.

E. CMAR is not entitled to compensation for providing Work that Owner's Advisor has not authorized.

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9.02 First Work Authorization

A. The first Work Authorization, authorizing the commencement of construction, will include, in addition to authorization for a specific Work Package, or multiple specific Work Packages, the authorization of expenditures by CMAR for Contract-specific (1) performance and payment bond premiums (2) Builder's Risk premiums, if CMAR is required to purchase and maintain Builder's Risk insurance, and (3) premiums for other specific insurance policies required by the Contract.

ARTICLE 10—PROCUREMENT OF SUBCONTRACTORS; CMAR SELF-PERFORMANCE OF AUTHORIZED WORK

10.01 Performance of the Authorized Work

A. CMAR will solicit and receive competitive bids on the Work included in each Work Authorization, including the purchase of materials and equipment. CMAR will prepare bid packages supporting the Work Authorization and make opportunities available to Subcontractors and Suppliers in a way that will increase competition and allow bids by trade contractors or specialty entities. CMAR may prepare bid packages for Work the CMAR may wish to self-perform, so long as doing so will not limit bidding by competing bidders (prospective subcontractors).

B. CMAR may bid on Work Packages, or portions thereof, if fully qualified to self-perform the subject Work, subject to the following limitations:

1. CMAR may not self-perform more **(than an amount to be determined "TBD" for the)** percent of the total scope of Work under this Contract, as determined on a monetary basis. This percentage applies to the Contract as a whole and does not impose a limitation on specific Work Authorizations. CMAR may self-perform all of the Work in a single Work Authorization so long as the percentage of Work on the total scope of Work for the Contract is within these limitations.

2. ~~CMAR may not self-perform more than **[number]** percent of the [**describe specific types of Work],** determined on a monetary basis. This percentage applies to the **[describe specific types of Work]** and does not impose a limitation on other Work Authorizations.~~

3. ~~CMAR may self-perform no more than **[number]** of the **[describe specific types of Work Packages]**.~~

4. ~~CMAR may not self-perform Work on the following packages:~~

a. ~~**[List work for which CMAR may not submit a bid to self-perform]**.~~

C. CMAR must submit its bids in advance of receiving other bids, and in the same manner that other bids are to be submitted. Bids are to be opened in the presence of the Owner's Advisor.

D. CMAR will award the subcontract for the Work under the Work Authorization to the responsible bidder submitting the lowest responsive bid for that portion of the Work for which bids are received. CMAR may self-perform Work when CMAR is the low bidder.

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ARTICLE 11—GUARANTEED MAXIMUM PRICE

11.01 Subject to the provisions of Article 4, CMAR guarantees that the maximum amount payable by Owner (Guaranteed Maximum Price, or GMP) for the sum of the amounts for Paragraphs 11.01.A through D that follow will be the binding GMP established by the process stated in Paragraphs 11.02 and 11.03.

A. Construction Support Cost Amount (Article 5);

B. Cost of the Work (Article 6);

C. CMAR Fee (Article 7); and

D. CMAR's Contingency Allowance Amount (Article 8).

11.02 The Estimated GMP indicated in Exhibit B Table 1—Estimated Guaranteed Maximum Price is a preliminary figure as of the Effective Date of the Contract. The GMP will be revised as the design is continued and completed.

11.03 A binding GMP will be established at any time agreeable to Owner and CMAR, but not later than the following:

A. If the Work is performed under Work Packages released and authorized concurrently for the complete Project, then the binding GMP will be established on the basis of Contract Documents that are 90% complete.

B. If the Work will be authorized over time, as the design for individual Work Packages is completed, in a series of incremental Work Authorizations (fast tracking or similar design/construction process) then the binding GMP will be developed in a series of incremental changes as the design for each Work Package reaches 90% completion, culminating, when all Work Packages have been authorized, in a binding GMP for the Contract.

11.04 Owner's Construction Budget

A. Owner's Advisor will establish an updated Owner's Construction Budget (Budget) based on the CMAR's procurement strategy which identifies Work Packages used to construct the Work. Owner's Advisor, working with CMAR, will update this Budget with actual amounts for each line item as Work Authorization amounts identified in the updated Budget are determined.

B. Owner's Advisor will revise the Budget to incorporate Change Orders or authorized allocation of contingency funds which change the funds available for Budget line items. When amounts for all Work Authorizations have been determined and the binding GMP is established for the Contract, the Budget must correlate to GMP line items, and the Budget must equal the GMP.

C. CMAR will identify variances between the budgeted amount and actual amounts as Work Authorization amounts are determined.

1. Positive variances are created when actual cost for a Work Authorization is less than the budgeted amount. Positive variances identify unused funds that can be used to offset negative variances.

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2. Negative variances are created when actual cost for a Work Authorization is more than the budgeted amount. Negative variances identify where additional funds are needed. Unused funds from positive variances can be used to offset these negative variances.

3. Net variances for the Contract are used to determine the current status of the Owner's Construction Budget.

    a. A net positive variance for the Contract represents a savings to the Owner. A final Contract Amendment will be issued at the completion of the Contract (Final Payment) to adjust the GMP to the actual amount of Contract costs.

    b. A net negative variance for the Contract represents the amount for which the CMAR is at risk, and no additional compensation will be made to the CMAR.

11.05 Options for Costs Exceeding the Owner's Budget

A. The Guaranteed Maximum Price resulting from the tabulation of cost for self-performed CMAR Work, bids for Work by Subcontractors and Suppliers, Construction Support Costs, CMAR Contingency Allowances and CMAR Fee cannot exceed the Owner's Construction Budget. The Owner may exercise any of the following options at the sole discretion of the Owner if the proposed Guaranteed Maximum Price exceeds the Owner's Construction Budget:

    1. Approve an increase in the Owner's Construction Budget in writing.

    2. Authorize rebidding or renegotiation for some or all parts of the Project within a reasonable time without an increase in the Guaranteed Maximum Price.

    3. Cooperate in the revision of the scope of the Project to reduce the actual cost of construction to the Owner's Construction Budget.

    4. Abandon the Project, in whole or in part, and terminate this Contract in accordance with applicable termination for convenience provisions.

B. If Owner selects the option described in Paragraph 6.05.A.1, CMAR shall proceed with performance of the Work, and provide CMAR Services as described in these Contract Documents without additional compensation for Procurement Services. Other fees and expenses related to the Cost of Work will be adjusted in accordance with the revised Cost of Work.

C. If Owner selects the option described in Paragraph 6.05.A.2, Owner and CMAR shall proceed with rebidding or renegotiation of some or all parts of the Project. The OPT will work with CMAR to determine if rebidding or restructuring Work Packages is likely to lead to lower bid prices; if so determined, CMAR will rebid selected original Work Packages or restructured Work Packages identified as having the potential to reduce the overall cost of construction to the Owner's Construction Budget. CMAR will advise the OPT of the likely impact to the schedule resulting from rebidding Work Packages. CMAR will provide CMAR Services for rebidding these Work Packages without additional compensation.

D. If Owner selects the option described in Paragraph 6.05.A.3, CMAR shall assist the OPT in studies to revise the scope of the Project to bring the Project cost within the Owner's Construction Budget. CMAR will provide research and cost estimates to evaluate the potential cost savings of each proposed change in scope for Work Packages and advise the OPT of the likely impact to the schedule resulting from rebidding Work Packages and

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changes in Contract Times that will result from the changed Work Packages. CMAR will provide CMAR Services for consultation in modifying the Project scope and rebidding these Work Packages without additional compensation.

E. CMAR shall revise the project schedule to incorporate delays caused by actions taken to bring the Project within the Owner's Construction Budget.

11.06 Conversion of Cost of Work to a Lump Sum Amount

A. If Owner and CMAR mutually agree, compensation for all Work on the Project, or for any Work Authorization, may be converted to a lump sum (stipulated amount). If compensation for all Work on the Project is converted to a lump sum amount, this lump sum amount will include costs for Construction Support Cost, Cost of the Work, the CMAR Fee, and all other costs associated with the Contract, all as if bid as a lump sum amount. CMAR will no longer have access to CMAR Contingency Allowance funds and bears all risk associated with delivering the Work for the lump sum amount.

B. If a Work Authorization is converted to a lump sum amount, this lump sum amount will include costs for Cost of the Work, the CMAR Fee, and all other costs associated with the Work Authorization, all as if bid as a lump sum amount; provided, however, that Construction Support Costs will continue to be compensated per Paragraph 5.05.

C. The following will continue to apply for conversions to lump sum covered in Paragraphs B and C:

1. The Cost of the Work provisions in Article 6 will continue to apply to pricing certain Change Orders and other similar matters, as set forth in Paragraph 6.01.A.2.

2. Construction Support Costs Extended Rate provisions of Paragraph 5.04 will continue to apply for Change Orders.

3. Owner's Contingency will continue to be available per Article 12.

ARTICLE 12—OWNER'S CONTINGENCY ALLOWANCE

12.01 Owner's Contingency Allowance

A. Owner's Contingency Allowance is used at the sole discretion of the Owner to cover unforeseen costs, Owner-directed changes in the scope of the Work, or any other unanticipated change in the Contract Price. These funds can only be accessed by the CMAR when and to the specific extent authorized by the Owner.

B. The Owner's Contingency Allowance is to be included in the Contract Amount awarded but is not part of the CMAR's GMP.

ARTICLE 13—PAYMENT PROCEDURES

13.01 Submittal and Processing of Payments

A. Billing and payment for CMAR Services are addressed in Article 3. The provisions in this Article 13 pertain to billing and payment for the Work.

B. CMAR shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will indicate the amount of the CMAR Fee then

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payable. Applications for Payment will be processed by Owner's Advisor as provided in the General Conditions.

13.02 Progress Payments; Retainage

A. Owner shall make progress payments on the basis of CMAR's Applications for Payment as recommended by Owner's Advisor on or about the **5th** day of each month during construction as provided in Article 13, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract.

B. Progress payments on account of the Cost of the Work will be made for each Work Authorization.

1. Prior to Substantial Completion, for each Work Authorization 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 (95%)** of the value of the Work completed, with the balance being retainage.

1) ~~If 50 percent or more of the Work under a Work Authorization has been completed, as determined by Owner's Advisor, and if the character and progress of the Work have been satisfactory to Owner, Owner's Advisor, and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner, Owner's Advisor, and Engineer, there will be no additional retainage; and~~

b. **95 percent (95%)** of cost of materials and equipment not incorporated in the Work, with the balance being retainage.

2. Upon completion of the Work under a Work Authorization, including completion of all punch list items, Owner shall pay an amount sufficient to increase total payments to CMAR to **100 percent (100%)** of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less **200 percent (200%)** of Owner's Advisor'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.

13.03 Final Payment

A. Upon final completion and acceptance of the Work, Owner shall pay the remainder of the Contract Price in accordance with Article 15 of the General Conditions.

13.04 Consent of Surety

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

13.05 Interest

A. All amounts not paid when due will bear interest at the rate of **[number]** percent per annum.

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ARTICLE 14—DOCUMENTATION AND AUDIT

14.01 Documentation

A. Whenever the Cost of the Work for any purpose is to be determined pursuant to this Contract, CMAR and pertinent Subcontractors will establish and maintain records of the costs in accordance with generally accepted accounting practices.

B. CMAR will provide documentation of all Costs of the Work with the Application for Payment as directed by the Owner's Advisor.

14.02 Audit

A. Subject to prior written notice, Owner will be afforded reasonable access, during normal business hours, to all CMAR's accounts, records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to the Cost of the Work and the CMAR Fee. CMAR shall preserve all such documents for a period of three years after the final payment by Owner. Subcontractors performing Work on a Cost of the Work basis will afford such access to Owner, and preserve such documents, to the same extent required of CMAR.

ARTICLE 15—CONTRACT TIMES

15.01 ~~Contract Times—Dates~~

A. ~~The Work will be substantially complete on or before **[date]**, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before **[date]**.~~

B. ~~The dates by which the Work will be substantially complete, and by which the Work will be completed and ready for final payment, will be set out in a Contract Amendment and comply with provisions of Article 15.~~

15.02 Contract Times—Days

A. The Work will be substantially complete within (an amount of days to be determined "TBD") 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 (an amount of days to be determined "TBD") after the date when the Contract Times commence to run.

B. ~~The number of days in which the Work will be substantially complete, and in which the Work will be completed and ready for final payment, will be set out in a Contract Amendment and comply with provisions of Article 15. Completion dates for specified portions of the Work, if applicable, may be set out in Work Authorizations or Change Orders.~~

15.03 Liquidated Damages

A. CMAR and Owner recognize that 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 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

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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 CMAR agree that as liquidated damages for delay, but not as a penalty:

1. Substantial Completion–CMAR shall pay Owner $**[to be determined ("TBD")]** 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 CMAR 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, CMAR shall pay Owner $**[number]** for each day that expires after such time until the Work is completed and ready for final payment.~~

3. ~~Milestones CMAR shall pay Owner the amount specified in Paragraph 15.05 for each day that expires after the time, as duly adjusted pursuant to the Contract, specified for achievement of each Milestone, until that Milestone is achieved.~~

4. If Owner recovers liquidated damages for a delay in completion of the Project or a specified Milestone by CMAR, 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.

B. ~~Bonus: CMAR 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 CMAR agree that as a bonus for early completion, Owner shall pay CMAR $**[number]** 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 $**[number]**.~~

15.04 Special Damages

A. ~~CMAR shall reimburse Owner (1) for any fines or penalties imposed on Owner as a direct result of CMAR's failure to attain Substantial Completion according to the Contract Times, and (2) for the actual costs reasonably incurred by Owner for construction management, engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 15.02 for Substantial Completion, as duly adjusted pursuant to the Contract, until the Work is substantially complete.~~

B. ~~After CMAR achieves Substantial Completion, if CMAR shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, CMAR shall reimburse Owner for the actual costs reasonably incurred by Owner for construction management, engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 15.02 for Work to be completed and ready for final payment, as duly adjusted pursuant to the Contract, until the Work is completed and ready for final payment.~~

C. ~~The special damages imposed in this Paragraph are supplemental to any liquidated damages for delayed completion established in this Agreement.~~

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15.05 ~~Milestones and Associated Damages~~

A. ~~Work required to be complete to meet the following Milestone(s) will be included in a separate Work Authorization.~~

B. ~~Milestone 1 – **[Describe the Milestone in General Terms. This description may be included in a Work Authorization as the Project and associated Work Package are developed as the design progresses]**.~~

1. ~~This Milestone must be substantially completed on or before **[Date] [{Number of Days} from the effective date of this Work Authorization]**.~~

2. ~~The Milestone will be considered substantially complete when the following requirements have been met:~~

a. ~~**[Describe the work that must be completed or describe work that can remain unfinished for the Work Authorization Milestone to be considered substantially complete]**.~~

3. ~~CMAR shall pay Owner $**[number]** for each day that expires after the time, as duly adjusted pursuant to the Contract, specified above for Substantial Completion of this Work Authorization, until the Work is substantially complete.~~

C. ~~Milestone 2 – **[Describe the Milestone in General Terms. This description may be included in a Work Authorization as the Project and associated Work Package are developed as the design progresses]**.~~

1. ~~This Milestone must be substantially completed on or before **[Date] [{Number of Days} from the effective date of this Work Authorization]**.~~

2. ~~The Milestone will be considered substantially complete when the following requirements have been met:~~

a. ~~**[Describe the work that must be completed or describe work that can remain unfinished for the Work Authorization Milestone to be considered substantially complete]**.~~

3. ~~CMAR shall pay Owner $**[number]** for each day that expires after the time, as duly adjusted pursuant to the Contract, specified above for Substantial Completion of this Work Authorization, until the Work is substantially complete.~~

ARTICLE 16—CONTRACT DOCUMENTS

16.01 Contents

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

1. This Agreement.

2. General Conditions.

3. Supplementary Conditions.

4. General Requirements (Division 01 of the Specifications.)

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5. Drawings and Specifications completed as of the Effective Date of the Contract: **[City of Port Orange RFSQ 24-03 Construction of Force & Water Mains (River Crossing) 60% Construction Documents].**
6. Exhibits to this Agreement (enumerated as follows):
    a. Exhibit A, Scope of CMAR's Services;
    b. Exhibit B, Basis of Compensation; and
    c. **[List other exhibits, if any – we will have no additional exhibits]**.
7. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
    a. Contract Amendments;
    b. Executed Work Authorizations, including any exhibits identified as Drawings, Specifications, or other Contract Documents;
    c. Work Authorization Modifications;
        1) Work Change Directives;
        2) Change Orders; and
        3) Field Orders.
    d. Performance and Payment Bonds; and
    e. Warranty Bonds, if any.

B. There are no Contract Documents other than those listed above in this Article 16.

C. The Contract Documents may only be amended, modified, or supplemented as provided in the Contract.

ARTICLE 17—REPRESENTATIONS, CERTIFICATIONS, AND STIPULATIONS

17.01 CMAR's Representations

A. —To induce Owner to enter into this Contract, CMAR makes the following representations:

1. CMAR has examined and carefully studied the Contract Documents, including Addenda.
2. CMAR 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. CMAR is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.
4. CMAR has carefully studied the reports, if any, of explorations and tests of subsurface conditions at or adjacent to the Site and the drawings, if any, of physical conditions relating to existing surface or subsurface structures at the Site that have been

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identified in the Supplementary Conditions, with respect to the Technical Data in such reports and drawings.

5. CMAR has carefully studied the reports and drawings, if any, 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. CMAR has considered the information known to CMAR 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 **[Proposal]** Documents; with respect to the effect of such information, observations, on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by CMAR; and (c) CMAR's safety precautions and programs.

7. Based on the information and observations referred to in the preceding paragraph, CMAR agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Guaranteed Maximum Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.

8. CMAR 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. CMAR has given Owner's Advisor written notice of all conflicts, errors, ambiguities, or discrepancies that CMAR has discovered in the Contract Documents, and of discrepancies between Site conditions and the Contract Documents, and the written resolution thereof by Owner's Advisor is acceptable to CMAR.

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. CMAR's entry into this Contract constitutes an incontrovertible representation by CMAR that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

17.02 CMAR's Certifications

A. CMAR 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 17.02:

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 proposal process or in the Contract execution;

2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the Proposal process or the execution of the Contract to the detriment of Owner, (b) to establish proposal Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;

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3. “collusive practice” means a scheme or arrangement between two or more Proposers, with or without the knowledge of Owner, a purpose of which is to establish proposal 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 proposal process or affect the execution of the Contract.

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

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This Agreement will be effective on **_____, 2025**, which is the Effective Date of the Contract.

Owner:	CMAR:
City of Port Orange	Wharton-Smith, Inc.
(typed or printed name of organization)	*(typed or printed name of organization)*
By:	By:
(individual's signature)	*(individual's signature)*
Date:	Date:
(date signed)	*(date signed)*
Name: Scott Stiltner	Name: Timothy S. Smith
(typed or printed)	*(typed or printed)*
Title: Mayor	Title: President
(typed or printed)	*(typed or printed)*
	*(If **[Type of Entity]** is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)*
Attest:	Attest:
(individual's signature)	*(individual's signature)*
Title:	Title:
(typed or printed)	*(typed or printed)*
Address for giving notices:	Address for giving notices:
Attention: City Manager	750 Monroe Road
1000 City Center Circle	Sanford, Florida 32771
Port Orange, Florida 32129	
Designated Representative:	Designated Representative:
Name: Junos Reed	Name:
(typed or printed)	*(typed or printed)*
Title: City Engineer	Title:
(typed or printed)	*(typed or printed)*
Address:	Address:
1000 City Center Circle	750 Monroe Road
Port Orange, Florida 32129	Sanford, Florida 32771
Phone: (386) 506-5751	Phone: (407) 321-8410
Email: jureed@port-orange.org	Email: phewitt@whartonsmith.com
	License No.:
	(where applicable)
	State:

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EXHIBIT A–SCOPE OF CMAR SERVICES

ARTICLE 1—BASIC PRECONSTRUCTION SERVICES

1.01 Project Management

A. Participate in Project Meetings

1. Participate in Project kick-off meeting. Be prepared to discuss CMAR's team and organizations structure, assignments for responsibilities and Teams CMAR's plan for implementation of Preconstruction Services.

2. Participate in periodic meetings with Owner, Owner's Advisor, and Engineer (collectively, Owner's Project Team or OPT) to review progress, coordinate efforts, and discuss planned activities for the next period. It is anticipated that these progress meetings will occur **[monthly]**.

B. Provide administration of Agreement for CMAR Preconstruction Services, including Applications for Payment, progress reporting, management of CMAR staff, schedule for services, and deliverables.

1.02 Review of Preliminary Design Report

A. As a priority first task, review Engineer's Preliminary Design Report as soon as it is available.

1. Provide input and advice, according to the general requirements of Exhibit A Paragraph 1.03.D below, regarding the Preliminary Design Report's content concerning coordination of utilities work (both above-ground utilities and Underground Facilities), Underground Facilities Procedure, and mitigation of utilities conflicts, for Engineer's use in the Final Design Phase of Engineer's services.

2. Recommend strategies for the division of the Work under design into Work Packages, and for phased design and authorization of construction of such Work Packages (fast tracking). Work collaboratively with the OPT to finalize the number of Work Packages and their approximate scope, and the schedule for preparation, authorization, and completion of such Work Packages.

1.03 Design-Related Preconstruction Services

A. Attend periodic design meetings to provide consultation on aspects of the design that will impact the budget, schedule, and quality of the completed Work.

B. Advise, assist, and provide recommendations on all aspects of the planning and design of the Work. Consult with the OPT regarding Site use and improvements, and the selection of materials, building systems, and equipment.

C. Provide recommendations: on construction feasibility; regarding actions designed to minimize adverse effects of labor or material shortages; on time requirements for procurement, installation, and construction completion; and on factors related to construction cost including estimates of alternative designs or materials, preliminary budgets, and possible opportunities for savings.

D. Review in-progress design documents, including the documents variously described as preliminary design documents, preliminary design report, design development documents,

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and the interim final drafts of the Drawings and Specifications, and provide input and advice on constructability, materials and equipment selections, and availability. Provide timely suggestions for modifications to improve:

1. Ability to bid the Work:
    a. Identify Work elements that may be difficult to price as presented in the design documents. Provide suggestions to reduce risk and to obtain better pricing from Subcontractors and Suppliers.
    b. Provide suggestions on Work Packages to improve biddability, however, Engineer will not subdivide work into Work Packages for specific trades.
    c. Determine that specified products are readily available and notify Engineer if equal or substitute materials might be available.
2. Constructability, including sequencing or coordination issues:
    a. Adequacy of details for construction;
    b. Potential conflicts during construction;
    c. Feasibility of construction;
    d. Construction sequencing;
    e. Ability to coordinate among Subcontractors and Suppliers; and
    f. Coordination between Contract Documents.
3. Operability:
    a. Ability to minimize disruptions to existing operations;
    b. Ability to complete construction connections to existing facilities or utilities;
    c. Modifications to facilitate initial start-up and/or performance testing; and
    d. Ability of Owner to operate/maintain the facility when completed.
4. Possible use of patented, licensed, or copyrighted products.
5. Requirements for Subcontractor and equipment and materials procurement.
6. Completeness, consistency, and clarity.

E. Subsurface conditions and Underground Facilities
1. Review information made available by Owner.
    a. Review information pertaining to subsurface or physical conditions at the Site. Inform Owner's Advisor of additional examinations, investigations, explorations, testing, or studies (Supplemental Investigations) of subsurface or physical conditions at the Site that CMAR concludes would be beneficial if conducted prior to commencement of construction. See General Conditions Paragraph 5.03.E.
    b. Review information pertaining to Underground Facilities. Collaborate with the Engineer to improve the accuracy and completeness of information regarding

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Underground Facilities that Engineer incorporates into Work Authorizations in accordance with General Conditions Paragraph 5.05.

2. Owner's Advisor will issue a Work Authorization for any necessary potholing, exploratory excavations, or other field investigations related to Paragraph E if necessary.

F. Research potential substitutes, furnish data and prepare a Preconstruction Substitute Request prior to a Work Authorization requesting the Owner's Advisor to authorize the use of other items of equipment or material in accordance with General Conditions Paragraph 7.09.

G. Provide review comments in writing using the processes or procedures prescribed by the Owner's Advisor. Verify that the Project design can be executed within the Owner's Construction Budget, within the allotted Contract Times, and with available labor, equipment, and materials.

H. Report to Owner's Advisor and Engineer any elements of the design that appear to be in error or appear to require engineering review and possible resulting modification.

I. The CMAR is not responsible for design of the Project. The CMAR does not control the project design or contents of the Contract Documents and does not assume responsibility or liability for the project design by performing these reviews. The CMAR's review of the project design and Contract Documents and providing recommendations are only advisory to the OPT.

1.04 Construction Management Plan and Implementation

A. Provide and implement a written Construction Management Plan that incorporates the following elements:

1. CMAR's organization for the Construction Phase of the project, including assigned responsibilities and level of authority within Project management;

2. Communication plan, including plans for distribution of documents, implementation of Action Item and Decision registers, frequency of reporting and project controls;

3. Document management plan that incorporates Communications Plan and contractual Electronic Data Protocols;

4. Construction contract administration;

5. Cost management;

6. Time management;

7. Quality management;

8. Risk management;

9. Safety management;

10. Site management and environmental controls;

11. Regulatory requirements and permits;

12. Procurement Strategy Plan. **[; and]**

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13. ~~**[Diverse Business Program Implementation;]**~~

14. **[Start up and commissioning program.]**

B. Work with the OPT to incorporate requirements of the General Conditions and General Requirements (Division 01 of the Specifications) into the plan. Reference provisions in the General Conditions and General Requirements as appropriate. Prepare a draft plan and submit for review and comment by the OPT. Respond to comments and incorporate changes suggested by review comments as appropriate.

1.05 Construction Contract Administration

A. Work with the OPT to incorporate requirements of the General Conditions and General Requirements into administration of the Contract. Review the Owner's Construction Management Plan and suggest changes as appropriate.

B. Communications

1. Assist the Owner's Advisor with planning Project meetings, participate in these meetings and provide documentation as requested by the Owner's Advisor.

2. Plan, schedule, and document meetings held with Subcontractors and Suppliers. Include the members of the OPT as appropriate.

1.06 Cost Management

A. Provide a preliminary evaluation of the Owner's program and budget requirements to determine that CMAR will be able to construct the facilities described in that program within the Owner's Construction Budget (Budget) using conceptual estimating techniques. Discuss this initial review of the Budget with the OPT.

B. Work with OA to update the Budget with supporting data for review by the OPT at the following intervals:

1. Completion of preliminary design documents by the Engineer and approval by the Owner.

2. Completion of design development documents by the Engineer and approval by the Owner.

3. At appropriate intervals agreed to by the OPT and CMAR during the preparation of the Construction Documents to determine that changes to the design can be constructed within the Budget.

C. Assist OA in preparing an updated line-item Budget based on the CMAR's proposed Procurement Strategy Plan prepared per Paragraph 1.13. This Budget is to include a line item for each anticipated Work Package, as well as line items for Construction Support Costs, the CMAR Fee, and CMAR Contingency Allowances and other costs, if any, that will be incorporated into the GMP for the Project.

D. Assess current construction market to determine risk associated with the Budget. As an example, volatility in the cost of selected materials or equipment may drive cost above the Budget. Identify areas where costs may be lower than original estimates and if cost savings may be used to balance the Budget. Report the cost of various design and construction alternatives to the Owner, including the CMAR's assumptions in preparing its analysis, a

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variance analysis between budget and preliminary Budgets, and recommendations for any adjustments to the Budget. Work with the OPT to consider costs relating to efficiency, usable life, maintenance, energy, and operation as part of the cost analysis.

E. Notify the Owner and the Owner's Advisor immediately if any estimated construction cost will cause the projected GMP to exceed the Budget. Make appropriate recommendations to the OPT if cost projections exceed the Budget.

F. Provide the Budget-related services set out in Paragraph 11.04 of the Agreement.

1.07 Time Management

A. Provide a preliminary master schedule for the Contract. Incorporate the Owner's Advisor's preliminary schedule and the schedule for design into the preliminary master schedule. Include allowances for reasonable periods required for the review and approval of items by the OPT and for approvals of governmental authorities having jurisdiction over the Project. Prepare the preliminary master schedule in a way that the detailed construction schedule can be incorporated into the master schedule as the Project becomes better defined.

B. Identify critical design Milestones that must be met to keep the Project on schedule. Coordinate and integrate the preliminary project schedule with the services and activities of the OPT and CMAR. Update the preliminary project schedule as design develops to indicate proposed activity sequences and durations, Milestone dates for receipt and approval of pertinent information, submittal of a GMP Proposal, preparation and processing of Shop Drawings and Samples, delivery of materials or equipment requiring long-lead time procurement, and the Owner's occupancy requirements.

C. Make appropriate recommendations to the Owner and Owner's Advisor if preliminary project schedule updates indicate that previously approved schedules may not meet Contract Time requirements.

D. Revise the master schedule after the GMP is established.

1.08 Quality Management

A. Prepare CMAR's Quality Control Plan (CQCP) in accordance with the General Requirements.

1. Describe the quality control organization and lines of authority. Quality control plan is to identify the quality control manager and other key individuals involved in CMAR's quality control effort. Provide the services of a dedicated quality control manager unless Owner's Advisor determines that quality control manager may combine quality control duties with other responsibilities. If quality control manager is to serve in other capacities, identify those other responsibilities and the percentage of time spent in each role. Describe the qualifications of the quality control manager (in resume format) to demonstrate experience with quality management activities and performance on successful projects.

2. Provide the name and qualifications, in resume format, of other persons assigned a quality control function. Define the roles and responsibilities and authorities for each person and the types of Work or portions of the work for which each person is responsible.

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3. Describe CMAR's approach to managing quality during construction. Describe how CMAR will integrate quality control procedures into the execution of the Work, provide testing and inspection required to control the quality of the Work in progress and verification or acceptance testing as required by the Contract Documents and CQCP.

4. Include a testing plan with details of tests to be provided. Designate the organization (Owner, Owner's Advisor, CMAR, or Testing Agency) responsible for each type of testing. Coordinate CQCP Testing Plan with testing to be provided by the Owner.

5. Describe CMAR approach for managing defective Work, including notification and documentation procedures, development and implementation of corrective action plans and documentation that record corrective action has been successful in producing Work that complies with the Contract Documents.

6. Describe the approach for scheduling, reviewing, certifying, and managing documentation provided by Subcontractors and Suppliers. Include the approach for managing the quality of submittals, documentation procedures, and process for tracking and keeping documentation up to date.

1.09 Risk Management

A. Analyze construction risks to assess risk impact and develop appropriate risk management strategies to minimize associated costs.

B. Identify additional information that will help with risk assessment.

C. Provide recommendations for appropriate allocation of construction risks.

D. Review possible impacts associated with the use of patented, licensed, or copyrighted products.

E. Review legal requirements for subcontractor and equipment procurement for risk impacts.

F. Suggest procurement strategies to minimize risk.

1.10 Safety Management

A. Provide a project-specific Health and Safety Plan for the Contract to address the safety concerns associated with construction activities, including potential hazards, that complies with applicable Laws and Regulations. Write the manual with the ability to readily update the plan to incorporate needed revisions on a regular basis.

B. The Health and Safety Plan is to include at least the following information:

1. Background information identifying the CMAR, Project description, and location;

2. Management accountability structure with authority to implement safety plans, stop work, or make other safety-related decisions;

3. Role of safety representative (see General Conditions, Paragraph 7.16);

4. Provide descriptions of qualifications and certifications related to the performance of safety representatives;

5. Objectives of the Health and Safety Plan;

6. Administration and enforcement of the Health and Safety Plan;

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7. Applicability of the Health and Safety Plan to various personnel categories, including the workforce, visitors, and members of the OPT;
8. List of conditions at the Site that may pose a hazard to anyone, hazard types, and those potentially exposed;
9. Procedures for first aid and medical attention;
10. Emergency notifications procedures based on hazard type which specify the entity to be notified for each situation;
11. Site access control requirements to prohibit unauthorized persons from entering the Site;
12. Orientation and training requirements for workers, visitors, and members of the OPT;
13. Hazard communications and awareness plan;
14. Required safety certifications for each type of work;
15. CMAR's safety training program and effort to create and maintain a culture of safety;
16. CMAR's written safety guidelines for project-specific issues as defined by Laws and Regulations;
17. Plan for conducting safety inspection and the audit frequency and schedule;
18. Process for conducting a Job Hazard Analysis for work activities and implementing countermeasures to ensure safety, including checklist specific the Project and type of work; and
19. Accident / incident reporting procedures including monthly reporting.

C. Incorporate Owner's site safety requirements as appropriate.

1.11 Site Management and Environmental Controls

A. Develop a plan for managing the Site during construction. The plan should address, at a minimum, management of the following:

1. Office space for CMAR, Subcontractors and if required by Contract, the OPT;
2. Water, sanitation, electrical, internet, and other utilities for CMAR's and OPT's operations at the Site;
3. Storage facilities, parking, and construction equipment storage and maintenance;
4. Protection of existing structures, trees and other landscaping, buildings, utilities, and Underground Facilities;
5. Site security, site safety, and emergency responses;
6. Temporary roads, temporary signage, barricades, fencing, and other devices to manage traffic to and within the Site, including provisions for delivery of materials and equipment, and maintenance during construction;
7. Environmental conditions including storm water management, pollution control, care of water, soil management, and other temporary controls and their removal when no longer required;

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8. Reference data and control points; and

9. Cleaning during construction and containment and disposal of waste materials.

B. Review plan with Owner's Advisor and Owner to identify potential conflicts with operating other facilities, on-going and anticipated construction by other entities. Revise if necessary.

1.12 Regulatory Requirements and Permits

A. Review regulatory requirements and permits required for construction. Develop a written plan for meeting applicable Laws and Regulations and obtaining permits. List the permit requirements, entities responsible for obtaining permits, documentation required for permits and cost for obtaining and complying with these requirements.

B. Incorporate the associated cost into the Cost of Work and inform the Owner so these can be incorporated into the Owner's Construction Budget, or the Owner's Construction Budget may be adjusted as required.

C. Incorporate time for obtaining permits into the project schedule to ensure permits can be obtained and regulatory requirements met in time for the orderly progression of Work.

1.13 Procurement Strategy Plan

A. Provide input to OPT regarding the current construction market, bidding climate, status of key Subcontractor and Supplier markets, and other local economic conditions.

B. As the design develops, organize the Work into Work Packages that will (1) allow for phased construction that will shorten the overall completion schedule for the Work, (2) encourage price competition by prospective Subcontractors and Suppliers, and (3) enhance the quality and safety of the Work.

C. Develop Subcontractor and Supplier interest in the Project consistent with state Laws and Regulations. Furnish the Owner's Advisor a list of possible Subcontractors and Suppliers, from whom competitive bids will be requested for each principal portion of the Work. Identify preferred providers based on CMAR's previous experience for quality of work, on-time delivery, and ability to complete work within bid amounts. Submission of this list is for information and discussion purposes only and not for prequalification. The review of this list will not require the OPT to investigate the qualifications of proposed Subcontractors and Suppliers, nor does it waive the right of Owner to later object to or reject any proposed Subcontractor or Supplier when bids are considered. CMAR may submit a Change Proposal for any increase in the Guaranteed Maximum Price if this change is made after the GMP has been established.

D. Recommend to the OPT a schedule for procurement of long-lead time items required to meet the project schedule. Assist the OPT with the procurement of these long-lead items by obtaining competitive bids for these items under a separate Work Authorization.

E. Identify critical elements of the Work that may require special procurement processes, such as prequalification of Subcontractors or Suppliers, requirement of certified or prequalified installers, or alternative contracting methods.

F. Advise the Owner of market conditions, bid issues, design issues, or other factors which may have had an impact causing bid prices to be higher than estimated. Discuss

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opportunities for bringing the Project within budget with the Owner and the Owner's Advisor, in consultation with the Engineer to assist with deciding on how to proceed.

ARTICLE 2—ADDITIONAL PRECONSTRUCTION SERVICES

2.01 Diverse Business Enterprise (DBE) Program Implementation

A. Identify potential contracting opportunities for DBE Subcontractors and Suppliers to meet Project DBE participation goals.

B. Identify materials and equipment for which no opportunity for DBE participation exists to assist the Owner in developing realistic DBE participation goals based on available opportunities.

C. Determine the eligible contract costs associated with each proposed Work Package.

D. Propose realistic DBE participation goals for the Project, expressed as a percentage of eligible contract costs, considering the specific subcontracting opportunities identified and the availability of DBE participants for each specific subcontracting opportunity.

E. ~~Determine if Owner's DBE participation goals for the Project, expressed as a percentage of eligible contract costs, is achievable when considering the specific subcontracting opportunities identified and the availability of DBE participants for each specific subcontracting opportunity. Propose the participation goals which are considered to be achievable.~~

F. Promote opportunities for DBE firms to participate in submitting offers for subcontracts. Provide potential Subcontractors and Suppliers with a copy of Owner's DBE policy with bid documents. Make a good faith effort to encourage DBE participation and make potential Subcontractors and Suppliers aware that participation is taken into consideration when awarding contracts.

2.02 Value Engineering Studies

A. Participate in Value Engineering reviews at the level appropriate for the projects at the completion of the first draft of the Final Design Phase documents (approximately 60% completion) to assist in identifying ways to improve value to the owner or reduce the cost for the project. Provide cost estimates to quantify potential cost savings to reduce the overall cost for the Project.

B. Assist OA in conducting a workshop to identify potential changes which could reduce the cost of the Project or increase the value of the Project by more than the cost of the changes. Present selected alternatives for more detailed evaluation. The detailed evaluation will consider cost, ability to implement the changes, technical analysis, and the impact of changes on the Project. Ideas that pass the technical and economic analysis, and merit incorporation into the design of the project, will be presented, in a draft report, as a proposal to the OPT for consideration. Incorporate responses of the OPT in the final report.

C. Review and comment on deliverables which include draft and final value engineering recommendation reports.

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2.03 Start Up and Commissioning Program

A. Provide CMAR's organizational structure for startup and commissioning. Identify the individuals from CMAR, Subcontractors and Suppliers actively involved in the process. Identify testing personnel required for startup, including independent testing agencies. Work with Owner's Advisor to develop a table of roles and responsibilities for CMAR team and the OPT.

B. Develop a written start up and commissioning program consistent with the requirements of the Contract Documents. Write the plan in a way that will allow specific details to be added or information updated as equipment and materials are purchased and delivered.

C. Identify all systems to be included in the startup plan, each item of equipment involved with each system and the interface between each item of equipment and other operating equipment. Identify how each equipment component fits into operations of the completed facility.

D. Identify control systems associated with operating the system or facility, and how each is used to start-up, operate, and shut down its associated system. Identify prerequisite conditions for startup and testing for each system and facility. Identify conditions which would merit termination of startup or testing procedures.

E. Compile a list of all documents required for startup, including Contract Documents, Shop Drawings, operations and maintenance manuals, verification of warranty information, lists of spare parts and their location, and contact information for manufacturer's representatives to be included in startup readiness testing /verification and performance testing.

F. Identify testing required for factory witness testing, startup readiness verification, equipment and performance testing, and functional and performance testing.

G. Provide a preliminary schedule for startup and commissioning plans which can be updated as more detailed information is available. Incorporate this schedule in the master schedule and construction schedule for the Project.

2.04 Surveys and Drawings

A. Provide field surveying required for the preparation of designs and drawings.

B. Provide Geographic Information System (GIS) mapping services or assistance with these services.

C. Prepare property, boundary, and right-of-way surveys; prepare easement and deed descriptions; conduct related title searches and examination of deed records.

2.05 Regulatory Agencies

A. Assist OPT in preparing applications and supporting documents for government grants, loans, or planning advances, and providing data for detailed applications other than those described in **[include reference – N/A]**.

B. Additional meetings with local, state, and federal agencies in excess of those described in **[include reference – N/A]**.

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2.06 Additional Inspections and Quality Management

A. Provide shop, mill, or laboratory inspections of materials and equipment, or field inspections of materials and equipment other than as required as Basic Services.

B. Unscheduled Post-Completion Inspections as required per Paragraph **[include reference]**.

2.07 Studies, Reports, and Investigations

A. Provide geotechnical investigations, studies, and reports.

2.08 Additional Copies of Documents

A. Furnish additional sets of printed documents created by the CMAR.

2.09 **[Other Additional Preconstruction Services]**

A. **[Include other Additional Preconstruction Services here. Add lines to Proposal Exhibit A and Agreement Exhibit B for these items.]**

ARTICLE 3—BASIC PROCUREMENT SERVICES

3.01 Project Management

A. Participate in Project Meetings

1. Participate in kick-off meeting for Procurement Services. Be prepared to discuss changes in CMAR's team and organization structure for Procurement Services, assignments of responsibilities, and CMAR's plan for implementation of Procurement Services.

2. Participate in periodic meetings with the OPT to review progress, coordinate efforts, and discuss planned activities related to procurement. It is anticipated that these progress meetings will occur **[weekly]** at times when procurement activities for Work Packages are underway.

B. Provide administration of Agreement for CMAR Procurement Services, including Applications for Payment, progress reporting, management of CMAR staff, schedule for services, and deliverables.

3.02 Assembling Work Packages

A. Assemble appropriate bid documents for distribution to prospective bidders for Work Packages in accordance with the procurement strategies defined in the Construction Management Plan and Procurement Strategy Plan (see Basic Preconstruction Services).

3.03 Advertise for Bids

A. Publicly advertise each Work Package, soliciting bids from Subcontractors and Suppliers for each Work Package in accordance with the applicable provisions of Laws and Regulations.

B. Maintain a list of all entities that have requested bid documents for each Work Package (planholders) until bids are received. Provide updates of the planholders as required by the Owner's Advisor.

C. Encourage multiple Subcontractors and Suppliers to submit bids on the Work Package so a minimum of three bids are received for each Work Package.

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3.04 Pre-Bid Conferences

A. Conduct a pre-bid conference with prospective Subcontractor and Suppliers to familiarize them with:

1. Bid opportunities for Work Packages;

2. Special requirements of the Contract Documents;

3. Prevailing wage requirements;

4. Equal employment opportunity requirements; and

5. Diverse Business Enterprise requirements, if any.

B. Obtain responses from the Owner's Advisor, in consultation with the Engineer, to all questions at pre-bid conferences requiring a modification to the Contract Documents. Prepare a record of the discussions at the pre-bid conference to assist the Owner's Advisor and Engineer in preparing Addenda as appropriate. Review and comment on Addenda prepared by the Owner's Advisor in consultation with the Engineer to incorporate responses to questions raised during or as a result of the pre-bid conference.

3.05 Addenda

A. Receive draft Addenda prepared by the Owner's Advisor in consultation with the Engineer. Review the draft Addenda for clarity, consistency, and coordination, and provide comments to Owner's Advisor and Engineer. By conducting such reviews and providing comments, CMAR does not assume responsibility or liability, in whole or in part, for all or any part of the Project design or the content of the Contract Documents.

B. Distribute Addenda regarding any changes in the bid process or Contract Documents to all planholders. Require verification from planholders that Addenda have been received.

3.06 Opening Bids

A. Open bids submitted by Subcontractors and Suppliers for all Work Packages at the time and location so indicated in the advertisement for bid or as altered by addendum sent to all planholders.

B. Where allowed by state Laws and Regulations, the CMAR may be able to self-perform portions of the Work. Require sealed bids for all Work Packages which the CMAR proposes to perform with its own resources. The CMAR must submit a sealed bid for any such Work Package to be opened at the same time and in the same manner that other bids for this Work are to be opened. The CMAR will be allowed to self-perform that Work for which the CMAR's bid demonstrates that it will provide the best value in terms of cost, schedule, and quality of Work.

C. Review all bids submitted in the presence of the Owner and the Owner's Advisor in a way that does not disclose the contents of the bid during the selection process to any entity other than the OPT and CMAR.

D. Compare bids received to the line-item budget prepared for the Project prior to the opening of bids. Resolve discrepancies or overlaps in bid packages to eliminate duplications or the omission of elements of the Work that are not included in Construction Support

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Costs. Discuss each bid received with the OPT and recommend which bid received will provide best value for the Owner.

E. Evaluate any substitutions or alternate bids offered by bidders. Owner's Advisor, in consultation with the Engineer, will evaluate the substitutions or alternate bids to determine the technical merit and to determine that the modifications offered are consistent with the intent of the Contract Documents. The Owner, in consultation with the Owner's Advisor and Engineer, will determine if the substitution or alternate is acceptable.

F. The Owner will adjust the Guaranteed Maximum Price (GMP) if the Owner requires the CMAR to contract with a Subcontractor or Supplier different from the entity submitting the bid on which the GMP is based. This adjustment will be made in the GMP or by Change Order if the GMP has already been established by a Work Authorization.

G. In the case of the need to replace a Subcontractor or Supplier under the provisions of the General Conditions Paragraph 7.10.O, Owner may direct the CMAR to obtain competitive bids for this Work if the cost proposed by the CMAR or substitute Subcontractor or Supplier for this Work differs from the line-item estimate by more than 10 percent of the line-item amount. The CMAR will not be required to advertise this Work as required in Paragraph 1.02.

H. Make all bids public after the award of contracts or not later than 7 days after the date of the final selection of bids or proposals.

ARTICLE 4—ADDITIONAL PROCUREMENT SERVICES

4.01 Diverse Business Program Implementation

A. Promote opportunities for DBE firms to participate in submitting offers for subcontracts. Provide potential Subcontractors and Suppliers with a copy of Owner's DBE policy with bid documents. Make a good faith effort to encourage DBE participation and make potential Subcontractors and Suppliers aware that participation is taken into consideration when awarding contracts.

B. Notify Owner if a qualified DBE Subcontractor or Supplier submits a bid but has submitted a higher bid price than a qualified non-DBE Subcontractor or Supplier. Work with the Owner to determine if the subcontract is to be awarded to the higher priced DBE subcontractor. Adjust the GMP accordingly.

4.02 Prequalification of Bidders

A. Prequalify bidders for the Project using the OPT's prequalification process. If the OPT does not have a prequalification process in place for this Project, CMAR will assist the OPT in developing and implementing a prequalification process. Any prequalification of bidders must also be in accordance with applicable state Laws and Regulations.

4.03 Additional Work Packages

A. Providing additional effort to procure Work Packages in addition to the number of Work Packages stipulated in Paragraph 3.02.

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4.04 Regulatory Agencies

A. Preparing applications and supporting documents for government grants, loans, or planning advances, and providing data for detailed applications other than those described in **[include reference – N/A]**.

B. Additional meetings with local, state, and federal agencies in excess of those described in **[include reference – N/A]**.

4.05 Additional Copies of Documents

A. Furnishing additional sets of printed documents.

4.06 **[Other Additional Procurement Services]**

A. **[Include other Additional Procurement Services here. Add lines to Proposal Exhibit A and Agreement Exhibit B for these items]**.

ARTICLE 5—SPECIAL SERVICES

5.01 The scope of services for Special Services, if any, will be the scope set forth in the Contract Amendment(s) establishing and authorizing such Special Services.

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Wharton-Smith, Inc.
CONSTRUCTION GROUP

February 6, 2025

Mr. Junos Reed
City Engineer
City of Port Orange
1000 City Center Circle
Port Orange, FL 32129

Subject: RFSQ #24-03
Force and Water Mains (River Crossing)
CMAR Preconstruction Services Proposal

Dear Mr. Reed:

Wharton-Smith, Inc. offers our proposal to provide CMAR preconstruction services for the Force and Water Mains (River Crossing) project. The general summary for the scope of work includes the following:

- Preconstruction Management, Coordination, and Meetings
- Preliminary Cost Estimates
- Design and Constructability Review
- Value Engineering
- Schedule Development
- Bidding, Procurement, and GMP Development

Our proposed lump sum fee for the preconstruction services: $131,534.00. Additional back-up and detail are provided in the attachments to this letter.

We appreciate the opportunity to provide our services and look forward to working with the City of Port Orange on another successful project.

If you have any questions or comments, please contact me directly.

Regards,

Josh Burns
Project Executive
Wharton-Smith, Inc.

PRECONSTRUCTION PROPOSAL

CITY OF PORT ORANGE
FORCE AND WATER MAINS RIVER CROSSING

PRECONSTRUCTION SCOPE OF SERVICES

The following narrative is to provide detail to Preconstruction Services for the Force and Water Mains River Crossing project.

The duration of the Preconstruction Services is assumed to be approximately 6 months for design and GMP development which is inclusive of 2 months for production and negotiation of the final Guaranteed Maximum Price (GMP). Please note that the 2 months allotted for the GMP does not include the time required for the City's approval and contract amendment.

Generally:

Attend general progress review and coordination meetings with Owner and the project team.

Attend periodic design meetings to provide consultation on aspects of the design and construction that will impact the budget, schedule, and quality of the completed Work.

1. CMAR will work with Owner to develop the optimum scope and quality of Work to meet Owner's budget. Such work will consist of considering options and alternates with scope and quality adjustments as determined by Owner. CMAR will assess cost and schedule impact of these options and alternates.

2. Consult with Owner regarding site use and improvements, and the selection of materials, building systems, and equipment.

3. Provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation, and construction completion; and factors related to construction cost including estimates of alternative designs or materials, preliminary budgets and possible opportunities for savings.

4. Provide recommendations on the construction schedule for opportunities for time savings.

Provide input to the Owner regarding current construction market, bidding climate, status of key Subcontractor and Supplier markets, and other local economic conditions. Develop Subcontractor and Supplier interest in the Work, consistent with Legal Requirements. Furnish Owner a list of suggested Subcontractors and Suppliers, from whom bids will be requested for each principal portion of the Work. Submission of this list is for information and discussion purposes only and not for prequalification.

In conjunction with the Owner, identify the appropriate early work packages including procurement of long-lead time items and equipment and other Work required to meet the schedule for the Owner.

In conjunction with the Owner, identify the appropriate Work packages from the Contract Documents for distribution to prospective bidders for providing all elements of Work not included in the General Conditions. Appropriate Work packages shall mean scopes of work that will maximize the competition for those Work packages. Work packages will also be identified with appropriate scopes of work should the Owner have any goals for involvement of the local and/or small contracting communities.

The following breakdown lists the anticipated tasks and expectations considered when producing the preconstruction proposal. Any work outside of this scope of work that is requested of Wharton-Smith by the Owner, shall be submitted in the form of a 'Request for Quotation' for review and approval prior to such work taking place.

Task 1 Project Coordination

1.1 Project Kickoff Meeting – Wharton-Smith staff will attend one (1) project kickoff meeting with City of Port Orange (Owner) and Kimley-Horn (Engineer).

1.2 Project Team Meetings (Virtual Monthly) – Wharton-Smith staff will facilitate monthly team meetings with City of Port Orange and Kimley-Horn as necessary to review design progress, action items, and other outstanding items.

1.3 Milestone Design Workshops – Wharton-Smith staff will attend two (2) design review workshops with City of Port Orange and Kimley-Horn. These meetings will be workshop style meetings to review drawings and specifications at the 60% and 90% design submittals.

1.4 Site Visits & Investigation – Wharton-Smith will perform site visits to investigate existing conditions, review spatial constraints, evaluate placements of bore pits and staging areas, develop ingress & egress plan during construction. Wharton-Smith will provide final reports of encountered conditions to the City.

1.5 Permitting Meetings & Coordination – In conjunction with the design engineer, Wharton-Smith staff will attend pre-application meetings, coordination meetings, site visits, and assist with the preparation and submittal of required permits.

1.6 Project Management & Administration – Wharton-Smith provides overall project management for the preconstruction phase. This includes budget control, schedule control, quality planning, safety planning, subcontractor management, and coordination with the City and the design consultant.

Task 2 Preliminary Cost Estimates

2.1 60% Cost Estimate – Wharton-Smith preconstruction staff will perform detailed takeoffs (based on drawing concepts) on all construction trades such as site work, HDD, pipe lining, utilities, mechanical, etc. A full cost estimate book will be provided showing all material, labor, and equipment take-offs and any subcontractor cost estimates.

Task 3 Design Review and Value Engineering

3.1 60% Submittal Constructability Review & Value Engineering (VE) – Wharton-Smith will perform detailed design and constructability review to identify changes, conflicts, constructability concerns, spatial concerns, general questions, and overall consistency of the design disciplines (structural, civil, process,

etc.). Value engineering options are provided during this phase and throughout the life cycle of the project.

3.2 90% Submittal Constructability Review & VE – These costs are for the same items outlined in Task 3.1 but for the 90% design documents including specifications and detailed review of all documents to ensure that they are "bid ready".

3.3 100% Submittal / Conformed Documents Review – These costs are for the same items outlined in Task 3.1 but include final review of all documents to ensure that they are conformed and ready for construction.

CMAR shall review in-progress design documents, including at a minimum the documents generally described above in 3.1 through 3.3 and provide input and advice to Owner on constructability, materials and equipment selections, and availability. Provide timely suggestions for modifications to improve:

- Constructability, including sequencing or coordination issues, to enable Work to be completed with a minimum of RFI's and change orders.
- Recommend potential vendors and manufacturers for incorporation into the design.
- Adequacy of details for construction.
- Potential conflicts during construction.
- Ability to coordinate among Subcontractors and Suppliers.
- Coordination between Contract Documents.
- Operability.
- Ability to minimize disruptions to existing operations.
- Ability to complete construction connections to existing facilities or utilities.
- Modifications to facilitative commissioning and start-up and/or performance testing.
- Ability of Owner to operate/maintain the Work in a safe, time and cost-efficient manner when completed.

Task 4 CPM Master Schedule

4.1 Schedule Development and Phasing – At the 60% design phase, Wharton-Smith will develop a baseline Critical Path Method (CPM) schedule using Primavera P6 software based on available information (and providing reasonable allowances for Owner review time and time for permits and approvals from governmental agencies). The schedule will be broken down by phase (design/permitting, procurement, construction, and closeout) and by structure. A detailed schedule sequence will be provided for each structure. All portions of the project will be interrelated by schedule logic so that a true "critical path" is easily identifiable. This schedule will be updated as the project progresses.

4.2 Review and Update During Design – The schedule developed in Task 4.1 is modified based on the 90% design documents and construction sequencing is determined.

4.3 Final Schedule Update at GMP – The schedule developed in Task 4.2 is modified based on the GMP design documents and final construction sequencing is determined. This schedule shall serve as the basis for General Condition's costs in the GMP as well as the contract time required for the duration of construction.

Task 5 Bidding, Procurement, and GMP

5.1 GMP Development – Wharton-Smith will identify and assemble appropriate work packages from GMP design documents to solicit prospective subcontractor and supplier proposals for providing all elements

of Work not included in the General Conditions. Work packages will be assembled with appropriate scopes of work should the Owner have any goals for involvement of the local and/or small contracting community. A selected bidders list will be developed and evaluated with the City prior to the bidding phase. Wharton-Smith preconstruction staff will perform detailed takeoffs (based on the GMP design documents) for all self-perform work and facilitate all bidding efforts. A full cost estimate book will be provided showing all material, labor, and equipment take-offs and any subcontractor/supplier cost proposals. This estimate will be submitted as the GMP Proposal for the work.

5.2 Pre-Bid Site Visits – Wharton-Smith will host, coordinate, and manage a pre-bid site visit for all potential bidders for the subcontract and purchase order work packages. Wharton-Smith will take notes and answer questions. Clarifications/addenda will be issued to bidding parties as needed based on the formal bid questions that are received.

5.3 Receive Bids – Wharton-Smith will receive bids throughout the course of an entire day. The bid times may be staggered to ensure our ability to answer questions or provide direction up to the last minute.

5.4 Review Bids and Recommend Award – All of the subcontractor and purchase order work package bids are reviewed for completeness, responsiveness, exceptions, clarifications, and deviations from the contract documents. Value engineering ideas and schedule commitments will also be evaluated. Wharton-Smith will provide a bid tabulation worksheet and make a recommendation for package award based on the best interest of the City. Final decision is made by Owner.

5.5 Risk Management Plans – Wharton-Smith staff will analyze design and construction risks to assess risk impact and develop risk management strategies in efforts to minimize associated costs and schedule impacts. Wharton-Smith will provide recommendations for appropriate budget allocation of these design and construction risks at each design milestone.

5.6 Final GMP Assembly – All documents that comprise the GMP are assembled into a single tabbed and searchable binder/pdf document. This includes all schedules, bid documents, subcontractor and supplier bids, Wharton-Smith self-perform cost estimates, other backup quotes, general conditions breakdowns, value engineering logs, contingencies and allowances, and other GMP relevant documents that were considered in creation of the GMP.

Task 6 Allowances

6.1 HDD Design Review & Cost Estimates – A $10,000 allowance has been included in our scope for HDD design reviews and cost estimates. Subcontractor selection for these is TBD. Any unused allowance will go back to the City.

Fee Summary: See attached fee summary.

OWNER: **CITY OF PORT ORANGE**
PROJECT: **FORCE AND WATER MAINS RIVER CROSSING**
ENGINEER **KIMLEY-HORN**
CURRENT DESIGN STATUS: **60%**

				OFFICE & FIELD MANAGEMENT STAFF												ESTIMATING & SUPPORT STAFF								WHARTON-SMITH PERSONNEL				SUBCONTRACTOR		
				Principal In Charge		Preconstruction Director		Preconstruction Manager		Senior Project Manager		Senior Superintendent		Administrative Assistant		Director of Estimating		Speciality Estimators		Document Specialist		Project Accountant								
					$170.00		$170.00		$165.00		$165.00	Rate	$165.00	Rate	$93.00	Rate	$179.00	Rate	$154.00	Rate	$85.00	Rate	$122.00							
ITEM	TASK	QTY	UNIT	HR	$	HR	$	HR	$	HR	$	HR	$	HR	$	HR	$	HR	$	HR	$	HR	0	HR's	LABOR COSTS	MISC. COSTS (PRO-RATED)	SUBTOTAL	SUB	COST	$ TOTALS
TASK 1	**PROJECT COORDINATION**																													
1.1	PROJECT KICKOFF MEETING	1	EA		0	2	340	4	660	2	330		0	2	186		0		0		0		0	10	1,516	25	1,541			1,541
1.2	PROJECT TEAM MEETINGS (VIRTUAL MONTHLY)	6	EA		0	3	510	6	990	6	990		0		0		0		0		0		0	15	2,490	37	2,527		-	2,527
1.3	MILESTONE DESIGN WORKSHOPS	2	EA		0	4	680	8	1320	4	660	4	660		0		0		0		0		0	20	3,320	49	3,369		-	3,369
1.4	SITE VISITS & INVESTIGATION	1	EA		0		0	24	3960	24	3960	24	3960		0		0		0		0		0	72	11,880	177	12,057		-	12,057
1.5	PERMITTING MEETINGS & COORDINATION	1	LS		0		0	4	660		0		0	4	372		0		0		0		0	8	1,032	20	1,052		-	1,052
1.6	PRECON PROJECT MANAGEMENT & ADMINISTRATION	1	LS	8	1360	8	1360	40	6600	20	3300		0	8	744		0		0	8	680	8	976	100	15,020	246	15,266		-	15,266
	SUBTOTALS			**8**	**1360**	**17**	**2890**	**86**	**14190**	**56**	**9240**	**28**	**4620**	**14**	**1302**	**0**	**0**	**0**	**0**	**8**	**680**	**8**	**976**	**225**	**35,258**	**554**	**35,812**		**-**	**35,812**
TASK 2	**PRELIMINARY COST ESTIMATES**																													
2.1	60% COST ESTIMATE	1	EA	2	340	2	330	8	1320	4	660		0	8	744	16	2864	60	9240	2	170		0	100	15,668	246	15,914		-	15,914
	SUBTOTALS			**2**	**340**	**2**	**330**	**8**	**1320**	**4**	**660**	**0**	**0**	**8**	**744**	**16**	**2864**	**60**	**9240**	**2**	**170**	**0**	**0**	**100**	**15,668**	**246**	**15,914**		**-**	**15,914**
TASK 3	**DESIGN AND CONSTRUCTABILITY REVIEWS**																													
3.1	60% SUBMITTAL CONSTRUCTABILITY REVIEW & VE	1	EA		0	4	680	20	3300	10	1650	4	660	1	93	2	358		0	1	85		0	42	6,826	103	6,929		-	6,929
3.2	90% SUBMITTAL CONSTRUCTABILITY REVIEW & VE	1	EA		0	2	340	16	2640	8	1320	4	660	1	93	2	358		0	1	85		0	34	5,496	84	5,580		-	5,580
3.3	100% SUBMITTAL / CONFORMED DOCUMENTS REVIEW	1	EA		0	2	340	4	660	4	660	2	330	1	93	2	358		0	1	85		0	16	2,526	39	2,565		-	2,565
	SUBTOTALS			**0**	**0**	**8**	**1360**	**40**	**6600**	**22**	**3630**	**10**	**1650**	**3**	**279**	**6**	**1074**	**0**	**0**	**3**	**255**	**0**	**0**	**92**	**14848**	**226**	**15074**		**-**	**15,074**
TASK 4	**CPM MASTER SCHEDULE**																													
4.1	SCHEDULE DEVELOPMENT AND PHASING (@ 60% DESIGN)	1	EA	1	170		0	8	1320	8	1320	2	330		0		0		0	1	85		0	20	3,225	49	3,274		-	3,274
4.2	SCHEDULE UPDATE AT 90% SUBMITTAL	1	EA	1	170		0	6	990	6	990	2	330		0		0		0	1	85		0	16	2,565	39	2,604		-	2,604
4.3	FINAL SCHEDULE UPDATE AT GMP (DETERMINES GC'S)	1	EA	1	170		0	2	330	2	330	2	330		0		0		0	1	85		0	8	1,245	20	1,265		-	1,265
	SUBTOTALS			**3**	**510**	**0**	**0**	**16**	**2640**	**16**	**2640**	**6**	**990**	**0**	**0**	**0**	**0**	**0**	**0**	**3**	**255**	**0**	**0**	**44**	**7,035**	**108**	**7,143**		**-**	**7,143**
TASK 5	**BIDDING, PROCUREMENT, AND GMP**																													
5.1	GMP DEVELOPMENT	1	LS	1	170	4	680	40	6600	24	3960		0	8	744	20	3580	20	3080	4	340		0	121	19,154	298	19,452		-	19,452
5.2	PRE-BID SITE VISITS	1	EA		0		0	4	660	4	660		0		0		0		0		0		0	8	1,320	20	1,340		-	1,340
5.3	RECEIVE BIDS (SINGLE BID DAY)	1	LS		0		0	8	1320		0		0	8	744		0		0		0		0	16	2,064	39	2,103		-	2,103
5.4	REVIEW BIDS AND RECOMMEND AWARD	1	LS		0		0	16	2640	4	660		0	2	186	4	716		0	1	85		0	27	4,287	66	4,353		-	4,353
5.5	RISK REGISTER DEVELOPMENT	1	LS	1	170	1	170	12	1980	6	990	2	330	1	93	4	716		0	1	85		0	28	4,534	69	4,603		-	4,603
5.6	FINAL GMP ASSEMBLY	1	LS	1	170	4	680	10	1650	6	990		0	4	372		0		0	4	340		0	29	4,202	71	4,273		-	4,273
	SUBTOTALS			**3**	**510**	**9**	**1530**	**90**	**14850**	**44**	**7260**	**2**	**330**	**23**	**2139**	**28**	**5012**	**20**	**3080**	**10**	**850**	**0**	**0**	**229**	**35,561**	**563**	**36,124**		**-**	**36,124**
TASK 6	**ALLOWANCES**																													
6.1	ALLOWANCE - HDD DESIGN REVIEW & COST ESTIMATES	1	LS		0		0		0		0		0		0		0		0		0		0	0	-	-	-	TBD	10,000.00	10,000
	SUBTOTALS			**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**-**	**-**	**-**		**10,000.00**	**10,000**
	TOTAL PRECONSTRUCTION SERVICES			16		36		240		142		46		48		50		80		26		8		**690**	**108,370**	**1,697**	**110,067**		**TOTAL**	**120,067**

FEE (8.50%)	**10,206**
INSURANCE (1.05%)	**1,261**
GRAND TOTAL:	**131,534**

MISC. MATERIAL/EQUIPMENT COSTS	COST
BID PACKAGE PLANS/SPECIFICATIONS REPRODUCTION	500.00
OFFICE SUPPLIES	200.00
TRAVEL EXPENSES	500.00
COMPUTER EQUIPMENT	500.00
COST PER HOUR	2.46

EXHIBIT B—GUIDELINES FOR PREPARING AGREEMENT EXHIBIT B

	No color is used in cells prepared by the Owner's Advisor.
	Light green indicates cells in which the Proposer or CMAR is to enter data, amounts or factors in the form of percentages. This color is not used in the Agreement Exhibit B since OA will prepare this document.
	Light blue indicates that the cell includes an equation. These cells are normally protected unless changes are being made to the worksheet.
	Light purple indicates cells containing data or amounts that are transferred to Table 1.
b	Lower-case letters in blue and bold fonts indicate column designators used for instructions. These may not correspond to Excel worksheet column headings since columns may have been combined for formatting. These correspond to information provided in the tables in Attachment A.
3	Numbers in blue and bold fonts indicate row or cell designators used for instructions. These correspond to information provided in tables in Attachment A.
Table	Names of other worksheets within the workbook are in blue and bold fonts.
C a	The capital letter "C" followed by a lower-case letter in blue and bold fonts is an abbreviated designation for a Column, in this example, Column **a**.
R 1	The capital letter "R" followed by a number in blue and bold fonts is an abbreviated designation for a Row, in this example, Row **1**.
[ ]	Brackets indicate a place holder where a specific type of information is to be provided.

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ATTACHMENT A–DETAILED INFORMATION FOR AGREEMENT EXHIBIT B

Table 1—Estimated Contract Price

Item	Item Title	Calculation	Comment
1	Compensation for CMAR Services	= Table 2, R 11	Transfers amount for Total Cost for CMAR Services from Table 2—Compensation for CMAR Services.
2	Fixed Construction Support Costs	= Table 3, R 1	Transfers amount for Total Fixed Construction Support Cost from Table 3—Basis of Compensation for Fixed Construction Support Cost.
3	Time Sensitive Construction Support Costs	= Table 4, R 1	Transfers amount for Total Time Sensitive Construction Support Cost from Table 4—Basis of Compensation for Time Sensitive Construction Support Cost.
4	Total Construction Support Costs	**(2 + 3)**	Worksheet calculates Total Construction Support Costs by adding the amount for Fixed Construction Support Cost to the amount for Time Sensitive Construction Support Cost.
5	Estimated Cost of the Work	**[Enter Amount]**	Enter the Estimated Cost of the Work prepared by the Owner's Advisor. This number is used to determine an estimated Guaranteed Maximum Price (GMP) which is included in calculating an estimated Contract Price.
6	CMAR Fee Percentage	**[Enter %]**	Enter the proposed or negotiated CMAR Fee Percentage.
7	CMAR Fee	**(5 x 6)**	Worksheet calculates the amount of the CMAR Fee by multiplying the Estimated Cost of the Work times the CMAR Fee Percentage. This is the amount of CMAR Fee based on Estimated Cost of the Work. Fee is earned as a percentage of the actual cost on approved Work Authorizations.
8	Cost of the Work with CMAR Fee	**(5 + 7)**	Worksheet calculates the amount of the Cost of the Work with CMAR Fee by adding the Estimated Cost of the Work to the CMAR Fee.
9	Payroll Cost—Estimated Cost of the Work	**[Enter Amount]**	Enter the Estimated Cost of the Work allocated to Payroll Cost.
10	Payroll Cost—CMAR Fee Percentage	**[Enter %]**	Enter the CMAR Fee Percentage proposed or negotiated for Payroll Costs
11	Payroll Cost—CMAR Fee Amount	**(9 x 10)**	Worksheet calculates the CMAR Fee amount for Payroll Cost by multiplying the Estimated Cost of the Work for Payroll times its CMAR Fee Percentage.
12	Payroll Cost—Cost with CMAR Fee	**(9 + 11)**	Worksheet calculates Payroll Cost with CMAR Fee by adding the Estimated Cost of the Work for Payroll to the Payroll Cost CMAR Fee Amount.
13	Incorporated Equipment and Materials—Estimated Cost of the Work	**[Enter Amount]**	Enter the Estimated Cost of the Work allocated to Equipment and Materials Incorporated into the Work.
14	Incorporated Equipment and Materials— CMAR Fee Percentage	**[Enter %]**	Enter the CMAR Fee Percentage proposed or negotiated for Equipment and Materials Incorporated into the Work.

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Item	Item Title	Calculation	Comment
15	Incorporated Equipment and Materials—CMAR Fee Amount	**(13 x 14)**	Worksheet calculates the CMAR Fee amount for Incorporated Equipment and Materials by multiplying the Estimated Incorporated Equipment and Materials Cost times its CMAR Fee Percentage.
16	Incorporated Equipment and Materials—Cost with CMAR Fee	**(13 + 15)**	Worksheet calculates Incorporated Equipment and Materials Cost with CMAR Fee by adding the Estimated Cost of Incorporated Equipment and Materials to its CMAR Fee Amount.
17	Consumable Equipment and Materials Cost—Estimated Cost of the Work	**[Enter Amount]**	Enter the Estimated Cost of the Work allocated to equipment and materials consumed in construction of the Work.
18	Consumable Equipment and Materials Cost—CMAR Fee Percentage	**[Enter %]**	Enter the CMAR Fee Percentage proposed or negotiated for equipment and materials consumed in construction of the Work.
19	Consumable Equipment and Materials Cost—CMAR Fee Amount	**(17 x 18)**	Worksheet calculates the CMAR Fee amount for Consumable Equipment and Materials by multiplying the Estimated Consumable Equipment and Materials Cost times its CMAR Fee Percentage.
20	Consumable Equipment and Materials Cost—Cost with CMAR Fee	**(17 + 19)**	Worksheet calculates Consumable Equipment and Materials Cost with CMAR Fee by adding the Estimated Cost of Consumable Equipment and Materials to its CMAR Fee Amount.
21	Subcontractor Cost—Estimated Cost of the Work	**[Enter Amount]**	Enter the Estimated Cost of the Work allocated to Subcontractor Cost.
22	Subcontractor Cost—CMAR Fee Percentage	**[Enter %]**	Enter the CMAR Fee Percentage proposed or negotiated for Subcontractor Cost.
23	Subcontractor Cost—CMAR Fee Amount	**(21 x 22)**	Worksheet calculates the CMAR Fee amount for Subcontractor Cost by multiplying the Estimated Cost of the Work for Subcontractor Cost times its CMAR Fee Percentage.
24	Subcontractor Cost—Cost with CMAR Fee	**(21 + 23)**	Worksheet calculates Subcontractor Cost with CMAR Fee by adding the Estimated Cost of the Work for Subcontractor Cost to its CMAR Fee Amount.
25	Construction Equipment Cost—Estimated Cost of the Work	**[Enter Amount]**	Enter the Estimated Cost of the Work allocated to Construction Equipment Cost.
26	Construction Equipment Cost—CMAR Fee Percentage	**[Enter %]**	Enter the CMAR Fee Percentage proposed or negotiated for Construction Equipment Costs.
27	Construction Equipment Cost—CMAR Fee Amount	**(25 x 26)**	Worksheet calculates the CMAR Fee amount for Construction Equipment by multiplying the Estimated Cost of the Work for Construction Equipment Cost times its CMAR Fee Percentage.
28	Construction Equipment Cost—Cost with CMAR Fee	**(25 + 27)**	Worksheet calculates Construction Equipment Cost with CMAR Fee by adding the Estimated Cost of the Work for Construction Equipment Cost to its CMAR Fee Amount.
29	Supplemental Cost— Estimated Cost of the Work	**[Enter Amount]**	Enter the Estimated Cost of the Work allocated to Supplemental Cost.

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Item	Item Title	Calculation	Comment
30	Supplemental Cost—CMAR Fee Percentage	**[Enter %]**	Enter the CMAR Fee Percentage proposed or negotiated for Supplemental Costs
31	Supplemental Cost—CMAR Fee Amount	**(29 x 30)**	Worksheet calculates the Estimated Cost of the Work for Supplemental Cost by multiplying the Estimated Cost of the Work for Supplemental Cost times its CMAR Fee Percentage.
32	Supplemental Cost—Cost with CMAR Fee	**(29 + 31)**	Worksheet calculates Supplemental Cost with CMAR Fee by adding the Estimated Cost of the Work for Supplemental Cost to its CMAR Fee Amount.
33	Total Estimated Cost of the Work	**∑ (9, 13, 17, 21, 25, 29)**	Worksheet calculates the Total Estimated Cost of the Work by summing the Estimated Cost of the Work for each of the Cost of the Work Categories.
34	Total CMAR Fee	**∑ (11, 15, 19, 23, 27, 31)**	Worksheet calculates the Total CMAR Fee by summing the CMAR Fee for each of the Cost of the Work Categories.
35	Cost of the Work with CMAR Fee	**∑ (12, 16, 20, 24, 28, 32)**	Worksheet calculates the Total Cost of the Work with CMAR Fee by summing the Cost with CMAR Fee for each of the Cost of the Work Categories.
36	Estimated Cost of the Work	**[Enter Amount]**	Enter the Estimated Cost of the Work prepared by the Owner's Advisor. This number is used to determine an estimated Guaranteed Maximum Price (GMP) used for approval of an estimated Contract Price.
37	CMAR Lump Sum (stipulated) Fee	**[Enter Value]**	Enter the stipulated amount proposed or negotiated for CMAR Fee.
38	Cost of the Work with CMAR Fee	**(36 + 37)**	Worksheet calculates the Cost of the Work with CMAR Fee by adding the Estimated Cost of the Work to the lump sum CMAR Fee.
39	CMAR Contingency Allowance Percentage	**[Enter %]**	Enter the proposed or negotiated percentage of the Cost of the Work to be used to calculate the CMAR Contingency Allowance.
40	Estimated Cost of the Work	**[Enter Amount]**	Enter the Estimated Cost of the Work prepared by the Owner's Advisor. This number is used to determine an estimated Guaranteed Maximum Price (GMP) used for approval of an estimated Contract Price.
41	CMAR Contingency Allowance	**(39 x 40)**	Worksheet calculates amount of CMAR Contingency Allowance by multiplying the CMAR Contingency Allowance Percentage times the Estimated Cost of the Work.
42	Other Specific Product or Contingency Allowance	**[Enter Amount]**	Identify other contingency allowances proposed or negotiated to be included in the Contract Price. Contingency allowance should be restricted to use for its stated purpose. Contingency allowance amount will be adjusted based on actual cost per applicable General Condition or Supplementary Conditions provisions related to a contingency allowance. Enter a description of the contingency allowance item and the amount for the contingency allowance.
43	Total CMAR and Other Contingency Allowances	**(41 + 42)**	Worksheet calculates Total CMAR and Other Contingency Allowances amount by adding the CMAR Contingency Allowance to other specified contingency allowances.

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Item	Item Title	Calculation	Comment
44	Estimated Guaranteed Maximum Price	**(4 + (8 or 35 or 38 + 43)**	Worksheet calculates the Estimated GMP by summing the cost for Construction Support Costs, Cost of the Work with CMAR Fee, and CMAR and Other Contingency Allowances. Depending on the procedures used for calculating the CMAR Fee, Items 8, 35, or 38 may be deleted. Delete terms that appear as **#REF!** in the equation for 44 per the Note to User for this section.
45	Owner's Contingency Allowance	**[Enter Amount]**	Enter the Owner's Contingency Allowance amount if the Owner's Contingency Allowance is to be include in the Contract Price.
46	Total Amount of Contract Award	**(1 + 44 + 45)**	Worksheet calculates The Total Amount of the Contract Award (amount for which Contract will be awarded) by summing the Cost for CMAR Services, the Estimated Guaranteed Maximum Price (calculated using the selected compensation method) and the Owner's Contingency Allowance.
47	Substantial Completion Days	**[Enter Days]**	Enter the proposed or negotiated days to Substantial completion in accordance with the applicable General Condition or Supplementary Conditions provisions.
48	Final Completion Days	**[Enter Days]**	Enter the proposed or negotiated days to Final Completion in accordance with the applicable General Condition or Supplementary Conditions provisions.
49	Construction Period Days	**(47 + 48)**	Worksheet calculates the Construction Period by adding the number of day to reach Substantial Completion to the number of additional days to reach Final Completion.

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Table 2—Compensation for CMAR Services

Column	Column Title	Calculation	Comment
a	Task	**[Enter Data]**	Enter the Task Number (from the corresponding paragraph number) for each item in the final Agreement Exhibit A Scope of CMAR Services. Standard tasks are shown.
b	Description	**[Enter Data]**	Enter the paragraph title for each item in the final Agreement Exhibit A Scope of CMAR Services. Standard tasks are shown.
c - g	Name of Provider	**[Enter Data]**	Enter the name of each CMAR service Provider. Enter the estimated number of hours for each task for each Provider in the rows below.
	Classification	**[Enter Data]**	Enter the type of service provided by each Provider. Examples: Project Manager, CMAR Services Manager, Estimator, Scheduler etc.
	Billing Rate	**[Enter Amount]**	Enter the hourly billing rate for each Provider. Rate is to include all fringe costs and expenses.
h	Amount	Hrs **C c** **x** Rate **C c** **+** Hrs **C d** **x** Rate **C d** **+** Hrs **C e** **x** Rate **C e** **+** Hrs **C f** **x** Rate **C f** **+** Hrs **C g** **x** Rate **C g**	Worksheet calculates Amount by multiplying the number of hours for each Task times the Billing Rate in the Column Titles for each Provider and totaling these to determine the total amount for each Task item.

Row	Row Title	Calculation	Comment
1	Total Cost for CMAR Preconstruction Basic Services	**∑ C h** for Task 1.00	Worksheet calculates total for Preconstruction Basic Services.
2	Total Cost for CMAR Preconstruction Additional Services	**∑ C h** for Task 2.00	Worksheet calculates total for Preconstruction Additional Services.
3	Total Cost for CMAR Preconstruction Services	**(1 + 2)**	Worksheet calculates total for Preconstruction Services.
4	Total Cost for CMAR Procurement Basic Services	**∑ C h** for Task 3.00	Worksheet calculates total for Procurement Basic Services.
5	Total Cost for CMAR Procurement Additional Services	**∑ C h** for Task 4.00	Worksheet calculates total for Procurement Additional Services.
6	Total Cost for CMAR Procurement Services	**(4 + 5)**	Worksheet calculates total for Procurement Services.
7	Total Owner's Contingency Allowance for CMAR Special Services (Stipulated Sum)	**[Enter Amount]**	Enter an amount for an Owner's Contingency Allowance dedicated to CMAR Special Services. Owner may choose to use Owner's Contingency Allowance to cover these additional services or may prefer that these be separate and reserved for CMAR services. This is recommended if Owner Contingency allowance will be established later as part of negotiations for the GMP

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Row	Row Title	Calculation	Comment
8	Owner's Contingency Allowance for CMAR Special Services Percentage	**[Enter %]**	Enter the amount for the Owner's Contingency Allowance. Owner can base the amount of its contingency allowance for CMAR Special Services as a percentage of totals for Preconstruction Services and Procurement Services. Enter that percentage here.
9	Owner's Contingency Allowance for CMAR based on Special Services (% of CMAR Services)	**(3 + 6) x 8**	Worksheet calculates the Owner's contingency allowance based on the percentage for CMAR Special services entered in p and the totals for Preconstruction and Procurement Services. This provides a larger contingency that will adjust if Additional services are added. Change the calculations if the contingency allowance is to be based on the total for Basic services only ((1 + 4) x 8).
10	Total Owner's Contingency Allowance for CMAR Special Services	**= 7 or 9**	Worksheet calculates the Owner's contingency allowance. If no percentage is entered in 8 the amount in 7 will be returned in 10**.** If a percentage is entered in 8**,** then 9 will be returned.
11	Total Cost for CMAR Services	**(3 + 6 +10)**	Worksheet calculates the total for CMAR Services. This number is transferred to **Table 1 R 1** to be included in the calculation of the Contract Price. It is not part of the Guaranteed Maximum Price for Work

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Table 3—Basis of Compensation for Fixed Construction Support Cost

Column	Column Title	Calculation	Comment
a	CMAR Number	**[Enter Data]**	Enter the CMAR Number for this item as submitted in the Proposal. Used solely for convenience in referencing a line item
b	Contract Reference	**[Enter Data]**	Enter a reference to a specification section or drawing. Used to reference applicable Specification sections.
c	Description	**[Enter Data]**	Enter a brief description of the Fixed Construction Support Cost item.
d	Quantity	**[Enter Number]**	Enter the quantity of each Fixed Construction Support Cost item. If the cost is a lump sum item, the Unit designation would be LS and the quantity would be shown as "1".
e	Units	**[Enter Data]**	Enter the Units of measure. Example: months, weeks, each, or similar units.
f	Unit Cost	**[Enter Amount]**	Enter the Unit Cost per unit for each item.
g	Amount	**(d x f)**	Worksheet calculates the amount for each line item by multiplying the Quantity times the Unit Cost amount for each Item.

Row	Row Title	Calculation	Comment
1	Total Fixed Construction Support Costs	∑ C g	Worksheet calculates the Total Fixed Support Cost by summing all Fixed Support Cost line items. This amount is transferred to **Table 1**, **R 2**.

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Table 4—Basis of Compensation for Time Sensitive Construction Support Cost

Column	Column Title	Calculation	Comment
a	CMAR Number	**[Enter Data]**	Enter the CMAR Number for this item as submitted in the Proposal. Used solely for convenience in referencing a line item
b	Contract Reference	**[Enter Data]**	Enter a reference to a specification section or drawing. Used to reference applicable Specification sections.
c	Description	**[Enter Data]**	Enter a brief description of the Time Sensitive Construction Support Cost item.
d	Quantity	**[Enter Number]**	Enter the quantity of each Time Sensitive Construction Support Cost item. If the cost is a lump sum item, the Unit designation would be LS and the quantity would be shown as "1".
e	Units	**[Enter Data]**	Enter the Units of measure. Example: months, weeks, each, or similar units.
f	Unit Cost	**[Enter Amount]**	Enter the Unit Cost per unit for each item.
g	Amount	**(d x f)**	Worksheet calculates the amount for each line item by multiplying the Quantity times the Unit Cost amount for each Item.

Row	Row Title	Calculation	Comment
1	Total Time Sensitive Construction Support Costs	**∑ C g**	Worksheet calculates the Total Fixed Support Cost by summing all Time Sensitive Construction Support Cost line items. This amount is transferred to **Table 1**, **R 3**.
2	Construction Period	**= (Table 1, R 49)**	Number of days in the Construction Period. This number is transferred here from **Table 1**, **R 49**.
3	Construction Support Cost Extended Rate	**(1 / 2)**	Worksheet calculates the Extended Rate for Time Sensitive Construction Support Cost by dividing the Total Time Sensitive Construction Support Cost by the number of days in the Construction Period.

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

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION MANAGER AT RISK CONTRACT

Prepared By









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GUIDELINES FOR USE OF EJCDC® CMAR-700, STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION MANAGER AT RISK CONTRACT

1.0 PURPOSE AND INTENDED USE OF THE DOCUMENT

EJCDC® CMAR-700, Standard General Conditions of the Construction Manager at Risk Contract (2023), is the foundation document for the EJCDC Construction Manager at Risk Series. The General Conditions define the basic rights, responsibilities, risk allocations, and contractual relationship of the Owner and Construction Manager at Risk (CMAR) and establish how the Contract is to be administered.

The Contract between Owner and CMAR is fundamentally a construction contract; however, in addition to its construction obligations the CMAR also is responsible for providing specified Preconstruction Services, for example, providing information regarding constructability to the Engineer during the design phase and Procurement Services which include identifying qualified Subcontractors, and bringing them under contract. These CMAR Services are described and addressed in the Agreement between Owner and Construction Manager, CMAR-525. The General Conditions contain many construction-specific provisions (for example, the differing site conditions clauses) but also contain general clauses that are applicable to the CMAR Services as well as to construction (for example, the indemnification clause).

CMAR-700 is based on and organized in the same manner as EJCDC C-700, Standard General Conditions of the Construction Contract (2018). Users familiar with C-700 will find that the substance, wording, and risk allocations of that document are carried over into CMAR-700 whenever appropriate. The distinctions between the two documents most often involve procedural matters, such as the payment application process in Article 15 (for example, in C-700, applications for payment are submitted to the Engineer; in CMAR-700, such applications are submitted to the Owner's Advisor).

2.0 OTHER DOCUMENTS

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

These General Conditions have been prepared for use with EJCDC® CMAR-525, Agreement Between Owner and Construction Manager at Risk (2023). The provisions of the General Conditions and the Agreement are interrelated, and a change in one may necessitate a change in the other.

To prepare supplementary conditions that are coordinated with the General Conditions, use EJCDC® CMAR-800, Supplementary Conditions of the Construction Contract – Construction Manager at Risk Series (2023).

The full EJCDC Construction series of documents is discussed in the EJCDC® CMAR-001, Commentary on the 2023 EJCDC Construction Management Documents scheduled for publication in 2023.

3.0 ORGANIZATION OF INFORMATION

All parties involved in a construction project benefit significantly from a standardized approach in the location of subject matter throughout the documents. Experience confirms the danger of addressing the same subject matter in more than one location; doing so frequently leads to conflicting requirements,

confusion, and unanticipated legal consequences. Careful attention should be given to the guidance provided in EJCDC® N 122/AIA® A521™, Uniform Location of Subject Matter, when preparing construction documents. EJCDC® N 122/AIA® A521™, is available at no charge from the EJCDC website, www.ejcdc.org, and from the websites of EJCDC's sponsoring organizations.

In addition, the current editions of MasterFormat and SectionFormat, published by the Construction Specifications Institute, provide useful guidance on the location of information and requirements in construction documents.

4.0 EDITING THIS DOCUMENT

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

Although it is permissible to revise the Standard EJCDC Text of CMAR-700 (the content beginning at Page 1 and continuing to the end), it is common practice to leave the Standard EJCDC Text of CMAR-700 intact and unaltered, with modifications and supplementation of CMAR-700's provisions set forth in EJCDC® CMAR-800, Supplementary Conditions of the Construction Contract – Construction Manager at Risk Series (2023). If the Standard Text itself is revised, the user must comply with the terms of the License Agreement, Paragraph 4.0, Document-Specific Provisions, concerning the tracking or highlighting of revisions. The following is a summary of the relevant License Agreement provisions:

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

5.0 LICENSE AGREEMENT

This document is subject to the terms and conditions of the **License Agreement, 2023 EJCDC® Construction Manager at Risk Series Documents**. A copy of the License Agreement was furnished at the time of purchase of this document and is available for review at www.ejcdc.org and the websites of EJCDC's sponsoring organizations.

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION MANAGER AT RISK CONTRACT

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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION MANAGER AT RISK CONTRACT

ARTICLE 1—DEFINITIONS AND TERMINOLOGY

1.01 Defined Terms

A. Wherever used in the Proposal Documents or Contract Documents, a term printed with initial capital letters, including the term's singular and plural forms, will have the meaning indicated in the definitions below. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and Paragraphs, and the titles of other documents or forms.

1. Addenda—Written or graphic instruments issued prior to the receipt of Proposals by the Owner which clarify, correct, or change the Proposal Documents or the proposed Contract Documents.

2. Agreement—The written instrument, including its attached exhibits, executed by Owner and Construction Manager at Risk, that sets forth the Contract Price and Contract Times, identifies the Owner, Construction Manager at Risk, Owner's Advisor, and Engineer, and designates the specific items that are Contract Documents.

3. Application for Payment—The document prepared by Construction Manager at Risk, in a form acceptable to Owner's Advisor, to request progress or final payments, and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

4. Change Order—A document which is signed by Construction Manager at Risk and Owner after the Effective Date of a governing Work Authorization and authorizes an addition, deletion, or revision in the authorized Work, an adjustment in the applicable incremental Guaranteed Maximum Price or Contract Times, or other revision to such Work Authorization.

5. Change Proposal—A written request by Construction Manager at Risk, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment in Guaranteed Maximum Price or Contract Times; contesting a decision by Owner's Advisor, in consultation with Engineer, concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Contract.

6. Claim

a. A demand or assertion by Owner directly to Construction Manager at Risk, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment of Contract Price or Contract Times; contesting a decision rendered by Owner's Advisor, in consultation with Engineer, concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents, or regarding a Change Proposal; or seeking other relief with respect to the terms of the Contract.

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b. A demand or assertion by Construction Manager at Risk directly to Owner, duly submitted in compliance with the procedural requirements set forth herein, contesting Owner's Advisor's decision, made in consultation with Engineer, regarding a Change Proposal.

c. A demand or assertion by Owner or Construction Manager at Risk, duly submitted in compliance with the procedural requirements set forth herein, made pursuant to Paragraph 12.01.A.3, concerning disputes arising after Owner's Advisor has issued a recommendation of final payment.

d. A demand for money or services by a third party is not a Claim.

7. CMAR Contingency Allowance—An allowance used to reimburse CMAR for costs due to unforeseen causes, unintentional errors, or events which cannot specifically be anticipated at the time Work Authorizations are issued, as set forth in the Agreement, Article 8.

8. CMAR Fee—The component of the Guaranteed Maximum Price that supplements the CMAR's compensation for the Cost of the Work, consisting of either a fixed fee (a stipulated price or lump sum amount) or a percentage of the Cost of the Work, as set forth in the Agreement.

9. CMAR Services—Those specific planning, organizational, and advisory services to be performed or furnished by CMAR, consisting collectively of Preconstruction Services, Procurement Services, and any other services authorized by Owner's Advisor and expressly identified in such authorization as CMAR Services. CMAR Services are not part of the Work.

10. Constituent of Concern—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), lead-based paint (as defined by the HUD/EPA standard), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to Laws and Regulations regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

11. Construction Manager at Risk (CMAR)—The entity that has entered into the Contract with Owner. Under the Contract the CMAR will provide CMAR Services and construct the Work set out in the Drawings and Specifications, as duly authorized, using the Construction Manager at Risk project delivery method.

12. Construction Period—The period from the commencement of Work on the first Work Authorization until Substantial Completion of the Work. This is the number of days for which Construction Support Costs will be compensated.

13. Construction Support Costs—See Agreement, Article 5.

14. Contract—The entire and integrated written agreement between Owner and Construction Manager at Risk concerning the CMAR Services and the Work.

15. Contract Amendment—A document signed by Owner and Construction Manager at Risk which modifies the terms and conditions of the Contract, including but not limited to modifications of the time or compensation provisions of the Agreement and the scope of CMAR Services. A Contract Amendment is not used to make changes in the Work or

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to a Work Authorization, such changes properly being made in a Change Order or supplemental Work Authorization.

16. Contract Documents—Those items so designated in the Agreement, and which together comprise the Contract.

17. Contract Price—The money that Owner has agreed to pay Construction Manager at Risk for performance and completion of the CMAR Services and the Work, in accordance with the Contract Documents. The Contract Price may be subdivided into component parts based on authorized CMAR Services and Work Authorizations. The Contract Price includes the CMAR's compensation for CMAR Services, Construction Support Costs, Cost of the Work, the CMAR Fee, CMAR Contingency Allowances, and the Owner's Contingency Allowance.

18. Contract Times—The number of days or the dates by which Construction Manager at Risk shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work and all required services. The Contract Times may be subdivided into component parts based on Work Authorizations and authorized CMAR Services.

19. Contractor—The term "Contractor," if used in the Contract, means Construction Manager at Risk.

20. Cost of the Work—The sum of eligible costs incurred by CMAR for the performance of the Work, as allowed by the Cost of the Work provisions set forth in the Agreement. Cost of the Work as a defined term does not include Construction Support Costs.

21. Drawings—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Construction Manager at Risk.

22. Effective Date of the Contract—The date indicated in the Agreement, on which the Contract becomes effective.

23. Electronic Document—Any Project-related correspondence, attachments to correspondence, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.

24. Electronic Means—Electronic mail (email), upload/download from a secure Project website, or other communications methods that allow: (a) the transmission or communication of Electronic Documents; (b) the documentation of transmissions, including sending and receipt; (c) printing of the transmitted Electronic Document by the recipient; (d) the storage and archiving of the Electronic Document by sender and recipient; and (e) the use by recipient of the Electronic Document for purposes permitted by this Contract. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.

25. Engineer—The individual or entity that has primary responsibility for preparing or furnishing the Drawings and Specifications and is named as Engineer in the Agreement.

26. Estimated Cost of the Work—An estimate of the Cost of the Work prepared by the Owner for use (a) during the CMAR selection process in evaluating Proposals submitted in response to the Request for Proposals and (b) during the early stages of the Contract in calculating an Estimated Guaranteed Maximum Price until the design has progressed

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to the point where Owner and CMAR can mutually agree upon a Guaranteed Maximum Price.

27. Estimated Guaranteed Maximum Price—A preliminary Guaranteed Maximum Price calculated on the basis of the Estimated Cost of the Work. This is a non-binding price used on an interim basis for comparison or estimation of Owner's Construction Budget until the design has progressed to the point that a Guaranteed Maximum Price for the Work is established, or a Guaranteed Maximum Price for a portion of the Work is established by issuance of a Work Authorization by the Owner's Advisor.

28. Field Order—A written order issued by Owner's Advisor which requires minor changes in the Work but does not change the Guaranteed Maximum Price or the Contract Times.

29. Final Completion—The point at which the Work is complete in accordance with the Contract Documents, items and documents required by the Contract Documents have been accepted by the Owner, all required services have been completed, and the Contract is ready for final payment.

30. Guaranteed Maximum Price (GMP)—The maximum amount to be paid by Owner to CMAR for the sum of the Construction Support Costs, plus Cost of the Work, plus the CMAR Fee, all as set forth in the Agreement.

31. Hazardous Environmental Condition—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto.

    a. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated into the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, is not a Hazardous Environmental Condition.

    b. The presence of Constituents of Concern that are to be removed or remediated as part of the Work is not a Hazardous Environmental Condition.

    c. The presence of Constituents of Concern as part of the routine, anticipated, and obvious working conditions at the Site, is not a Hazardous Environmental Condition.

32. Laws and Regulations; Laws or Regulations—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and binding decrees, resolutions, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

33. Liens—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.

34. Milestone—A principal event in the performance of the Work that the Contract requires Construction Manager at Risk to achieve by an intermediate completion date, or by a time prior to Substantial Completion of all the Work.

35. Notice of Award—The written notice by Owner stating that Owner will enter into the Construction Manager at Risk contract with the selected Construction Manager at Risk.

36. Owner—The entity with which Construction Manager at Risk has contracted regarding the CMAR Services and the Work, and which has agreed to pay Construction Manager

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at Risk for the performance of the CMAR Services and the Work, pursuant to the terms of the Contract.

37. Owner's Advisor (OA)—The individual or entity named as Owner's Advisor in the Agreement. The Owner's Advisor provides services to the Owner, as an advisor and representative.

38. Owner's Construction Budget (Budget)—The amount budgeted by the Owner to pay CMAR to perform and complete the Work in accordance with the Contract Documents. This amount includes compensation for Cost of the Work, the CMAR Fee, and Construction Support Costs, but does not include compensation for CMAR Services.

39. Owner's Project Team (OPT)—As used in this Contract, refers to Owner, Owner's Advisor and Engineer, collectively.

40. Preconstruction Services—Those planning, management, and support services to be performed or furnished by CMAR as set forth in the Scope of CMAR Preconstruction Services Exhibit to the Agreement. Preconstruction Services are separate and distinct from Procurement Services, and from the performance of the Work itself, and are a component of CMAR Services.

41. Preconstruction Services Price—The total amount to be paid to CMAR for the Preconstruction Services described in the Scope of CMAR Preconstruction Services Exhibit to the Agreement.

42. Procurement Services—Those services relating to assembling Work Packages and procurement of construction Subcontractors, Suppliers, and materials and equipment, to be performed or furnished by CMAR as set forth in the procurement-related provisions of the Scope of CMAR Services Exhibit to the Agreement. Procurement Services are separate and distinct from Preconstruction Services, and from the performance of the Work itself, and are a component of CMAR Services.

43. Procurement Services Price—The total amount to be paid to CMAR for providing the Procurement Services described in the Scope of CMAR Procurement Services Exhibit to the Agreement.

44. Progress Schedule—A schedule, prepared and maintained by Construction Manager at Risk, describing the sequence and duration of the activities comprising Construction Manager at Risk's plan to accomplish the Work within the Contract Times.

45. Project—The total undertaking to be accomplished for Owner by construction managers, engineers, contractors, advisors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the CMAR Services and the Work to be performed under the Contract are a part.

46. Punch List - the detailed list of incomplete, unsatisfactory or unacceptable, or defective items that the CMAR is required to complete prior to final payment that is generated in accordance with Paragraph 15.06 of the General Conditions.

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

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48. Schedule of Submittals—A schedule, prepared and maintained by Construction Manager at Risk, of required Submittals and the time requirements for review of the Submittals.

49. Shop Drawings—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Construction Manager at Risk and submitted by Construction Manager at Risk to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.

50. Site—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands or areas furnished by Owner which are designated for the use of Construction Manager at Risk.

51. Specifications—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.

52. Subcontractor—An individual or entity having a direct contract with Construction Manager at Risk or with any other Subcontractor for the performance of a part of the Work.

53. Submittal—A written or graphic document, prepared by or for Construction Manager at Risk, which the Contract Documents require Construction Manager at Risk to submit to Owner's Advisor, or that is indicated as a Submittal in the Schedule of Submittals accepted by Owner's Advisor. Submittals may include Shop Drawings and Samples; schedules; product data; Owner-delegated designs; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or Site quality-control testing and inspections; warranties and certifications; Suppliers' instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; Project photographic documentation; record documents; and other such documents required by the Contract Documents. Submittals, whether approved or accepted by Owner's Advisor or Engineer, are not Contract Documents. Change Proposals, Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.

54. Substantial Completion—The time and date at which the Work, or a specified part thereof, has progressed to the point where, the Work, or the specified part thereof, is sufficiently complete, in accordance with the Contract Documents, so that the Work, or the specified part thereof, can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion of such Work.

55. Supplementary Conditions—The part of the Contract that amends or supplements these General Conditions.

56. Supplier—A manufacturer, fabricator, supplier, distributor, or vendor having a direct contract with Construction Manager at Risk or with any Subcontractor to furnish

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materials or equipment to be incorporated in the Work by Construction Manager at Risk or a Subcontractor.

57. Technical Data

    a. Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (1) existing subsurface conditions at or adjacent to the Site, or existing physical conditions at or adjacent to the Site including existing surface or subsurface structures, except Underground Facilities, or (2) Hazardous Environmental Conditions at the Site.

    b. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then Technical Data is defined, with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06, as the data contained in boring logs, recorded measurements of subsurface water levels, assessments of the condition of subsurface facilities, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical, environmental, or other Site or facilities conditions report prepared for the Project and made available to Construction Manager at Risk.

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

58. Underground Facilities—All active or not-in-service underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems. An abandoned facility or system is not an Underground Facility.

59. Unit Price Work—Work to be paid for based on unit prices.

60. Work—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.

61. Work Authorization—A document issued by Owner's Advisor and signed by Owner and CMAR which identifies and defines new Work Packages and establishes the amount to be paid, times for completion, and any special or supplementary provisions applicable to the authorized Work.

62. Work Package–A specific portion of the Work developed by Engineer and Owner's Advisor in collaboration with the CMAR and subsequently authorized by a Work Authorization.

63. Emergency Work Change Directive—A written directive issued by Owner's Advisor to Construction Manager at Risk on or after the Effective Date of a governing Work

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Authorization, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work due to an emergency that prevents the parties from using the Change Order process.

1.02 Terminology

A. The words and terms discussed in Paragraphs 1.02.B, C, D, and E are not defined terms that require initial capital letters, but, when used in the Proposal Documents or Contract Documents, have the indicated meaning.

B. Intent of Certain Terms or Adjectives–The Contract Documents include the terms "as allowed," "as approved," "as ordered," "as directed" or terms of like effect or import to authorize an exercise of professional judgment by Owner's Advisor or Engineer. In addition, the adjectives "reasonable," "suitable," "acceptable," "proper," "satisfactory," or adjectives of like effect or import are used to describe an action or determination of Owner's Advisor or Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents, unless there is a specific statement indicating otherwise. The use of any such term or adjective is not intended to and will not be effective to assign to Owner's Advisor or Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.

C. Day–The word "day" means a period of 24 hours measured from midnight to the next midnight, including weekends and legal holidays unless otherwise specifically defined.

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

1. does not conform to the Contract Documents;

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

3. has been damaged prior to Owner's Advisor's recommendation of final payment unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.04 or Paragraph 15.05.

E. Furnish, Install, Perform, Provide

1. The word "furnish," when used in connection with services, materials, or equipment, means to supply and deliver said services, materials, or equipment to the Site, or some other specified location ready for use or installation and in usable or operable condition.

2. The word "install," when used in connection with services, materials, or equipment, means to put into use or place in final position said services, materials, or equipment complete and ready for their intended use.

3. The words "perform" or "provide," when used in connection with services, materials, or equipment, means to furnish and install said services, materials, or equipment complete and ready for their intended use.

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4. If the Contract Documents establish an obligation of CMAR with respect to specific services, materials, or equipment, but do not expressly use any of the four words "furnish," "install," "perform," or "provide," then CMAR shall furnish and install said services, materials, or equipment complete and ready for their intended use.

F. Contract Price or Contract Times–References to a change in "Contract Price or Contract Times" or "Contract Times or Contract Price" or similar, indicate that such change applies to (1) Contract Price, (2) Contract Times, or (3) both Contract Price and Contract Times, as warranted, even if the term "or both" is not expressed.

G. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2—PRELIMINARY MATTERS

2.01 Delivery of Performance and Payment Bonds; Evidence of Insurance

A. Performance and Payment Bonds–When CMAR delivers the signed counterparts of a Work Authorization to Owner, CMAR shall also deliver to Owner the performance bond and payment bond, if the Contract requires CMAR to furnish such bonds, or confirm that existing performance and payment bonds have been supplemented to account for the additional authorized Work.

B. Evidence of CMAR's Insurance–When CMAR delivers the signed counterparts of the Agreement to Owner, CMAR shall also deliver to Owner, with copies to each additional insured, as identified in the Contract, the certificates, endorsements, and other evidence of insurance required to be provided by CMAR in accordance with Article 6, except to the extent the Supplementary Conditions or Agreement expressly establish other dates for delivery of specific insurance policies.

C. *[INTENTIONALLY DELETED]*

2.02 Copies of Documents

A. Owner shall furnish to CMAR four printed copies of the Contract, including one fully signed counterpart of the Agreement, and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.

B. Owner shall maintain and safeguard at least one original printed record version of the Contract, including Drawings and Specifications signed and sealed by Engineer and other design professionals. Owner shall make such original printed record version of the Contract available to CMAR for review. Owner may delegate the responsibilities under this provision to Owner's Advisor.

2.03 Electronic Transmittals

A. Except as otherwise stated elsewhere in the Contract, the Owner, Owner's Advisor, Engineer, and CMAR may send, and shall accept, Electronic Documents transmitted by Electronic Means.

B. If the Contract does not establish protocols for Electronic Means, then Owner, Owner's Advisor, and CMAR shall jointly develop such protocols.

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C. Subject to any governing protocols for Electronic Means, when transmitting Electronic Documents by Electronic Means, the transmitting party makes no representations as to long-term compatibility, usability, or readability of the Electronic Documents resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the Electronic Documents.

2.04 Construction Management

A. In addition to providing CMAR Services, during the course of the Contract, and especially during the performance of the Work, CMAR will:

1. Organize and manage the resources required for construction of the Work, commissioning, and correction of defective Work after Substantial Completion of the Work.

2. Administer, coordinate, monitor, and report on construction progress and associated activities.

3. Assist the Owner's Advisor in collecting, disseminating, and storing documents and information.

4. Manage the Work to meet Contract goals and objectives.

5. Recommend action to the Owner related to the management of the Work.

6. Develop schedule and cost control systems to monitor and report on the progress of the overall Contract.

ARTICLE 3—CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 Intent

A. The Contract Documents are complementary; what is required by one Contract Document is as binding as if required by all.

B. It is the intent of the Contract Documents to describe a functionally complete Project, or part thereof, to be constructed in accordance with the Contract Documents.

C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic versions of the Contract Documents, including any printed copies derived from such electronic versions, and the printed record version, the printed record version will govern.

D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.

E. Owner's Advisor, in consultation with Engineer, will issue clarifications and interpretations of the Contract Documents as provided herein.

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

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G. Nothing in the Contract Documents creates:

1. any contractual relationship between Owner, Owner's Advisor, or Engineer and any Subcontractor, Supplier, or other individual or entity performing or furnishing any of the Work, for the benefit of such Subcontractor, Supplier, or other individual or entity; or

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

3.02 Reference Standards

A. Standards, Specifications, Codes, Laws and Regulations

1. Reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, means the standard specification, manual, reference standard, code, or Laws or Regulations in effect at the time of receipt of Proposals, except as may be otherwise specifically stated in the Contract Documents.

2. No provision of any such standard specification, manual, reference standard, or code, and no instruction of a Supplier, will be effective to change the duties or responsibilities of Owner, CMAR, Owner's Advisor, or Engineer from those set forth in the Contract Documents. No such provision or instruction will be effective to assign to Owner, Owner's Advisor, or Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 Reporting and Resolving Discrepancies

A. Reporting Discrepancies

1. CMAR's Verification of Figures and Field Measurements–Before undertaking each part of the Work, CMAR shall carefully study the applicable Drawings and Specifications, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. CMAR shall promptly report in writing to Owner's Advisor any conflict, error, ambiguity, or discrepancy that CMAR discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict, error, ambiguity, or discrepancy is resolved by a clarification or interpretation by Owner's Advisor, in consultation with Engineer, and, if appropriate, an amendment or supplement to the Contract is issued by Owner's Advisor pursuant to Paragraph 11.01.

2. CMAR's Review of Drawings and Specifications–If, while performing or providing CMAR Services, or during the performance of the Work, CMAR discovers any conflict, error, ambiguity, or discrepancy within the Drawings and Specifications, whether in draft or final form, or between such documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then CMAR shall promptly report it to Owner's Advisor in writing. CMAR shall not proceed with the Work affected thereby, except in an emergency as required by Paragraph 7.18, until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Owner's

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Advisor, in consultation with Engineer, and, if appropriate, an amendment or supplement to the Contract is issued by Owner's Advisor pursuant to Paragraph 11.01.

B. Resolving Discrepancies

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

a. the provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier, whether or not specifically incorporated by reference as a Contract Document; or

b. the provisions of any Laws or Regulations applicable to the performance of the Work, unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation.

3.04 Interpretation of the Contract Documents

A. During the performance of the Work and until final payment, CMAR and Owner shall submit to the Owner's Advisor in writing all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation) or relating to the performance or acceptability of the Work under the Contract Documents, as soon as possible after such matters arise.

B. Owner's Advisor will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, and if appropriate initiate a change to the Contract Documents. In determining its response, Owner's Advisor will consider CMAR's prior involvement and obligations with respect to reviewing and commenting on draft design documents during CMAR's provision of CMAR Services. Owner's Advisor's written clarification, interpretation, or decision (1) will be based, when applicable, on consultation with Engineer, and (2) will be final and binding on CMAR, unless CMAR appeals by submitting a Change Proposal, and on Owner, unless Owner appeals by filing a Claim.

3.05 Reuse of Documents

A. CMAR and its Subcontractors and Suppliers shall not:

1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents, or copies of any thereof, prepared by or bearing the seal of Engineer or its consultants, including electronic media versions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer; or

2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without Owner's express written consent, or violate any copyrights pertaining to such Contract Documents.

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

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ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK

4.01 Commencement of Contract Times; Notice to Proceed

A. The Contract Times will commence to run on the Effective Date of the Contract, or as specified in Work Authorizations.

4.02 Starting the Work

A. CMAR shall start to perform the Work promptly upon receipt of the first Work Authorization. No Work may be done at the Site prior to such authorization.

4.03 Reference Points

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

4.04 Progress Schedule

A. CMAR shall adhere to the Progress Schedule established as part of Preconstruction Services, as it may be adjusted from time to time as provided below.

1. CMAR shall submit to Owner's Advisor for its information proposed adjustments in the Progress Schedule that will not result in changing the Contract Times.

2. Proposed adjustments in the Progress Schedule that will change the Contract Times must be submitted in accordance with the requirements of Article 11.

B. CMAR shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work will be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, except as permitted by Paragraph 16.04, or as Owner and CMAR may otherwise agree in writing.

4.05 Delays in CMAR's Progress

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

B. CMAR shall not be entitled to an adjustment in Guaranteed Maximum Price or Contract Times for delay, disruption, or interference caused by or within the control of CMAR. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier will be deemed to be within the control of CMAR.

C. If CMAR's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, CMAR, and those for which they are responsible, then CMAR shall be entitled to an equitable adjustment in Contract Times. Such an adjustment will be CMAR's sole and exclusive remedy for the delays, disruption, and interference described in this Paragraph. Unanticipated causes of delay, disruption, or

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interference that may give rise to an adjustment in Contract Times under this Paragraph include but are not limited to the following:

1. Severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
2. Abnormal weather conditions not anticipated or customary in Volusia County;
3. Acts or failures to act of third-party utility owners or other third-party entities, other than those third-party utility owners or other third-party entities performing other work at or adjacent to the Site as arranged by or under contract with Owner, as contemplated in Article 8; and
4. Acts of war or terrorism.

D. CMAR's entitlement to an adjustment of Contract Times is limited as follows:

1. CMAR's entitlement to an adjustment of the Contract Times is conditioned on the delay, disruption, or interference adversely affecting an activity on the critical path to completion of the Work, as of the time of the delay, disruption, or interference.
2. *[INTENTIONALLY DELETED]*
3. Adjustments of Contract Times are subject to the provisions of Article 11.

E. Each CMAR request or Change Proposal seeking an increase in Contract Times or Guaranteed Maximum Price must be supplemented by supporting data that sets forth in detail the following:

1. The circumstances that form the basis for the requested adjustment;
2. The date upon which each cause of delay, disruption, or interference began to affect the progress of the Work;
3. The date upon which each cause of delay, disruption, or interference ceased to affect the progress of the Work;
4. The number of days' increase in Contract Times claimed because of each such cause of delay, disruption, or interference; and
5. *[INTENTIONALLY DELETED]*

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

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

G. Paragraph 8.03 addresses delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.

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

5.01 Availability of Lands

A. Owner shall furnish the Site. Owner shall notify CMAR in writing of any encumbrances or restrictions not of general application but specifically related to use of the Site with which CMAR must comply in performing the Work.

B. *[INTENTIONALLY DELETED]*

C. CMAR shall provide for all additional lands and access thereto that may be required for temporary construction facilities, staging, or storage of materials and equipment. Contractor shall have the obligation to restore the additional lands to their original condition.

5.02 Use of Site and Other Areas

A. Limitation on Use of Site and Other Areas

1. CMAR shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that CMAR has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. CMAR shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for CMAR's operations; (c) damage to any other adjacent land or areas, or to improvements, structures, utilities, or similar facilities located at such adjacent lands or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the CMAR or those for which CMAR is responsible.

2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the CMAR or those for which CMAR is responsible, CMAR shall (a) take immediate corrective or remedial action as required by Paragraph 7.18, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or in a court of competent jurisdiction; and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner, Owner's Advisor, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against any such claim, and against all costs, losses, and damages, including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs, arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Owner's Advisor, Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part by, or based upon, CMAR's performance of the Work, or because of other actions or conduct of the CMAR or those for which CMAR is responsible.

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B. Removal of Debris During Performance of the Work–During the progress of the Work the CMAR shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. The CMAR shall prevent paint, mortar, and concrete splatter on concrete sidewalks and stairwell pads. Any such splatter shall be immediately removed so no evidence of splatter remains. All construction debris shall be removed in a timely manner. Surrounding graded and grassed areas shall be regularly magnetically scanned to collect miscellaneous nails and other sharp objects; the CMAR shall remove such objects from the construction site. Removal and disposal of such waste materials, rubbish, and other debris will conform to applicable Laws and Regulations.

C. Cleaning—Prior to Substantial Completion of the Work CMAR shall clean the Site and the Work and make it ready for utilization by Owner. Concrete and ceramic surfaces shall be cleaned and washed. Woodwork and resilient flooring shall be dusted and cleaned. Sash, fixtures and equipment shall be thoroughly cleaned. Stains, spots, dust. marks and smears shall be removed from all surfaces. Hardware and metal surfaces shall be cleaned and polished. Glass and plastic surfaces shall be thoroughly cleaned by professional window cleaners. All damaged, broken or scratched glass or plastic shall be replaced by the CMAR at the CMAR's expense. At the completion of the Work CMAR shall remove from the Site and adjacent areas all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

D. Loading of Structures—CMAR shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall CMAR subject any part of the Work or adjacent structures or land to stresses or pressures that could damage said structures or decrease their durability.

5.03 Subsurface and Physical Conditions

A. Reports and Drawings—The Supplementary Conditions identify:

1. Those reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data;

2. Those drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site, except Underground Facilities, that contain Technical Data; and

3. Technical Data described in such reports and drawings.

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

C. Reliance by CMAR on Technical Data—CMAR may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents and shall under no circumstances relieve CMAR from visiting the Site and becoming familiar with and satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.. If no such express identification has been made, then CMAR may rely upon the accuracy of the Technical Data as defined in Paragraph 1.01.A.55.b.

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

1. the completeness of such reports and drawings for CMAR's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by CMAR, and safety precautions and programs incident thereto;

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

3. the contents of other Site-related documents made available to CMAR, such as record drawings from other projects at or adjacent to the Site, or Owner's archival documents concerning the Site; or

4. any CMAR interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

E. Confirmation of Site Conditions—As a part of Preconstruction Services CMAR will inform Owner if CMAR concludes that additional examination, investigation, exploration, testing, or study (Supplemental Investigations) of subsurface or physical conditions at the Site prior to commencement of construction would be advantageous, practical, and cost-effective, specifically identifying the nature and scope of any such recommended Supplemental Investigations. If Owner authorizes CMAR to conduct such Supplemental Investigations, through CMAR's own personnel or through a qualified consultant, or if Owner conducts such Supplemental Investigations, through Owner's Advisor, the Engineer, or a consultant, then CMAR will be entitled to rely on the results of the Supplemental Investigations, together with the Technical Data cited above, in planning and pricing construction at the Site.

F. If Owner does not authorize any Supplemental Investigations of Site conditions, then CMAR will proceed with planning and pricing construction based on the Technical Data made available to it.

G. CMAR will be bound by any additional knowledge regarding Site conditions that CMAR gains while providing Preconstruction services.

5.04 Differing Subsurface or Physical Conditions

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

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

2. is of such a nature as to require a change in the Drawings or Specifications;

3. differs materially from that shown or indicated in the Contract Documents; or

4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

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then CMAR shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith, except in an emergency as required by Paragraph 7.18, notify Owner's Advisor in writing about such condition. CMAR shall not further disturb such condition or perform any Work in connection therewith, except with respect to an emergency, until receipt of a written statement permitting CMAR to do so.

B. Owner's Advisor's Review–After receipt of written notice as required by the preceding paragraph, Owner's Advisor, in consultation with Engineer, will promptly review the subsurface or physical condition in question; determine whether it is necessary for Owner to obtain additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A; obtain any pertinent cost or schedule information from CMAR; prepare recommendations to Owner regarding the CMAR's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Owner's Advisor's findings, conclusions, and recommendations.

C. Owner's Statement to CMAR Regarding Site Condition–After receipt of Owner's response and instructions regarding Owner's Advisor's written findings, conclusions, and recommendations, Owner's Advisor will issue a written statement to CMAR regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and informing CMAR of Owner's Advisor's written findings, conclusions, and recommendations, as revised based on Owner's response and instructions.

D. Early Resumption of Work–If at any time Owner's Advisor, in consultation with Engineer, determines that Work in connection with the subsurface or physical condition in question may resume prior to completion of Owner's Advisor's review or Owner's Advisor's issuance of its statement to CMAR, because the condition in question has been adequately documented, and analyzed on a preliminary basis, then Owner's Advisor may instruct CMAR to resume such Work.

E. Possible Price and Times Adjustments

1. CMAR shall be entitled to an equitable adjustment in Guaranteed Maximum Price or Contract Times, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in CMAR's cost of, or time required for, performance of the Work; subject, however, to the following:

    a. Such condition must fall within any one or more of the categories described in Paragraph 5.04.A;

    b. With respect to Work that is paid for on a unit price basis, any adjustment in Guaranteed Maximum Price will be subject to the provisions of Paragraph 13.02; and

    c. CMAR's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E.

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2. CMAR shall not be entitled to any adjustment in the Guaranteed Maximum Price or Contract Times with respect to a subsurface or physical condition if:

    a. CMAR knew of the existence of such condition at the time CMAR made a commitment to Owner with respect to Guaranteed Maximum Price and Contract Times through a Work Authorization;

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

    c. The existence of such condition reasonably could have been discovered or revealed as a result of practical and cost-effective Supplemental Investigations, as defined in Paragraph 5.03.E, but CMAR did not recommend any such Supplemental Investigations to Owner; or

    d. CMAR failed to give the written notice required by Paragraph 5.04.A.

3. If Owner and CMAR agree regarding CMAR's entitlement to and the amount or extent of any adjustment in the Guaranteed Maximum Price or Contract Times, then any such adjustment will be set forth in a Change Order.

4. CMAR may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Guaranteed Maximum Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to CMAR regarding the subsurface or physical condition in question.

F. Underground Facilities; Hazardous Environmental Conditions–Paragraph 5.05 governs rights and responsibilities regarding the presence or location of Underground Facilities. Paragraph 5.06 governs rights and responsibilities regarding Hazardous Environmental Conditions. The provisions of Paragraphs 5.03 and 5.04 are not applicable to the presence or location of Underground Facilities, or to Hazardous Environmental Conditions.

5.05 Underground Facilities

A. CMAR's Responsibilities–Unless it is otherwise expressly provided in the Supplementary Conditions, the cost of all the following is included in the Guaranteed Maximum Price, and CMAR shall have full responsibility for:

1. collaborating with Engineer during the design phase, as part of Preconstruction Services, to improve the accuracy and completeness of information regarding Underground Facilities that Engineer gathers and depicts in the final Contract Documents;

2. complying with applicable state and local utility damage prevention Laws and Regulations;

3. verifying the actual location of those Underground Facilities shown or indicated in the Contract Documents as being within the area affected by the Work, by exposing such Underground Facilities prior to construction;

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

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5. the safety and protection of all existing Underground Facilities at the Site and repairing any damage thereto resulting from the Work.

B. Notice by CMAR–If CMAR believes that an Underground Facility that is uncovered or revealed at the Site during construction was not shown or indicated on the Drawings, or was not shown or indicated on the Drawings with reasonable accuracy, then CMAR shall, promptly after first becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith, except in an emergency as required by Paragraph 7.18, notify Owner and Owner's Advisor in writing regarding such Underground Facility within 5 days.

C. Owner's Advisor's Review

1. Owner's Advisor will:

a. promptly review the Underground Facility in consultation with Engineer, and conclude whether such Underground Facility was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy;

b. identify and communicate with the owner of the Underground Facility; prepare recommendations to Owner, and if necessary, issue any preliminary instructions to CMAR regarding the CMAR's resumption of Work in connection with the Underground Facility in question;

c. obtain any pertinent cost or schedule information from CMAR; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and

d. advise Owner and Engineer in writing of Owner's Advisor's findings, conclusions, and recommendations.

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

D. Owner's Advisor's Statement to CMAR Regarding Underground Facility–After receipt of Owner's response to and recommendations regarding Owner's Advisor's written findings, conclusions, and recommendations, Owner's Advisor will issue a written statement to CMAR regarding the Underground Facility in question, addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and informing CMAR of Owner's Advisor's written findings, conclusions, and recommendations, as revised based on Owner's response and instructions.

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

F. Possible Price and Times Adjustments

1. CMAR shall be entitled to an equitable adjustment in the Guaranteed Maximum Price or Contract Times, to the extent that any existing Underground Facility at the Site that

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was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in CMAR's cost of, or time required for, performance of the Work; subject, however, to the following:

a. With respect to Work that is paid for on a unit price basis, any adjustment in Guaranteed Maximum Price will be subject to the provisions of Paragraph 13.02;

b. CMAR's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E; and

c. CMAR gave the notice required in Paragraph 5.05.B.

2. If Owner and CMAR agree regarding CMAR's entitlement to and the amount or extent of any adjustment in the Guaranteed Maximum Price or Contract Times, then any such adjustment will be set forth in a Change Order.

3. CMAR may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Guaranteed Maximum Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to CMAR regarding the Underground Facility in question.

4. The information and data shown or indicated on the Drawings with respect to existing Underground Facilities at the Site is based on information and data (a) furnished by the owners of such Underground Facilities, or by others, (b) obtained from available records, or (c) gathered in an investigation conducted in accordance with the current edition of ASCE Manual 38, Standard Guideline for Investigating and Documenting Existing Utilities, by the American Society of Civil Engineers. If such information or data is incorrect or incomplete, CMAR's remedies are limited to those set forth in this Paragraph 5.05.F.

5.06 Hazardous Environmental Conditions at Site

A. Reports and Drawings–The Supplementary Conditions identify:

1. those reports known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site;

2. drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and

3. Technical Data described in such reports and drawings.

B. Reliance by CMAR on Technical Data Authorized–CMAR may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then CMAR may rely on the accuracy of the Technical Data as defined in Paragraph 1.01.A.55.b. Except for such reliance on Technical Data, CMAR may not rely upon or make any claim against Owner, Owner's Advisor, or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

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

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of construction to be employed by CMAR, and safety precautions and programs incident thereto;

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

3. any CMAR interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

C. CMAR shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.

D. CMAR shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by CMAR, Subcontractors, Suppliers, or anyone else for whom CMAR is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.

E. If CMAR encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if CMAR or anyone for whom CMAR is responsible creates a Hazardous Environmental Condition, then CMAR shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby, except in an emergency as required by Paragraph 7.18; and (3) notify Owner, Owner's Advisor, and Engineer, and promptly thereafter confirm such notice in writing) within 5 days of first becoming aware of the condition. Owner shall promptly consult with Owner's Advisor and Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Owner's Advisor and Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide CMAR with the written notice required by Paragraph 5.06.E. If CMAR or anyone for whom CMAR is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition and impose a set-off against payments to account for the associated costs.

F. CMAR shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto and delivered written notice to CMAR either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely. An equitable adjustment shall be made in the Contract Price or Contract Time, or both, to the extent that (i) they are attributable to the existence or location of any Hazardous Environmental Condition that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents or a report listed in the Supplemental Conditions, (ii) Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated the Hazardous Environmental Conditions, (iii) Contractor did not negligently, recklessly, or intentionally cause the Hazardous Environmental Condition, and (iv) Contractor notifies Owner and Engineer of such condition within 5 days after first becoming aware of such condition.

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G. If Owner and CMAR cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Guaranteed Maximum Price or Contract Times, as a result of such Work stoppage, such special conditions under which Work is agreed to be resumed by CMAR, or any costs or expenses incurred in response to the Hazardous Environmental Condition, then within 30 days of Owner's written notice regarding the resumption of Work, CMAR may submit a Change Proposal, or Owner may impose a set-off. Entitlement to any such adjustment is subject to the provisions of Paragraphs 4.05.D, 4.05.E, 11.07, and 11.08.

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

I. *[INTENTIONALLY DELETED]*

J. *[INTENTIONALLY DELETED]*

K. *[INTENTIONALLY DELETED]*

ARTICLE 6—BONDS AND INSURANCE

6.01 Performance, Payment, and Other Bonds

A. No later than the execution of the first Work Authorization the CMAR shall furnish a payment and performance bond in accordance with Sec. 255.05, Florida Statutes, , in an amount at least equal to the Guaranteed Maximum Price, as security for the faithful performance and payment of CMAR's obligations under the Contract. These bonds must remain in effect until one year after the date when final payment on the Contract becomes due or until completion of the correction period for the Contract specified in Paragraph 15.09, whichever is later, except as provided otherwise by Laws or Regulations, the terms of a prescribed bond form, the Supplementary Conditions, or other provisions of the Contract. The obligations, duties, responsibilities, and requirements of Contractor set forth in this Contract shall be incorporated into CMAR's performance bond. The premium costs of such bonds are:

1. included in Construction Support Cost if purchased for the Work based on the Estimated Guaranteed Maximum Price established with the Agreement; or

2. a reimbursable Cost of the Work if the bonds are purchased with the first Work Authorization and increased as subsequent Work Authorizations are approved.

B. CMAR shall also furnish such other bonds, if any, as are required by the Supplementary Conditions or other provisions of the Contract.

C. All bonds must be in the form included in the Contract Documents or otherwise specified by Owner prior to execution of the Contract. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority must show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond. The payment and performance bonds shall be recorded in the public records of Volusia County, Florida.

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D. CMAR shall obtain the required bonds from surety companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue bonds in the required amounts.

E. If the surety on a bond furnished by CMAR is declared bankrupt or becomes insolvent, or the surety ceases to meet the requirements above, then CMAR shall promptly notify Owner and Owner's Advisor in writing and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which must comply with the bond and surety requirements above.

F. If CMAR has failed to obtain a required bond, Owner may exclude the CMAR from the Site and exercise Owner's termination rights under Article 16.

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

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

I. Performance Bonds required of certain Subcontractors and Suppliers—see Paragraph 7.10.O.

6.02 Insurance—General Provisions

A. CMAR shall obtain and maintain insurance as required in this Article and in the Supplementary Conditions. In the event of any conflict between this Paragraph 6.02 and the specific insurance requirements of CMAR set forth in Supplemental Conditions, the specific requirements in Supplementary Conditions shall govern.

B. All insurance required by the Contract to be purchased and maintained by Owner or CMAR shall be obtained from insurance companies that are duly licensed or authorized in the State of Florida in which the Project is located to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract must have an A.M. Best Financial Strength Rating of A- or better, and an A.M. Best Financial Size Category of VII or larger.

C. Alternative forms of insurance coverage, including but not limited to self-insurance and "Occupational Accident and Excess Employer's Indemnity Policies," are not adequate to meet the insurance requirements of this Contract, unless expressly allowed in the Supplementary Conditions.

D. CMAR shall deliver to Owner, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that CMAR has obtained and is maintaining the policies and coverages required by the Contract. Upon request by Owner or any other insured, CMAR shall also furnish other evidence of such required insurance, including but not limited to copies of policies, documentation of applicable self-insured retentions, if allowed, and deductibles, full disclosure of all relevant exclusions, and evidence of insurance required to be purchased and maintained by Subcontractors or Suppliers. In any documentation furnished under this provision, CMAR, Subcontractors, and Suppliers may block out (redact) (1) any confidential premium or pricing information and

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(2) any wording specific to a project or jurisdiction other than those applicable to this Contract.

E. *[INTENTIONALLY DELETED]*

F. Failure of Owner to demand such certificates or other evidence of the CMAR's full compliance with these insurance requirements, or failure of Owner or CMAR to identify a deficiency in compliance from the evidence provided, will not be construed as a waiver of the CMAR's obligation to obtain, and maintain such insurance.

G. In addition to the liability insurance required to be provided by CMAR, the Owner, at Owner's option, may purchase and maintain Owner's own liability insurance. Owner's liability policies, if any, operate separately and independently from policies required to be provided by CMAR, and CMAR cannot rely upon Owner's liability policies for any of CMAR's obligations to the Owner, Owner's Advisor, Engineer, or third parties.

H. CMAR shall require:

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

2. Suppliers to purchase and maintain insurance that is appropriate for their participation in the Project.

I. If CMAR does not purchase or maintain the insurance required by the Contract, CMAR shall notify the Owner in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any cancellation of the required coverage.

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

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

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

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

N. All the policies of insurance required to be purchased and maintained under this Contract will contain a provision or endorsement that the coverage afforded will not be canceled, or renewal refused, until at least 10 days prior written notice has been given to the purchasing

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policyholder. Within three days of receipt of any such written notice, the purchasing policyholder must provide a copy of the notice to Owner's Advisor and each other insured.

6.03 CMAR's Insurance

A. Required Insurance–CMAR shall purchase and maintain worker's compensation, commercial general liability, and other insurance pursuant to the specific requirements of the Supplementary Conditions.

B. General Provisions–The policies of insurance required by this Paragraph 6.03 as supplemented must:

1. include at least the specific coverages required;

2. be written for not less than the limits provided, or those required by Laws or Regulations, whichever is greater;

3. remain in effect at least until the Work is complete, as set forth in Paragraph 15.07.D, and longer if expressly required elsewhere in this Contract, and at all times thereafter when CMAR may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract;

4. apply with respect to the performance of the Work, whether such performance is by CMAR, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable; and

5. include completed operations coverage:

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

b. CMAR shall furnish Owner and each additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment.

6. make the CMAR solely responsible for any insurance deductible or self-insured retention.

7. include all necessary endorsements to support the stated requirements.

C. Additional Insureds–The CMAR's commercial general liability, automobile liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies, if required by this Contract, must:

1. include and list as additional insureds Owner, Owner's Advisor, and Engineer, and any individuals or entities identified as additional insureds in the Supplementary Conditions;

2. include coverage for the respective officers, directors, members, partners, employees, and consultants of all such additional insureds;

3. afford primary coverage to these additional insureds for all claims covered thereby, including as applicable those arising from both ongoing and completed operations;

4. not seek contribution from insurance maintained by the additional insured; and

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

6.04 Builder's Risk and Other Property Insurance

A. Builder's Risk–Unless otherwise provided in the Supplementary Conditions, beginning at the commencement of construction CMAR shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the Work's full insurable replacement cost, subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations. The specific requirements applicable to the builder's risk insurance are set forth in the Supplementary Conditions.

For purposes of the builder's risk and other required property insurance, "commencement of construction" first occurs when materials are in the course of delivery to the Site or an off-site storage location required to be insured if transit coverage is required, or if transit coverage is not required, when materials are delivered to the Site, or an off-site storage location required to be insured.

B. Property Insurance for Facilities of Owner Where Work Will Occur–CMAR is responsible for obtaining and maintaining property insurance covering each existing structure, building, or facility in which any part of the Work will occur, or to which any part of the Work will attach or be adjoined. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, providing coverage consistent with that required for the builder's risk insurance, and will be maintained until the Work is complete, as set forth in Paragraph 15.07.D. Such policy shall identify both CMAR and Owner as additional insureds. CMAR shall be solely responsible for any deductible.

C. Property Insurance for Substantially Complete Facilities–Promptly after Substantial Completion, and before actual occupancy or use of the substantially completed Work, CMAR will obtain property insurance for such substantially completed Work and maintain such property insurance at least until the Work is complete, as set forth in Paragraph 15.07.D. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, and provide coverage consistent with that required for the builder's risk insurance. The builder's risk insurance may terminate upon written confirmation of CMAR's procurement of such property insurance.

D. Partial Occupancy or Use by Owner–If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, as provided in Paragraph 15.05, then Owner, or through CMAR, will provide advance notice of such occupancy or use to the builder's risk or all-risk insurer and CMAR shall obtain coverage or an endorsement consenting to the continuation of coverage prior to Owner commencing such partial occupancy or use.

E. Insurance of Other Property; Additional Insurance–If the express insurance provisions of the Contract do not require or address the insurance of a property Item or interest, then the entity or individual owning such property Item will be responsible for insuring it. If CMAR elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.04, CMAR may do so at its expense.

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6.05 Property Losses; Subrogation

A. The builder's risk insurance policy purchased and maintained in accordance with Paragraph 6.04, or an installation floater policy if authorized by the Supplementary Conditions, will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against Owner's Advisor, Engineer, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors.

1. Owner and CMAR waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils, risks, or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Owner's Advisor, Engineer, its consultants, all individuals or entities identified in the Supplementary Conditions as builder's risk or installation floater insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused.

2. None of the above waivers extends to the rights that any party making such waiver may have to the proceeds of insurance held by CMAR as trustee or fiduciary, or otherwise payable under any policy so issued.

B. *[INTENTIONALLY DELETED]*

C. *[INTENTIONALLY DELETED]*

D. CMAR shall assure that each subcontract contains provisions whereby the Subcontractor waives all rights against Owner, CMAR, Owner's Advisor, Engineer, all individuals or entities identified in the Supplementary Conditions as insureds, their consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from fire or other peril, risk, or cause of loss covered by builder's risk insurance, installation floater, and any other property insurance applicable to the Work.

6.06 Receipt and Application of Property Insurance Proceeds

A. Any insured loss under the builder's risk and other policies of property insurance required by Paragraph 6.04 will be adjusted and settled with the named insured that purchased the policy. Such named insured will act as fiduciary for the other insureds and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.

B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.04 must maintain such proceeds in a segregated account and distribute such proceeds in accordance with such agreement as the parties in interest

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may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.

C. If no other special agreement is reached, CMAR shall repair or replace the damaged Work, using allocated insurance proceeds.

D. Owner, at its sole discretion, may elect to fund the costs associated with any property insurance claim, excluding the deductible, and seek reimbursement from CMAR's policy that identifies both CMAR and Owner as named insureds. If Owner exercises this right, it shall have sole authority to settle and adjust any claim and receive reimbursement under the policy with the proceeds made payable to Owner. CMAR shall have the obligation to cooperate and comply with all terms and provisions of the policy and its failure to do so shall constitute a material breach of the Contract. If Owner does not elect this right, CMAR shall be required to fund the costs associated with any property insurance claim and seek reimbursement under the policy.

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

ARTICLE 7—CMAR'S RESPONSIBILITIES

7.01 CMAR's Means and Methods of Construction

A. CMAR shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.

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

7.02 Supervision and Superintendence

A. CMAR shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents.

B. At all times during the progress of the Work, CMAR shall assign a competent resident superintendent who will not be replaced without written notice to Owner and Owner's Advisor except under extraordinary circumstances.

7.03 CMAR Services—Key Personnel and Subconsultants

A. CMAR will provide the services of the key individuals identified in the Agreement for CMAR Services (Preconstruction Services and Procurement Services) for the duration of the time required to provide these services. CMAR may substitute other individuals for the key individuals identified in the Agreement or for individuals previously approved only upon good

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cause and with the written consent of the Owner. Subject to the foregoing, not providing the individuals proposed may be the grounds for termination of this Contract.

B. CMAR may provide CMAR Services through one or more subconsultants under contract to CMAR provided, however, that CMAR remains responsible to the Owner for all duties and obligations of the CMAR under this Contract, and in rendering services any such subconsultant must comply with all applicable terms and conditions of the Contract Documents. If the Agreement identifies a specific subconsultant, CMAR will provide the services of such subconsultant for the duration of the time required to complete the subcontracted tasks. CMAR may substitute other subconsultants for the subconsultants identified in the Agreement or previously approved only with the written consent of the Owner. Subject to the foregoing, not providing the subconsultants proposed may be the grounds for termination of this Contract.

7.04 Quality of CMAR Services

A. The Owner's Advisor, with the concurrence of Owner and Engineer, has the right to reject or disapprove any substandard portion of the CMAR Services. Owner's Advisor will provide written notice stating the reason for the rejection or disapproval. CMAR will revise the services in question to address the inadequacies identified by Owner's Advisor.

B. CMAR acknowledges that any review or approval of CMAR Services by the Owner or Owner's Advisor does not relieve CMAR of its responsibility to properly and timely perform such services.

7.05 Continuation or Termination of CMAR Services

A. Owner may terminate this Contract for Owner's convenience at the completion of Preconstruction Services if Owner determines that doing so is in Owner's best interest. Owner is not obligated to cite a reason for such a termination, but in making its determination Owner may wish to consider factors such as the quality of the CMAR Services, facts that indicate that the Project cannot be constructed for a cost within the Owner's budget, and changes in key personnel.

B. The Owner may terminate the Contract for Owner's convenience at the end of Procurement Services if Owner determines that doing so is in Owner's best interest. Owner is not obligated to cite a reason for such a termination, but in making its determination Owner may wish to consider factors such as whether CMAR is unable to offer a Guaranteed Maximum Price within the Owner's Construction Budget, or whether it will be advantageous to bid out the Work as a whole on a stipulated price basis.

7.06 Labor; Working Hours

A. CMAR shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. CMAR shall maintain good discipline and order at the Site.

B. CMAR shall provide or furnish:

1. Construction-related services as described in Division 00 and Division 01 of the Contract Documents;

2. Post-construction services as described in Division 00 and Division 01 of the Contract Documents; and

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3. All other construction-related and post-construction services described in the Contract Documents.

C. CMAR shall be fully responsible to Owner, Owner's Advisor, and Engineer for all acts and omissions of CMAR's employees; of subconsultants, Suppliers, and Subcontractors, and their employees; and of any other individuals or entities performing or furnishing any of the CMAR Services or the Work, just as CMAR is responsible for CMAR's own acts and omissions. The CMAR agrees to remove from the Project an employee, Subcontractor, or Subcontractor employee that commits any breach of the Contract Documents or any breach of the Owner's written rules and regulations regarding the jobsite conduct.

D. The CMAR shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. CMAR shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The CMAR shall require all construction personnel to maintain a neat general appearance at all times. Shirts, trousers and proper shoes are required apparel. The display of vulgar words, signs or figures is prohibited. Sandals and flip-flops are prohibited on the Project site. The use of radios, tape players, CD players, boom boxes, sound producing devices and the like are prohibited on the Project site. The CMAR shall not be permitted to use restrooms or other sanitary facilities within the Owner's existing buildings or on-site facilities.

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

7.07 Services, Materials, and Equipment

A. Unless otherwise specified in the Contract Documents, CMAR shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.

B. All materials and equipment incorporated into the Work must be new and of good quality, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications will expressly run to the benefit of Owner. If required by Owner's Advisor, the CMAR shall furnish satisfactory evidence, including reports of required tests, as to the source, kind, and quality of materials and equipment.

C. All materials and equipment must be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

D. CMAR will be fully responsible for the quality and effectiveness (1) of all services performed or provided by CMAR, including but not limited to CMAR Services and general services in support of construction, and (2) of the deliverables and documentation associated with all such services.

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7.08 "Or Equals"

A. CMAR's Request; Governing Criteria–Whenever an Item of equipment or material is specified or described in the Contract Documents by using the names of one or more proprietary items or specific Suppliers, the Guaranteed Maximum Price has been based upon CMAR furnishing such Item as specified. The specification or description of such an Item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" Item is permitted, CMAR may request that Owner's Advisor authorize the use of other items of equipment or material, or items from other proposed Suppliers, under the circumstances described below.

1. If Owner's Advisor, in consultation with Engineer, determines that an Item of equipment or material proposed by CMAR is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Owner's Advisor will deem it an "or equal" item. For the purposes of this paragraph, a proposed Item of equipment or material will be considered functionally equal to an Item so named if:

    a. in the exercise of reasonable judgment Owner's Advisor, in consultation with Engineer, determines that the proposed item:

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

        2) will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;

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

        4) is not objectionable to Owner.

    b. CMAR certifies that if the proposed Item is approved and incorporated into the Work:

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

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

B. CMAR's Expense–CMAR shall provide all data in support of any proposed "or equal" Item at CMAR's expense.

C. Owner's Advisor's Evaluation and Determination–Owner's Advisor, in consultation with Engineer, will be allowed a reasonable time to evaluate each "or-equal" request. Owner's Advisor may require CMAR to furnish additional data about the proposed "or-equal" item. Owner's Advisor, in consultation with Engineer, will be the sole judge of acceptability. No "or-equal" Item will be ordered, furnished, installed, or utilized until Owner's Advisor's review is complete and Owner's Advisor, in consultation with Engineer, has determined that the proposed Item is equal, which will be evidenced by an approved Shop Drawing or other written communication. Owner's Advisor will advise CMAR in writing of any negative determination.

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D. Effect of Owner's Advisor's Determination–Neither approval nor denial of an "or-equal" request will result in any change in Guaranteed Maximum Price. The Owner's Advisor's denial of an "or-equal" request will be final and binding and may not be reversed through an appeal under any provision of the Contract.

E. Treatment as a Substitution Request–If Owner's Advisor determines that an Item of equipment or material proposed by CMAR does not qualify as an "or-equal" item, CMAR may request that Owner's Advisor consider the Item a proposed substitute pursuant to Paragraph 7.09.

7.09 Substitutes

A. CMAR's Request; Governing Criteria–Unless the specification or description of an Item of equipment or material required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, CMAR may request that Owner's Advisor authorize the use of other items of equipment or material under the circumstances described below.

B. To the extent possible such requests must be made as part of Preconstruction Services, before the completion of the applicable portion of the design, the Procurement of Subcontractors, construction pricing, and execution of the governing Work Authorization (Preconstruction Substitute Requests). Preconstruction Substitute Requests are further addressed in Paragraph 7.09.E below; substitute requests made after the applicable Work Authorization are addressed in Paragraph 7.09.F.

C. The following provisions apply to all substitute requests:

1. CMAR shall submit adequate information as provided below to allow Owner's Advisor, in consultation with Engineer, to determine if the Item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Owner's Advisor will not accept requests for review of proposed substitute items of equipment or material from anyone other than CMAR.

2. The requirements for review by Owner's Advisor, in consultation with Engineer, will be as set forth in Paragraph 7.09.D, as supplemented by the Specifications, and as Owner's Advisor may decide is appropriate under the circumstances.

3. CMAR shall make written application to Owner's Advisor for review of a proposed substitute Item of equipment or material that CMAR seeks to furnish or use. The application:

a. will certify that the proposed substitute Item will:

1) adequately perform the functions and achieve the results called for by the general design;

2) be similar in substance to the Item specified; and

3) be suited to the same use as the Item specified.

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b. will state:

1) the extent, if any, to which the use of the proposed substitute Item will necessitate a change in Contract Times;

2) whether use of the proposed substitute Item in the Work will require a change in any of the Contract Documents, or in the provisions of any other direct contract with Owner for other work on the Project, to adapt the design to the proposed substitute item; and

3) whether incorporation or use of the proposed substitute Item in connection with the Work is subject to payment of any license fee or royalty.

c. will identify:

1) all variations of the proposed substitute Item from the Item specified; and

2) available engineering, sales, maintenance, repair, and replacement services.

d. will contain, to the extent applicable, an itemized estimate of all costs, anticipated price impacts, or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Guaranteed Maximum Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.

D. Owner's Advisor's Evaluation and Determination–Owner's Advisor, in consultation with Engineer, will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Owner's Advisor may require CMAR to furnish additional data about the proposed substitute item. Owner's Advisor, in consultation with Engineer, will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Owner's Advisor's review is complete and Owner's Advisor determines that the proposed Item is an acceptable substitute.

E. Preconstruction Substitute Requests—CMAR will research potential substitutes, furnish data, and prepare a Preconstruction Substitute Request as compensable Basic Preconstruction Services. CMAR will not be responsible for costs incurred by Owner, Owner's Advisor, or Engineer in response to a Preconstruction Substitute Request. If such a request is approved, CMAR will not be required to issue a special guarantee with respect to the substitute's inclusion in the final design.

F. For substitute requests made after a Work Authorization, or in an untimely manner such that the substitution cannot be made part of the final design on which binding construction pricing is based, the following apply:

1. Owner's Advisor's determination will be evidenced by a Field Order, or a proposed Change Order issued by the Owner's Advisor accounting for the substitute itself and all related impacts, including changes in Guaranteed Maximum Price or Contract Times. Owner's Advisor will advise CMAR in writing of any negative determination.

2. Special Guarantee –Owner's Advisor may require CMAR to furnish at CMAR's expense a special performance guarantee or other surety with respect to the substitute.

3. Reimbursement of Review Cost–Owner's Advisor and Engineer will record their costs in evaluating the substitute proposed or submitted by CMAR. Whether or not Owner's Advisor approves a substitute so proposed or submitted by CMAR, CMAR shall

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reimburse Owner for the reasonable charges of Owner's Advisor and Engineer for evaluating each such proposed substitute. CMAR shall also reimburse Owner for the reasonable charges of Owner's Advisor and Engineer for making changes in the Contract Documents, or in the provisions of any other direct contract with Owner resulting from the acceptance of each proposed substitute.

4. CMAR's Expense–CMAR shall provide all data in support of any proposed substitute at CMAR's expense.

5. Effect of Owner's Advisor's Determination–If Owner's Advisor approves the substitute request, CMAR shall execute a Change Order and proceed with the substitute. The Owner's Advisor's denial of a substitution request will be final and binding and may not be reversed through an appeal under any provision of the Contract. CMAR may challenge the scope of reimbursement costs imposed under Paragraph 7.09.F.3, by timely submittal of a Change Proposal.

7.10 Concerning Subcontractors and Suppliers

A. CMAR may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner. The CMAR's retention of a Subcontractor or Supplier for the performance of parts of the Work will not relieve CMAR's obligation to Owner to perform and complete the Work in accordance with the Contract Documents.

B. CMAR shall retain specific Subcontractors and Suppliers for the performance of designated parts of the Work if required by the Contract to do so.

C. As a general matter, CMAR shall retain Subcontractors and Suppliers for Work Packages through the procurement process described in the Agreement, including but not limited to the Procurement Strategy Plan and Exhibit A Article 3 of the Agreement. If there is a conflict between such provisions of the Agreement and this paragraph, the provisions of the Agreement will govern.

D. Subsequent to the submittal of CMAR's Proposal or final negotiation of the terms of the Contract, Owner may not require CMAR to retain any Subcontractor or Supplier against which CMAR has reasonable objection to furnish or perform any of the Work.

E. Prior to entry into any binding subcontract or purchase order, CMAR shall submit to Owner the identity of the proposed Subcontractor or Supplier, unless Owner has already deemed such proposed Subcontractor or Supplier acceptable during the CMAR selection process, the Subcontractor and Supplier procurement process, or otherwise. Such proposed Subcontractor or Supplier will be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within 5 days.

F. Owner may require the replacement of a Subcontractor or Supplier. Owner also may require CMAR to retain specific replacements; provided, however, that Owner may not require a replacement to which CMAR has a reasonable objection. If CMAR has submitted the identity of certain Subcontractors or Suppliers for acceptance by Owner, through the Subcontractor and Supplier procurement process or otherwise, and Owner has accepted it, either in writing or by failing to make written objection thereto, then Owner may subsequently revoke the acceptance of any such Subcontractor or Supplier so identified solely on the basis of

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substantive, reasonable objection after due investigation. CMAR shall submit an acceptable replacement for the rejected Subcontractor or Supplier.

G. If Owner requires the replacement of any Subcontractor or Supplier retained by CMAR to perform any part of the Work, then CMAR shall be entitled to an adjustment in Guaranteed Maximum Price or Contract Times, with respect to the replacement; and CMAR shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.

H. No acceptance by Owner of any such Subcontractor or Supplier, whether initially or as a replacement, will constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.

I. On a monthly basis, CMAR shall submit to Owner's Advisor a complete list of all Subcontractors and Suppliers having a direct contract with CMAR, and of all other Subcontractors and Suppliers known to CMAR at the time of submittal.

J. CMAR shall be solely responsible for scheduling and coordinating the work of Subcontractors and Suppliers.

K. The divisions and sections of the Specifications and the identifications of any Drawings do not control CMAR in dividing the Work among Subcontractors or Suppliers, or in delineating the Work to be performed by any specific trade.

L. All Work performed for CMAR by a Subcontractor or Supplier must be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract for the benefit of Owner, Owner's Advisor, and Engineer.

M. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to CMAR for Work performed for CMAR by the Subcontractor or Supplier.

N. CMAR shall restrict all Subcontractors and Suppliers from communicating with Owner's Advisor or Owner, except through CMAR or in case of an emergency, or as otherwise expressly allowed in this Contract.

O. CMAR will perform or undertake the responsibilities of any Subcontractor or Supplier that defaults, fails to perform, declares bankruptcy, or meets any of the other requirements for termination for cause listed as applying to the CMAR as described in Paragraph 16.02 of the General Conditions.

1. If, for a specific Subcontractor or Supplier, CMAR determines that CMAR would not reasonably be able to self-perform the Subcontractor's work or meet the Supplier's obligations in the event of the Subcontractor or Supplier default, then CMAR may require a subcontract/supplier performance bond, the costs of which will be reimbursed as a Cost of the Work under the Subcontract costs category (Paragraph 6.02, Agreement). Before requiring such a bond, CMAR will consult with Owner's Advisor and consider whether other protective measures are feasible and more cost-effective.

2. If Owner requires that CMAR enter into a subcontract with a Subcontractor to which the CMAR has reasonable objections, CMAR may require subcontract performance and payment bonds, the costs of which will be reimbursed as a Cost of the Work under the Subcontract costs category (Paragraph 6.02, Agreement).

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7.11 Patent Fees and Royalties

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

B. [*INTENTIONALLY DELETED]*

C. [INTENTIONALLY DELETED]

7.12 Permits

A. Unless otherwise provided in the Contract Documents, CMAR shall obtain and pay for all construction permits, licenses, and certificates of occupancy. Owner shall assist CMAR, when necessary, in obtaining such permits and licenses. CMAR shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of the submission of CMAR's Proposal. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

7.13 Taxes

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

7.14 Laws and Regulations

A. CMAR shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of CMAR Services or the Work. Neither Owner, Owner's Advisor, nor Engineer will be responsible for monitoring CMAR's compliance with Laws or Regulations.

B. If CMAR performs any CMAR Services or Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, CMAR shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner, Owner's Advisor, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages, including but not limited to all fees and charges of construction managers, engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs, arising out of or relating to such CMAR Services, Work, or other action.

C. It is not CMAR's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this does not relieve CMAR of its obligations under Paragraph 3.03.

D. Owner or CMAR may give written notice to the other party of any changes after the Effective Date of the Contract in Laws or Regulations having an effect on the cost or time of performance of the Work, including but not limited to changes in Laws or Regulations having

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an effect on procuring permits and on sales, use, value-added, consumption, and other similar taxes. If Owner and CMAR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in Guaranteed Maximum Price or Contract Times resulting from such changes, then within 30 days of such written notice CMAR may submit a Change Proposal, or Owner may initiate a Claim.

7.15 Record Documents

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

7.16 Safety and Protection

A. CMAR shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations.

B. CMAR shall designate a qualified and experienced safety representative whose duties and responsibilities are the prevention of Work-related accidents and the maintenance and supervision of safety precautions and programs.

C. CMAR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:

1. all persons on the Site or who may be affected by the Work;

2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and

3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

D. All damage, injury, or loss to any property referred to in Paragraph 7.16.C.2 or 7.16.C.3 caused, directly or indirectly, in whole or in part, by CMAR, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, will be remedied by CMAR at its expense, except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner, Owner's Advisor, or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of CMAR or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them.

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E. CMAR shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection.

F. CMAR shall notify Owner's Advisor; Owner; the owners of adjacent property; the owners of Underground Facilities and other utilities, if the identity of such owners is known to CMAR; and other contractors and utility owners performing work at or adjacent to the Site, in writing, when CMAR knows that prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.

G. CMAR shall comply with the applicable requirements of Owner's safety programs, if any. Any Owner's safety programs that are applicable to the Work are identified or included in the Supplementary Conditions or Specifications.

H. CMAR shall inform Owner, Owner's Advisor, and Engineer of the specific requirements of CMAR's safety program with which Owner's, Owner's Advisor's, and Engineer's employees and representatives must comply while at the Site.

I. CMAR's duties and responsibilities for safety and protection will continue until all the Work is completed, Owner's Advisor has issued a written notice to Owner and CMAR in accordance with Paragraph 15.07.C that the Work is acceptable, and CMAR has left the Site, except as otherwise expressly provided in connection with Substantial Completion.

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

7.17 Hazard Communication Programs

A. CMAR shall be responsible for coordinating any exchange of safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

7.18 Emergencies

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

7.19 Submittals

A. Shop Drawing and Sample Requirements

1. Before submitting a Shop Drawing or Sample, CMAR shall:

a. review and coordinate the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;

b. determine and verify:

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1) all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect to the Submittal;

2) the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and

3) all information relative to CMAR's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto;

c. confirm that the Submittal is complete with respect to all related data included in the Submittal.

2. Each Shop Drawing or Sample must bear a stamp or specific written certification that CMAR has satisfied CMAR's obligations under the Contract Documents with respect to CMAR's review of that Submittal, and that CMAR approves the Submittal.

3. With each Shop Drawing or Sample, CMAR shall give Owner's Advisor specific written notice of any variations that the Submittal may have from the requirements of the Contract Documents. This notice must be set forth in a written communication separate from the Submittal; and, in addition, in the case of a Shop Drawing by a specific notation made on the Shop Drawing itself.

B. Submittal Procedures for Shop Drawings and Samples–CMAR shall label and submit Shop Drawings and Samples to Owner's Advisor for review by Engineer in accordance with the accepted Schedule of Submittals.

1. Shop Drawings

a. CMAR shall submit the number of copies required in the Specifications.

b. Data shown on the Shop Drawings must be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show the services, materials, and equipment CMAR proposes to provide, and to enable the information to be reviewed for the limited purposes required by Paragraph 7.19.D.

2. Samples

a. CMAR shall submit the number of Samples required in the Specifications.

b. CMAR shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Owner's Advisor may require to enable Engineer to review the Sample for the limited purposes required by Paragraph 7.19.D.

C. Proceeding without Engineer's Approval—Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, Owner will not pay for related Work, including equipment or materials, until Engineer approves the Shop Drawing or Sample. If CMAR proceeds without such approval, CMAR will bear the full risk of all resulting delays, costs, and losses, including but not limited to removal, corrective, purchase, and installation costs, if such approval is not granted.

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D. Engineer's Review of Shop Drawings and Samples

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the accepted Schedule of Submittals. Engineer's review will be only to determine if the items covered by the Submittals will, after installation or incorporation in the Work, comply with the requirements of the Contract Documents, and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. Engineer's review and approval, if any, will not extend to means, methods, techniques, sequences, or procedures of construction, or to safety precautions or programs incident thereto.

3. Engineer's review and approval, if any, of a separate Item as such will not indicate approval of the assembly in which the Item functions.

4. Engineer's review and approval, if any, of a Shop Drawing or Sample will not relieve CMAR from responsibility for any variation from the requirements of the Contract Documents unless CMAR has complied with the requirements of Paragraph 7.19.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Owner's Advisor, in consultation with Engineer, will document any such approved variation from the requirements of the Contract Documents in a Field Order or other appropriate Contract modification.

5. Engineer's review and approval, if any, of a Shop Drawing or Sample will not relieve CMAR from responsibility for complying with the requirements of Paragraphs 7.19.A and B.

6. Engineer's review and approval, if any, of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, will not, under any circumstances, change the Contract Times or Guaranteed Maximum Price, unless such changes are included in a Change Order.

7. Neither receipt, review, acceptance, or approval of a Shop Drawing or Sample will result in such Item becoming a Contract Document.

8. CMAR shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.19.D.4.

E. Resubmittal Procedures for Shop Drawings and Samples

1. CMAR shall make required corrections and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. CMAR shall direct specific attention in writing to revisions other than the corrections called for on previous Submittals.

2. CMAR shall furnish required Shop Drawing and Sample submittals with adequate information and accuracy to obtain required approval of an Item with no more than two resubmittals. Engineer will record Engineer's time for reviewing a third or subsequent resubmittal of a Shop Drawing or Sample, and CMAR shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due CMAR to secure reimbursement for such charges.

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3. If CMAR requests a change of a previously approved Shop Drawing or Sample, CMAR shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due CMAR to secure reimbursement for such charges, unless the need for such change is beyond the control of CMAR.

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

1. The following provisions apply to all Submittals other than Shop Drawings, Samples, and Owner-delegated designs:

a. CMAR shall submit all such Submittals to Owner's Advisor in accordance with the Schedule of Submittals and pursuant to the applicable terms of the Contract Documents.

b. A timely review will be made of all such Submittals in accordance with the Schedule of Submittals and return such Submittals with a notation of either Accepted or Not Accepted. Any such Submittal that is not returned within the time established in the Schedule of Submittals will be deemed accepted.

c. Review will be only to determine if the Submittal is acceptable under the requirements of the Contract Documents as to general form and content of the Submittal.

d. If any such Submittal is not accepted, CMAR shall confer with Owner's Advisor regarding the reason for the non-acceptance and resubmit an acceptable document.

2. Procedures for the submittal and acceptance of the Progress Schedule, the Schedule of Submittals, and the Schedule of Values are set forth in Paragraphs 4.04, 7.19, and 15.02.

G. Owner-delegated Designs–Submittals pursuant to Owner-delegated designs are governed by the provisions of Paragraph 7.22.

7.20 CMAR's General Warranty and Guarantee

A. CMAR warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Owner's Advisor and Engineer are entitled to rely on CMAR's warranty and guarantee.

B. Owner's rights under this warranty and guarantee are in addition to, and are not limited by, Owner's rights under the correction period provisions of Paragraph 15.09. The time in which Owner may enforce its warranty and guarantee rights under this Paragraph 7.20 is limited only by applicable Laws and Regulations restricting actions to enforce such rights; provided, however, that after the end of the correction period under Paragraph 15.09:

1. Owner shall give CMAR written notice of any defective Work within 60 days of the discovery that such Work is defective; and

2. Such notice will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the notice.

C. CMAR's warranty and guarantee hereunder excludes defects or damage caused by:

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1. abuse, or improper modification, maintenance, or operation, by persons other than CMAR, Subcontractors, Suppliers, or any other individual or entity for whom CMAR is responsible; or

2. normal wear and tear under normal usage.

D. CMAR shall perform or provide CMAR Services in accordance with the Contract Documents and good construction management practice.

E. CMAR's obligation to perform and complete the CMAR Services and the Work in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of CMAR Services or Work that is not in accordance with the Contract Documents, a release of CMAR's obligation to perform the CMAR Services or Work in accordance with the Contract Documents, or a release of Owner's warranty and guarantee rights under this Paragraph 7.20:

1. Observations by Owner's Advisor or Engineer;

2. Recommendation by Owner's Advisor or payment by Owner of any progress or final payment;

3. The acceptance of CMAR Services without objection;

4. The issuance of a certificate of Substantial Completion by Owner's Advisor or any payment related thereto by Owner;

5. Use or occupancy of the Work or any part thereof by Owner;

6. Any review and approval of a Shop Drawing or Sample submittal;

7. The issuance of a notice of acceptability by Owner's Advisor;

8. The end of the correction period established in Paragraph 15.09;

9. Any inspection, test, or approval by others; or

10. Any correction of defective Work by Owner.

F. If the Contract requires CMAR to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract will govern with respect to CMAR's performance obligations to Owner for the Work described in the assigned contract.

7.21 Indemnification

A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of CMAR under the Contract or otherwise, CMAR shall indemnify and hold harmless Owner, Owner's Advisor, and the Owner's officers, employees, from losses, damages, costs, and judgments, including but not limited to all reasonable fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs, arising from third-party claims or actions relating to or resulting from the performance or furnishing of CMAR Services or the Work, provided that any such claim, action, loss, cost, judgment or damage is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property, other than the Work itself, including the loss of use resulting therefrom, and caused in whole or in part by any act or omission of the CMAR, any Subcontractor, anyone directly or indirectly

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employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which otherwise exists as to any party or person described in this subsection.

B. The CMAR acknowledges the limit of dollar amount of CMAR's indemnity obligations required by the Contract specifically for those claims caused in whole or in part by the Owner or Engineer shall be $1,000,000 or the Contract Sum of the Project, whichever is more. The parties agree that the indemnity provided herein bears a reasonable commercial relationship to the Contract and is incorporated by this reference into the Project specifications and bid documents. if any.

C. Notwithstanding the above and without monetary limitation, the CMAR hereby indemnifies and holds harmless the Owner, their officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by negligence, recklessness, or intentional wrongful misconduct of the CMAR and persons employed or utilized by the Contractor in the performance of the Contract.

D. CMAR agrees and understands that its obligation to indemnify, hold harmless, and defend as set forth in Paragraphs 7.21.A and B. above includes without limitation, claims, losses, etc., for personal injury, death, property damage, Hazardous Environmental Conditions, infringement of patent rights or copyrights incidental to the use or incorporation in the performance of the Work, etc., to the extent caused by the negligence, recklessness, or intentional misconduct of CMAR and the persons or entities employed or utilized by CMAR in the performance of the Contract.

7.22 Delegation of Professional Design Services

A. Owner may require CMAR to provide professional design services for a portion of the Work by express delegation in the Contract Documents. Such delegation will specify the performance and design criteria that such services must satisfy, and the Submittals that CMAR must furnish to Owner's Advisor with respect to the Owner-delegated design.

B. CMAR shall cause such Owner-delegated professional design services to be provided pursuant to the professional standard of care by a properly licensed design professional, whose signature and seal must appear on all drawings, calculations, specifications, certifications, and Submittals prepared by such design professional. Such design professional must issue all certifications of design required by Laws and Regulations.

C. If a Shop Drawing or other Submittal related to the Owner-delegated design is prepared by CMAR, a Subcontractor, or others for submittal to Owner's Advisor, then such Shop Drawing or other Submittal must bear the written approval of CMAR's design professional when submitted by CMAR to Owner's Advisor.

D. Owner, Owner's Advisor, and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the design professionals retained or employed by CMAR under an Owner-delegated design, subject to the professional standard of care and the performance and design criteria stated in the Contract Documents.

E. Pursuant to this Paragraph 7.22, Engineer's review, approval, and determinations regarding design drawings, calculations, specifications, certifications, and other Submittals furnished

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by CMAR pursuant to an Owner-delegated design will be only for the following limited purposes:

1. Checking for conformance with the requirements of this Paragraph 7.22;
2. Confirming that CMAR, through its design professionals, has used the performance and design criteria specified in the Contract Documents; and
3. Establishing that the design furnished by CMAR is consistent with the design concept expressed in the Contract Documents.

F. CMAR shall not be responsible for the adequacy of performance or design criteria specified by Owner or Engineer.

G. CMAR is not required to provide professional services in violation of applicable Laws and Regulations.

ARTICLE 8—OTHER WORK AT THE SITE

8.01 Other Work

A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.

B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give CMAR written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any third-party utility work that Owner has arranged to take place at or adjacent to the Site, Owner shall provide such information to CMAR.

C. CMAR shall afford proper and safe access to the Site to each contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work.

D. CMAR shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. CMAR shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that CMAR may cut or alter others' work with the written consent of Owner's Advisor and the others whose work will be affected.

E. If the proper execution or results of any part of CMAR's Work depends upon work performed by others, CMAR shall inspect such other work and promptly report to Owner's Advisor in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of CMAR's Work. CMAR's failure to so report will constitute an acceptance of such other work as fit and proper for integration with CMAR's Work except for latent defects and deficiencies in such other work.

F. The provisions of this Article are not applicable to work that is performed by third-party utilities or other third-party entities without a contract with Owner, or that is performed without having been arranged by Owner. If such work occurs, then any related delay,

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disruption, or interference incurred by CMAR is governed by the provisions of Paragraph 4.05.C.3.

8.02 Coordination

A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be set forth in the Supplementary Conditions or provided to CMAR prior to the start of any such other work:

1. The identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;

2. An itemization of the specific matters to be covered by such authority and responsibility; and

3. The extent of such authority and responsibilities.

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

8.03 Legal Relationships

A. If, in the course of performing other work for Owner at or adjacent to the Site, the Owner's employees, any other contractor working for Owner, or any utility owner that Owner has arranged to perform work, causes damage to the Work or to the property of CMAR or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then CMAR shall be entitled to an equitable adjustment in the Guaranteed Maximum Price or the Contract Times. CMAR must submit any Change Proposal seeking an equitable adjustment in the Guaranteed Maximum Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment will consider information, if any regarding such other work that was provided to CMAR in the Contract Documents prior to the submittal of the Proposal or the final negotiation of the terms of the Contract, and any remedies available to CMAR under Laws or Regulations concerning utility action or inaction. When applicable, any such equitable adjustment in Guaranteed Maximum Price will be conditioned on CMAR assigning to Owner all CMAR's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. CMAR's entitlement to an adjustment of the Contract Times or Guaranteed Maximum Price is subject to the provisions of Paragraphs 4.05.D and 4.05.E.

B. CMAR shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site.

1. If CMAR fails to take such measures, and as a result, damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due CMAR, and assign to such other contractor or utility owner the Owner's contractual rights against CMAR with respect to the breach of the obligations set forth in this Paragraph 8.03.B.

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2. When Owner is performing other work at or adjacent to the Site with Owner's employees, CMAR shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of CMAR's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due CMAR.

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

ARTICLE 9—OWNER'S RESPONSIBILITIES

9.01 Communications to CMAR

A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to CMAR through Owner's Advisor.

9.02 Replacement of Owner's Advisor or Engineer

A. Owner may at its discretion appoint a replacement for Owner's Advisor, provided CMAR makes no reasonable objection to the replacement. The replacement's status under the Contract Documents will be that of the former Owner's Advisor.

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

9.03 Furnish Data

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

9.04 Pay CMAR

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

9.05 Lands and Easements; Reports, Tests, and Drawings

A. Owner's duties with respect to providing lands and easements are set forth in Paragraph 5.01.

B. Owner's duties with respect to providing engineering surveys to establish reference points are set forth in Paragraph 4.03.

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

9.06 Insurance

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

9.07 Change Orders

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

9.08 Inspections, Tests, and Approvals

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

9.09 Owner's Tasks in Support of CMAR Services

A. Owner shall provide CMAR with all criteria and full information as to Owner's requirements for the Project including drafts of proposed Contract Documents, general schedules and completion requirements, reports, surveys, permits, record documents from related previous projects, and other information as required for CMAR to provide services. Owner shall be responsible for, and CMAR may rely upon, the accuracy and completeness of all such criteria and information, and of any other programs, instructions, data, and other information furnished by Owner to CMAR pursuant to this Agreement. CMAR may use such criteria and information in performing or furnishing CMAR Services.

B. Owner shall provide reasonable assistance to CMAR in securing the release of documents and information held by private entities and by public agencies as needed to provide services required by this Agreement.

C. Owner shall arrange for safe access to and make all provisions for CMAR to enter upon public and private property as required for CMAR to perform services.

D. Owner shall review documents presented by CMAR, make decisions, and carry out Owner's other responsibilities in a timely manner so as not to delay the CMAR's performance of its services.

E. Owner shall provide the services of attorneys, insurance consultants, financial advisors, and other professional advisors or consultants required for the Project, but not provided by the CMAR.

1. Advise CMAR of the identity and scope of services of any independent consultant, designer, contractor, or other construction manager employed by Owner to perform or furnish services in regard to the Project, including cost estimating, project peer reviews, value engineering, and constructability reviews.

2. Define and set forth the duties, responsibilities, and limitations of authority of these other parties as they relate to the duties, responsibilities, and authority of CMAR.

F. Owner is not responsible for discovering deficiencies in the CMAR's Services. CMAR will correct any deficiencies without additional compensation, except to the extent this corrective action is directly attributable to deficiencies in Owner-furnished information.

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9.10 Limitations on Owner's Responsibilities

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

9.11 Undisclosed Hazardous Environmental Condition

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

9.12 Evidence of Financial Arrangements

A. [INTENTIONALLY DELETED

9.13 Safety Programs

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

B. Owner shall furnish copies of any applicable Owner safety programs to CMAR.

ARTICLE 10—STATUS OF OWNER'S ADVISOR AND ENGINEER DURING CONSTRUCTION

10.01 Owner's Advisor

A. Owner's Advisor will be Owner's representative during the construction period.

B. The general duties, responsibilities, and the limitations of authority of Owner's Advisor and Engineer during construction are set forth below.

10.02 Visits to Site

A. Owner's Advisor will either be based at the Site or make visits to the Site on a regular basis. Owner's Advisor will observe the Work; check the quality, quantity, and progress of the Work; implement Owner's quality assurance program; and administer the Contract as Owner's representative.

B. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe, as an experienced and qualified design professional, the progress that has been made and the quality of the various aspects of CMAR's executed Work. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer will report to Owner's Advisor regarding information obtained during such Site visits and observations.

C. Owner's Advisor's and Engineer's visits and observations are subject to all the limitations on Owner's Advisor's and Engineer's authority and responsibility set forth in Paragraph 10.05. Particularly, but without limitation, during or as a result of Owner's Advisor's and Engineer's visits or observations of CMAR's Work, neither Owner's Advisor nor Engineer will supervise, direct, control, or have authority over or be responsible for CMAR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and

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programs incident thereto, or for any failure of CMAR to comply with Laws and Regulations applicable to the performance of the Work.

10.03 Determinations for Unit Price Work

A. Owner's Advisor will determine the actual quantities and classifications of Unit Price Work performed or furnished by CMAR as set forth in Paragraph 13.02.

10.04 Decisions on Requirements of Contract Documents and Acceptability of Work; Exercise of Authority

A. Owner's Advisor will render decisions regarding the requirements of the Contract Documents, and judge the quality and acceptability of the Work, pursuant to the specific procedures set forth herein for interpretations, Change Proposals, Applications for Payment, and acceptance of the Work.

1. Before rendering such decisions or judgments, and before exercising its authority with respect to differing subsurface or physical conditions, Underground Facilities, "or equal" and substitute requests, emergencies, Field Orders, and similar matters, Owner's Advisor will consult with Engineer as to all matters in question involving (a) the design, as set forth in the Drawings, Specifications, or otherwise, (b) the quality or acceptability of the Work under the Contract Documents, or (c) other engineering matters.

2. With respect to such matters, Owner's Advisor's decisions and judgments as rendered will be in accord with Engineer's professional analysis, opinions, recommendations, and conclusions.

B. In rendering such decisions and judgments, exercising such authority, or providing professional analysis, opinions, recommendations, or conclusions underlying such decisions and judgments, neither Owner's Advisor nor Engineer will show partiality to Owner or CMAR, and neither Owner's Advisor nor Engineer will be liable to Owner, CMAR, or others in connection with any proceedings, interpretations, analysis, opinions, recommendations, conclusions, decisions, or judgments conducted or rendered in good faith.

C. Owner's Advisor may at any time request that CMAR furnish proposed changes to Guaranteed Maximum Price and Contract Times that would result from specified proposed changes to the Contract Documents.

10.05 Limitations on Owner's Advisor's and Engineer's Authority and Responsibilities

A. Neither Owner's Advisor's nor Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by Owner's Advisor or Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Owner's Advisor or Engineer, will create, impose, or give rise to any duty in contract, tort, or otherwise owed by Owner's Advisor or Engineer to CMAR, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

B. Neither Owner's Advisor nor Engineer will supervise, direct, control, or have authority over or be responsible for CMAR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CMAR to comply with Laws and Regulations applicable to the performance of the Work. Neither Owner's Advisor nor Engineer will be responsible for CMAR's failure to perform the Work in accordance with the Contract Documents.

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C. Neither Owner's Advisor nor Engineer will be responsible for the acts or omissions of CMAR or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

D. Owner's Advisor's review of the final Application for Payment and accompanying documentation, and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by CMAR under Paragraph 15.07.A, will only be to determine generally that their content complies with the requirements of the Contract Documents, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.

10.06 Compliance with Safety Program

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

ARTICLE 11—CHANGES TO THE CONTRACT

11.01 Amending and Supplementing the Contract

A. The Contract may be amended or supplemented by a Contract Amendment, Work Authorization, Change Order, Emergency Work Change Directive, or Field Order.

B. A Work Authorization, as more fully defined in Paragraph 1.01, is used to authorize specified Work, and establish related compensation. Change Orders, Work Change Directives, and Field Orders are used to modify a Work Authorization, including but not limited to modifications of the authorized Work and changes to the Guaranteed Maximum Price and Contract Times associated with the Work Authorization.

If a modification under a Work Authorization includes a change in the Guaranteed Maximum Price or the Contract Times, such amendment or supplement must be set forth in a Change Order.

C. A Contract Amendment, as more fully defined in Paragraph 1.01, is used for general contract modification purposes.

D. All changes to the Contract that involve (1) the performance or acceptability of the Work, (2) the design, as set forth in the Drawings, Specifications, or otherwise, or (3) other engineering matters, must be supported by Engineer's recommendation. Owner and CMAR may amend other terms and conditions of the Contract without the recommendation of the Engineer.

11.02 Change Orders

A. With respect to a governing Work Authorization, Owner and CMAR shall execute appropriate Change Orders covering:

1. Changes in Guaranteed Maximum Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work performed in accordance with a Emergency Work Change Directive;

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2. Changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.05, (b) required because of Owner's acceptance of defective Work under Paragraph 14.04 or Owner's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Work involves the design, as set forth in the Drawings, Specifications, or otherwise, or other engineering matters; and

3. Changes that embody the substance of any final and binding results under: Paragraph 11.03.B, resolving the impact of an Emergency Work Change Directive; Paragraph 11.09, concerning Change Proposals; Paragraph 13.02.D, final adjustments relating to determination of quantities for Unit Price Work; and similar provisions.

B. If Owner or CMAR refuses to execute a Change Order that is required to be executed under the terms of Paragraph 11.02.A, it will be deemed to be of full force and effect, as if fully executed.

C. Owner and CMAR will enter into either a Change Order, if related to a specific Work Authorization, or a Contract Amendment with respect to the following:

1. Changes in Guaranteed Maximum Price resulting from an Owner set-off, unless CMAR has duly contested such set-off;

2. Changes that embody the substance of any final and binding results under Article 12, Claims; Paragraph 13.01, final adjustments resulting from allowances; and similar provisions.

11.03 Emergency Work Change Directives

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

B. If Owner has issued a written Emergency Work Change Directive and:

1. CMAR believes that an adjustment in Contract Times or Guaranteed Maximum Price is necessary, then CMAR shall submit any Change Proposal seeking such an adjustment no later than 30 days after the completion of the Work set out in the Work Change Directive.

2. Owner believes that an adjustment in Contract Times or Guaranteed Maximum Price is necessary, then Owner shall submit a Change Order including an adjustment no later than 60 days after issuance of the Work Change Directive.

11.04 Field Orders

A. Owner's Advisor, in consultation with Engineer, may authorize minor changes in the Work if the changes do not involve an adjustment in the Guaranteed Maximum Price or the Contract Times. Such changes will be accomplished by a Field Order and will be binding on Owner and on CMAR, which shall perform the Work involved promptly.

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

11.05 Owner-Authorized Changes in the Work

A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work. Changes involving the design, as set forth in the Drawings, Specifications, or otherwise, or other engineering matters will be supported by Engineer's recommendation.

B. Such changes in the Work may be accomplished by a Change Order, if Owner and CMAR have agreed as to the effect, if any, of the changes on Contract Times or Guaranteed Maximum Price; or by a Work Change Directive. Upon receipt of any such document, CMAR shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work must be performed under the applicable conditions of the Contract Documents.

C. Nothing in this Paragraph 11.05 obligates CMAR to undertake work that CMAR reasonably concludes cannot be performed in a manner consistent with CMAR's safety obligations under the Contract Documents or Laws and Regulations.

11.06 Unauthorized Changes in the Work

A. CMAR shall not be entitled to an increase in the Guaranteed Maximum Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents, as amended, modified, or supplemented, except in the case of an emergency as provided in Paragraph 7.18 or in the case of uncovering Work as provided in Paragraph 14.05.C.2.

11.07 Change of Contract Price

A. The Contract Price may be changed by a Work Authorization, Change Order, or Contract Amendment. Any Change Proposal for an adjustment in the Guaranteed Maximum Price must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment of Contract Price must comply with the provisions of Article 12.

B. An adjustment in the Guaranteed Maximum Price with respect to the Work will be determined as follows:

1. Where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved;

2. Where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum; or

3. Where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the basis of the Cost of the Work determined in accordance with the Cost of the Work provisions in the Agreement, plus the CMAR Fee, applied proportionally, for overhead and profit determined in accordance with the terms in the Agreement.

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11.08 Change of Contract Times

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

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

11.09 Change Proposals

A. Purpose and Content—CMAR shall submit a Change Proposal to Owner's Advisor to request an adjustment in the Contract Times or Guaranteed Maximum Price; contest a decision by Owner's Advisor concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; challenge a set-off against payment due; or seek other relief under the Contract. The Change Proposal will specify any proposed change in Contract Times or Guaranteed Maximum Price, or other proposed relief; identify any governing Work Authorization; indicate CMAR's recommendation for the correct means of amending the Contract (Work Authorization, Change Order, or Contract Amendment) if the proposed change is accepted; and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents. Each Change Proposal will address only one issue, or a set of closely related issues.

B. Determination of Changes in Guaranteed Maximum Price for Work—If a Change Order under a Work Authorization entails a change in Guaranteed Maximum Price, then:

1. The change will include the applicable increase or decrease in Cost of the Work, pursuant to the provisions Article 6 of the Agreement.

2. The CMAR Fee for changes will be those agreed to Article 7 of the Agreement.

3. If there is a Guaranteed Maximum Price, it will increase or decrease in an amount equal to the increase or decrease in the Cost of the Work and CMAR Fee, as duly determined.

4. The amount of any increases or decreases in the CMAR Fee, or in Guaranteed Maximum Price, will be set forth in the applicable Change Order.

C. Change Proposal Procedures

1. Submittal—CMAR shall submit each Change Proposal to Owner's Advisor within 30 days after the start of the event giving rise thereto, or after such decision.

2. Supporting Data—The CMAR shall submit supporting data, including the proposed change in Guaranteed Maximum Price or Contract Time, if any, to the Owner's Advisor within 15 days after the submittal of the Change Proposal.

a. Change Proposals based on or related to delay, interruption, or interference must comply with the provisions of Paragraphs 4.05.D and 4.05.E.

b. Change Proposals related to a change of Guaranteed Maximum Price based on Cost of the Work must include full and detailed account of eligible costs, such as materials incorporated into the Work, labor and equipment used for the subject Work, and Subcontract costs.

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

3. Owner's Advisor's Initial Review—Owner's Advisor, in consultation with Engineer, will advise Owner regarding the Change Proposal and consider any comments or response from Owner regarding the Change Proposal. If in its discretion Owner's Advisor concludes that additional supporting data is needed before conducting a full review and making a recommendation regarding the Change Proposal, then Owner's Advisor may request that CMAR submit such additional supporting data by a date specified by Owner's Advisor, prior to Owner's Advisor beginning its full review of the Change Proposal.

4. Owner's Advisor's Full Review and Recommendation on the Change Proposal—Upon receipt of CMAR's supporting data, including any additional data requested by Owner's Advisor, Owner's Advisor, in consultation with Engineer, will conduct a full review of each Change Proposal and, within 30 days after such receipt of the CMAR's supporting data, either recommend approval of the Change Proposal in whole, deny it in whole, or approve it in part and deny it in part. Such actions must be in writing, with a copy provided to Owner and CMAR. If Owner's Advisor does not act on the Change Proposal within 30 days, then either Owner or CMAR may at any time thereafter submit a letter to the other party indicating that as a result of Owner's Advisor's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.

5. Binding Decision—Owner's Advisor's recommendation is sent to the Owner who shall render a final . The Owner's decision is final and binding upon CMAR, unless CMAR appeals the decision by filing a Claim under Article 17.

D. Post-Completion—CMAR shall not submit any Change Proposals after Owner's Advisor issues a written recommendation of final payment pursuant to Paragraph 15.07.B.

11.10 Notification to Surety

A. CMAR shall notify the performance and payment bond surety of the issuance of each Work Authorization and confirm that the bonds have been adjusted to reflect the changes in Guaranteed Maximum Price and Contract Times.

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

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ARTICLE 12—CLAIMS *[INTENTIONALLY DELETED]*

ARTICLE 13—ALLOWANCES; UNIT PRICE WORK

13.01 Allowances

A. The CMAR Contingency Allowance (Agreement, Article 8) and Owner's Contingency Allowance (Agreement, Article 12) are governed by the applicable provisions of the Agreement.

B. CMAR confirms that it has included the CMAR Contingency Allowance in the Guaranteed Maximum Price and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Owner's Advisor.

C. CMAR confirms that it has included the Owner's Contingency Allowance in the Contract Price and that use of Owner's Contingency Allowance is subject to the provisions of Article 12 in the Agreement.

D. Cash Allowances—CMAR agrees that:

1. the cash allowances include the cost to CMAR, less any applicable trade discounts, of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and

2. CMAR's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Guaranteed Maximum Price and not in the allowances, and no demand for additional payment for any of the foregoing will be valid.

E. Prior to final payment, an appropriate Change Order will be issued as recommended by Owner's Advisor to reflect actual amounts due CMAR for Work covered by allowances, and the Guaranteed Maximum Price will be correspondingly adjusted.

13.02 Unit Price Work

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

B. The estimated quantities of items of Unit Price Work are estimates and are solely for the purpose of comparison of Proposals and determining an Estimated Guaranteed Maximum Price. Payments to CMAR for Unit Price Work will be based on actual quantities.

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

D. Owner's Advisor will determine the actual quantities and classifications of Unit Price Work performed or furnished by CMAR. Owner's Advisor will review with CMAR the Owner's Advisor's preliminary determinations on such matters before rendering a written decision thereon, by recommendation of an Application for Payment or otherwise. Owner's Advisor's written decision thereon will be final and binding except as modified by Owner's Advisor to reflect changed factual conditions or more accurate data upon Owner and CMAR, and the

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final adjustment of Guaranteed Maximum Price will be set forth in a Change Order, subject to the provisions of the following Paragraph.

E. Adjustments in Unit Price

1. CMAR or Owner shall be entitled to an adjustment in the unit price with respect to an Item of Unit Price Work if:

a. the quantity of the Item of Unit Price Work performed by CMAR differs materially and significantly from the estimated quantity of such Item indicated in the Agreement; and

b. CMAR's unit costs to perform the Item of Unit Price Work have changed materially and significantly as a result of the quantity change.

2. The adjustment in unit price will account for and be coordinated with any related changes in quantities of other items of Work, and in CMAR's costs to perform such other Work, such that the resulting overall change in Guaranteed Maximum Price is equitable to Owner and CMAR.

3. Adjusted unit prices will apply to all units of that item.

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

14.01 Access to Work

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

14.02 Tests, Inspections, and Approvals

A. CMAR shall give Owner's Advisor timely notice of readiness of the Work, or specific parts thereof, for all required inspections and tests and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.

B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except those costs incurred in connection with tests or inspections of covered Work will be governed by the provisions of Paragraph 14.05.

C. If Laws or Regulations of any public body having jurisdiction require any Work, or part thereof, specifically to be inspected, tested, or approved by an employee or other representative of such public body, CMAR shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Owner's Advisor the required certificates of inspection or approval.

D. CMAR shall be responsible for arranging, obtaining, and paying for all inspections and tests required:

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1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
2. to attain acceptance of materials or equipment to be incorporated in the Work;
3. by manufacturers of equipment furnished under the Contract Documents;
4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
5. for acceptance of materials, mix designs, or equipment submitted for approval prior to CMAR's purchase thereof for incorporation in the Work.

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

E. If the Contract Documents require the Work, or part thereof, to be accepted by Owner, Owner's Advisor, Engineer, or another designated individual or entity, then CMAR shall assume full responsibility for arranging and obtaining such approvals.

F. If any Work, or the work of others that is to be inspected, tested, or approved is covered by CMAR without written concurrence of Owner's Advisor, CMAR shall, if requested by Owner's Advisor, uncover such Work for observation. Such uncovering will be at CMAR's expense unless CMAR has given Owner's Advisor timely notice of CMAR's intention to cover the same and Owner's Advisor had not acted with reasonable promptness in response to such notice.

14.03 Defective Work

A. CMAR's Obligation—It is CMAR's obligation to assure that the Work is not defective.

B. Owner's Advisor's Authority—Owner's Advisor has the authority to determine, in consultation with Engineer, whether Work is defective, and to reject defective Work.

C. Notice of Defects—Prompt written notice of all defective Work of which Owner, Owner's Advisor, or Engineer has actual knowledge will be given to CMAR.

D. Correction, or Removal and Replacement—Promptly after receipt of written notice of defective Work, CMAR shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if Owner's Advisor has rejected the defective Work, remove it from the Project and replace it with Work that is not defective.

E. Preservation of Warranties—When correcting defective Work, CMAR shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

F. Costs and Damages—In addition to its correction, removal, and replacement obligations with respect to defective Work, CMAR shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Owner by governmental authorities because the Work is defective, and the costs of repair or replacement of work of others resulting from defective Work. Prior to final payment, if Owner and CMAR are unable to agree as to the measure of such claims, costs, losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 15.

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14.04 Acceptance of Defective Work

A. If, instead of requiring correction or removal and replacement of defective Work, Owner prefers to accept it, Owner may do so. If such acceptance occurs prior to final payment, to Engineer's confirmation that such acceptance is in general accord with the design intent and applicable engineering principles and will not endanger public safety. CMAR shall pay all claims, costs, losses, and damages attributable to Owner's evaluation of and determination to accept such defective Work; such costs to be approved by Owner's Advisor as to reasonableness, and for the diminished value of the Work to the extent not otherwise paid by CMAR. If any such acceptance occurs prior to final payment, the necessary revisions in the Contract Documents with respect to the Work will be incorporated in a Change Order. If the parties are unable to agree as to the decrease in the Guaranteed Maximum Price, reflecting the diminished value of Work so accepted, then Owner may impose a reasonable set-off against payments due under Article 15. If the acceptance of defective Work occurs after final payment, CMAR shall pay an appropriate amount to Owner.

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

14.05 Uncovering Work

A. Owner's Advisor has the authority to require additional inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.

B. If any Work is covered contrary to the written request of Owner's Advisor, then CMAR shall, if requested by Owner's Advisor, uncover such Work for Owner's Advisor's or Engineer's observation, and then replace the covering, all at CMAR's expense.

C. If Engineer or Owner's Advisor considers it necessary or advisable that covered Work be observed by Owner's Advisor or Engineer, or inspected or tested by others, then Owner's Advisor will so advise CMAR, and CMAR shall uncover, expose, or otherwise make available for observation, inspection, or testing as Owner's Advisor may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.

1. If it is found that the uncovered Work is defective, CMAR shall be responsible for all claims, costs, losses, and damages arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction, including but not limited to all costs of repair or replacement of work of others, and pending CMAR's full discharge of this responsibility the Owner shall be entitled to impose a reasonable set-off against payments due under Article 15.

2. If the uncovered Work is not found to be defective, CMAR shall be allowed an increase in the Guaranteed Maximum Price or an extension of the Contract Times, directly

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

14.06 Owner May Stop the Work

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

14.07 Owner May Correct Defective Work

A. If CMAR fails within a reasonable time after written notice from Owner's Advisor to correct defective Work, or to remove and replace defective Work as required by Owner's Advisor, then Owner may, after 7 days' written notice to CMAR, correct or remedy any such deficiency.

B. In exercising the rights and remedies under this Paragraph 14.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude CMAR from all or part of the Site, take possession of all or part of the Work and suspend CMAR's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid CMAR but which are stored elsewhere. CMAR shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, Owner's Advisor, Engineer, and their consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.

C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against CMAR as set-offs against payments due under Article 15. Such claims, costs, losses, and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of CMAR's defective Work.

D. CMAR shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 14.07.

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

15.01 Payment for CMAR Services

A. The basis and procedures for payment for CMAR Services are set forth in the Agreement, Article 3. The provisions of this Article 15 pertain to payment for performance and furnishing of the Work, unless noted otherwise.

15.02 Progress Payments

A. Basis for Progress Payments

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1. CMAR will, at least 10 days prior to applying for Payment, prepare and submit for approval by Owner's Advisor a schedule allocating portions of the Guaranteed Maximum Price to various portions of the Work, as determined by the applicable Work Authorizations.

2. The Schedule of Values will serve as the basis for progress payments and will be incorporated by Owner's Advisor into an Application for Payment form. Progress payments for Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.02. Progress payments for cost-based Work will be based on Cost of the Work completed by CMAR during the pay period.

B. Applications for Payments

1. At least 20 days before the date established in the Agreement for each progress payment, but not more often than once a month, CMAR, on the 25th of each month, shall submit to Owner's Advisor for review an Application for Payment filled out and signed by CMAR covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents.

2. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment must also be accompanied by: (a) a bill of sale, invoice, copies of subcontract or purchase order payments, or other documentation establishing full payment by CMAR for the materials and equipment; (b) at Owner's request, documentation warranting that Owner has received the materials and equipment free and clear of all Liens; and (c) evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.

3. Beginning with the second Application for Payment, each Application must include an affidavit of CMAR stating that all previous progress payments received by CMAR have been applied to discharge CMAR's legitimate obligations associated with prior Applications for Payment.

4. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

C. Review of Applications

1. Owner's Advisor will, within 10 days after each Application for Payment is stamped as received by Owner's Advisor, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to CMAR indicating in writing Owner's Advisor's reasons for refusing to recommend payment and the action necessary to make payment application proper. In the latter case, CMAR shall make the necessary corrections and resubmit the Application.

2. Owner's Advisor's recommendation of any payment requested in an Application for Payment will constitute a representation by Owner's Advisor to Owner, based on

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Owner's Advisor's (a) observations of the executed Work, (b) consultations with Engineer, and (c) review of the Application for Payment and the accompanying data and schedules, that to the best of Owner's Advisor's knowledge, information, and belief:

a. the Work has progressed to the point indicated;

b. the quality of the Work is generally in accordance with the Contract Documents subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.02, and any other qualifications stated in the recommendation; and

c. the conditions precedent to CMAR's being entitled to such payment appear to have been fulfilled in so far as it is Owner's Advisor's responsibility to observe the Work.

3. By recommending any such payment Owner's Advisor will not thereby be deemed to have represented that:

a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Owner's Advisor in the Contract; or

b. there may not be other matters or issues between the parties that might entitle CMAR to be paid additionally by Owner or entitle Owner to withhold payment to CMAR.

4. Neither Owner's Advisor's review of CMAR's Work for the purposes of recommending payments nor Owner's Advisor's recommendation of any payment, including final payment, will impose responsibility on Owner's Advisor:

a. to supervise, direct, or control the Work;

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

c. for CMAR's failure to comply with Laws and Regulations applicable to CMAR's performance of the Work;

d. to make any examination to ascertain how or for what purposes CMAR has used the money paid by Owner; or

e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.

5. Neither Owner Advisor's review of CMAR's Work for purposes of recommending payments nor Owner's Advisor's recommendation of any payment shall relieve CMAR of responsibility or liability for defects in the Work.

6. Owner's Advisor may refuse to recommend the whole or any part of any payment if, in Owner's Advisor's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.02.C.2.

7. Owner's Advisor will recommend reductions in payment (set-offs) necessary in Owner's Advisor's opinion to protect Owner from loss because:

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a. the Work is defective, requiring correction or replacement;

b. the Guaranteed Maximum Price has been reduced by Change Orders or other Contract modifications;

c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;

d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which CMAR is responsible; or

e. Owner's Advisor has actual knowledge of the occurrence of any of the events that would constitute a default by CMAR and therefore justify termination for cause under the Contract Documents.

D. Payment Becomes Due

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

E. Reductions in Payment by Owner

1. In addition to any reductions in payment (set-offs) recommended by Owner's Advisor, Owner is entitled to impose a set-off against payment based on any of the following:

a. Claims have been made against Owner based on CMAR's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages resulting from CMAR's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;

b. CMAR has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;

c. CMAR has failed to provide and maintain required bonds or insurance;

d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which CMAR is responsible;

e. Owner has incurred extra charges for advisory services or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests, and inspections, or return visits to manufacturing or assembly facilities;

f. The Work is defective, requiring correction or replacement;

g. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;

h. The Guaranteed Maximum Price has been reduced by Change Orders or other Contract modifications;

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i. An event has occurred that would constitute a default by CMAR and therefore justify a termination for cause;

j. Liquidated or other damages have accrued as a result of CMAR's failure to achieve Milestones, Substantial Completion, or final completion of the Work;

k. Liens have been filed in connection with the Work, except where CMAR has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;

l. Claims have been made or costs have been incurred arising from CMAR Services; or

m. Other items entitle Owner to a set-off against the amount recommended.

2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Owner's Advisor, Owner will give CMAR immediate written notice, with a copy to Owner's Advisor, stating the reasons for such action and the specific amount of the reduction, and promptly pay CMAR any amount remaining after deduction of the amount so withheld. Owner shall promptly pay CMAR the amount so withheld, or any adjustment thereto agreed to by Owner and CMAR, if CMAR remedies the reasons for such action. The reduction imposed will be binding on CMAR unless it duly submits a Change Proposal contesting the reduction.

3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld will be treated as an amount due as determined by Paragraph 15.02.D.1 and subject to interest as provided in the Agreement.

F. Where the Contract Price is based on the Cost of Work, if Owner determines that progress payments made to date substantially exceed the actual progress of the Work, as measured by reference to the Schedule of Values, or present a potential conflict with the Guaranteed Maximum Price, then Owner may require that CMAR prepare and submit a plan for the remaining anticipated Applications for Payment that will bring payments and progress into closer alignment and take into account the Guaranteed Maximum Price, if any, through reductions in billings, increases in retainage, or other equitable measures. Owner will review the plan, discuss any necessary modifications, and implement the plan as modified for all remaining Applications for Payment.

15.03 CMAR's Warranty of Title

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

15.04 Substantial Completion

A. When CMAR considers the entire Work ready for its intended use CMAR shall notify Owner's Advisor in writing that the entire Work is substantially complete and request that Owner's Advisor issue a certificate of Substantial Completion. CMAR shall at the same time submit to Owner's Advisor CMAR's proposed Punch List of items to be completed or corrected before final payment. Substantial Completion cannot occur before the Owner is able to begin to utilize the entire Work for the purposes for which it was intended.

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B. Promptly after CMAR's notification, Owner, CMAR, Owner's Advisor, and Engineer will inspect the Work to determine the status of completion. If the Work is not determined to be substantially complete, Owner's Advisor will notify CMAR in writing, giving the reasons for the determination.

C. If the Work is deemed substantially complete, Owner's Advisor will deliver to Owner a preliminary certificate of Substantial Completion which will fix the date of Substantial Completion. Owner's Advisor will attach to the certificate the Owner's Advisor's proposed Punch List of items to be completed or corrected before final payment. Owner shall have 7 days after receipt of the preliminary certificate during which to make written objection to Owner's Advisor as to any provisions of the certificate or attached Punch List. If, after considering the objections to the provisions of the preliminary certificate, Owner's Advisor, in consultation with Engineer, concludes that the Work is not substantially complete, Owner's Advisor will, within 14 days after submission of the preliminary certificate to Owner, notify CMAR in writing that the Work is not substantially complete, stating the reasons for the conclusion. If Owner does not object to the provisions of the certificate, or if despite consideration of Owner's objections Owner's Advisor, in consultation with Engineer, concludes that the Work is substantially complete, then Owner's Advisor will, within said 14 days, execute and deliver to Owner and CMAR a final certificate of Substantial Completion, with a revised Punch List of items to be completed or corrected, reflecting such changes from the preliminary certificate as Owner's Advisor believes justified after consideration of any objections from Owner.

D. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and CMAR will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and CMAR agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.

E. After Substantial Completion the CMAR shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases CMAR may submit monthly Applications for Payment for completed Punch List items, following the progress payment procedures set forth above.

F. Owner shall have the right to exclude CMAR from the Site after the date of Substantial Completion subject to allowing CMAR reasonable access to remove its property and complete or correct items on the Punch List.

15.05 Partial Use or Occupancy; Completion of Authorized Work

A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Owner's Advisor, Engineer, and CMAR agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with CMAR's performance of the remainder of the Work, subject to the following conditions:

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1. At any time, Owner may request in writing that CMAR permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when CMAR agrees that such part of the Work is substantially complete, CMAR, Owner, Owner's Advisor and Engineer will follow the procedures of Paragraph 15.04.A through 15.04.E for that part of the Work.

2. At any time, CMAR may notify Owner and Owner's Advisor in writing that CMAR considers any such part of the Work substantially complete and request Owner's Advisor to issue a certificate of Substantial Completion for that part of the Work.

3. Within a reasonable time after either such request, Owner, CMAR, Owner's Advisor and Engineer will inspect that part of the Work to determine its status of completion. If Owner's Advisor, in consultation with Engineer, does not consider that part of the Work to be substantially complete, Owner's Advisor will notify Owner and CMAR in writing, giving the reasons for its determination. If Owner's Advisor, in consultation with the Engineer, considers that part of the Work to be substantially complete, then for that part of the Work the provisions of Paragraph 15.04 will apply with respect to certification of Substantial Completion, the Division of responsibility, and access.

4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.04 regarding builder's risk or other property insurance.

5. Neither the organization of the Work into Work Packages, nor the authorization of specified parts of the Work in a Work Authorization, establishes (a) that such packages or parts of the Work have been identified in the Contract Documents or otherwise as a part of the Work that Owner may use or occupy upon completion, or (b) that any such Work constitutes a separately functioning and usable part of the Work that upon completion can be used by Owner for its intended purpose without significant interference with CMAR's performance of the remainder of the Work. The determination of whether any part of the Work qualifies for partial use or occupancy under this Paragraph 15.05 will be made on the merits without reference to Work Packages or Work Authorizations.

B. Substantial Completion of Authorized Work

1. When CMAR considers the entire Work authorized under a specific Work Authorization is ready for its intended use, CMAR shall notify Owner's Advisor in writing that such authorized Work is substantially complete and request that Owner's Advisor issue a certificate of Substantial Completion applicable solely to such authorized Work. CMAR shall at the same time submit to Owner's Advisor the CMAR's proposed punch list of items to be completed or corrected before such authorized Work is deemed complete.

2. CMAR, Owner, Owner's Advisor, and Engineer will follow the procedures of Paragraphs 15.04.A, B, C, E, and F for such authorized Work. The terms of Paragraph 15.04.D are not applicable to the determination of Substantial Completion of the Work authorized under a Work Authorization.

3. Until Substantial Completion of the entire Work under this Contract under Paragraph 15.04, such authorized Work will not be eligible for Owner's use or occupancy, unless otherwise eligible for partial use or occupancy under Paragraph 15.05.A; the determination of a date of Substantial Completion for such

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authorized Work will not mark the commencement of the contractual correction period and applicable warranties required by the Contract for such authorized Work; and the authorized Work will remain the responsibility of CMAR.

15.06 Final Inspection – Punch List

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

15.07 Final Payment

A. Application for Final Payment

1. After Owner's Advisor, in consultation with Engineer, determines that CMAR has (a) satisfactorily completed all corrections identified during the final inspection, (b) has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents, as provided in Paragraph 7.15, and other documents, and (c) completed performance of all services required by the Contract, CMAR may make application for final payment.

2. The final Application for Payment must be accompanied, except as previously delivered by:

a. all documentation called for in the Contract Documents, including but not limited to, the evidence that CMAR maintains completed operations coverage for its required commercial general liability (CGL) insurance;

b. consent of the surety, if any, to final payment;

c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects or will so pass upon final payment;

d. a list of all duly pending Change Proposals and Claims; and

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

3. In lieu of the final releases or waivers of Liens specified in Paragraph 15.07.A.2 and as approved by Owner, CMAR may furnish receipts or releases in full and an affidavit of CMAR whereby CMAR swears and affirms that: (a) all payroll, services, material, and equipment bills and other indebtedness connected with the Work for which Owner has paid CMAR through the date of CMAR's final Application for Payment have been paid by CMAR; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner will pay CMAR in the final Application for Payment will represent CMAR's receipt of all payments for the Work except for the specifically enumerated Claims (and Claims not specifically enumerated are deemed released and waived) and that CMAR will promptly pay its Subcontractors and Suppliers upon its receipt of the final payment. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, CMAR may furnish a bond or other collateral satisfactory

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to Owner to indemnify Owner against any Lien, or Owner at its option may issue joint checks payable to CMAR and specified Subcontractors and Suppliers.

4. The documents and materials that CMAR is required to submit to accompany its Final Application for Payment (as set forth in this Paragraph 15.07) are conditions precedent to issuance of final payment.

B. Owner's Advisor's Review of Final Application and Recommendation of Payment—If, on the basis of Owner's Advisor's observation of the Work during construction and final inspection, consultation with Engineer regarding completion, and review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Owner's Advisor is satisfied that CMAR has completed the Work and fulfilled CMAR's other obligations under the Contract, Owner's Advisor will, within 10 days after receipt of the final Application for Payment, indicate in writing Owner's Advisor's recommendation of final payment and present the final Application for Payment to Owner for payment. Such recommendation will account for any set-offs against payment that are necessary in Owner's Advisor's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. Otherwise, Owner's Advisor will return the Application for Payment to CMAR, indicating in writing the reasons for refusing to recommend final payment, in which case CMAR shall make the necessary corrections and complete the Work and all remaining services, and resubmit the Application for Payment.

C. Notice of Acceptability of the Work—In support of its recommendation of payment of the final Application for Payment, Owner's Advisor, with Engineer's express approval, will also give written notice to Owner and CMAR that the Work is acceptable, subject to stated limitations in the notice and to the provisions of Paragraph 15.08.

D. Completion of Work—The Work is complete, subject to surviving obligations, when it is ready for final payment as established by the Owner's Advisor's written recommendation of final payment and issuance of Notice of Acceptability of the Work.

E. Final Payment Becomes Due—Upon receipt from Owner's Advisor of the final Application for Payment and accompanying documentation, Owner shall set off against the amount recommended by Owner's Advisor for final payment any further sum to which Owner is entitled, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions of this Contract with respect to progress payments. Owner shall pay the resulting balance due to CMAR within 25 days of the final Application for Payment being stamped as received by Owner's Advisor.

15.08 Waiver of Claims

A. By making final payment, Owner waives its claim or right to liquidated damages or other damages for late completion by CMAR, except as set forth in an outstanding Claim, appeal under the provisions of Article 17, set-off, or express reservation of rights by Owner. Owner reserves all other claims or rights after final payment.

B. The acceptance of final payment by CMAR will constitute a waiver by CMAR of all claims and rights against Owner other than those pending matters that have been duly submitted as a Claim or appealed under the provisions of Article 17.

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15.09 Correction Period

A. Scheduled Correction Period Inspection—Within one month before the end of the Contract's correction period, CMAR will participate in an inspection of the Work with the Owner, Owner's Advisor, and Engineer to ascertain whether any portion of the Work or the repair of any damage to the Site or adjacent areas is defective and therefore subject to correction by CMAR.

B. If within one year after the date of Substantial Completion, or such longer period of time as may be prescribed by the Supplementary Conditions or the terms of any applicable special guarantee required by the Contract Documents, Owner gives CMAR written notice that any Work has been found to be defective, whether as a result of the scheduled correction period inspection or otherwise, or that CMAR's repair of any damages to the Site or adjacent areas has been found to be defective, then after receipt of such notice of defect CMAR shall promptly, without cost to Owner and in accordance with Owner's written instructions:

1. return to the Site with Owner, Owner's Advisor and Engineer to inspect any apparent or discovered defects in the Work, or unrepaired damage to the Site or adjacent areas;

2. consult with Owner's Advisor and Engineer regarding recommendations as to replacement or correction of such defective Work, or the repair of any damage;

3. correct the defective repairs to the Site or such adjacent areas;

4. correct such defective Work;

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

6. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting from the corrective measures.

C. Owner shall give any such notice of defect within 60 days of the discovery that such Work or repairs is defective. If such notice is given within 60 days but after the end of the correction period, the notice will be deemed a notice of defective Work under Paragraph 7.20.B.

D. If, after receipt of a notice of defect within 60 days and within the correction period, CMAR does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. CMAR shall pay all costs, losses, and damages, including but not limited to all fees and charges of construction managers, engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs, arising out of or relating to such correction or repair or such removal and replacement, including but not limited to all costs of repair or replacement of work of others. CMAR's failure to pay such costs, losses, and damages within 10 days of invoice from Owner will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the failure to pay.

E. In special circumstances where a particular Item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that Item may start to run from an earlier date if so provided in the Specifications.

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F. Where defective Work, and damage to other Work resulting therefrom, has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

G. CMAR's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph are not to be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

ARTICLE 16—SUSPENSION AND TERMINATION

16.01 Owner May Suspend CMAR Services or Work

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

16.02 Owner May Terminate for Cause

A. The occurrence of any one or more of the following events will constitute a default by CMAR and justify termination for cause:

1. CMAR's persistent failure to perform the Work in accordance with the Contract Documents, including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment, or failure to adhere to the Progress Schedule;

2. Failure of CMAR to perform or otherwise to comply with a material term of the Contract Documents;

3. CMAR's disregard of Laws or Regulations of any public body having jurisdiction; or

4. CMAR's repeated disregard of the authority of Owner, Owner's Advisor or Engineer.

5. CMAR's failure to timely pay Subcontractors and Suppliers after it receives payment from Owner, or

6. CMAR's failure to obtain or maintain the insurance required of it in the Contract.

B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving CMAR and any surety 5 days' written notice that Owner is considering a declaration that CMAR is in default and termination of the Contract, Owner may proceed to:

1. declare CMAR to be in default, and give CMAR, and any surety, written notice that the Contract is terminated; and

2. enforce the rights available to Owner under any applicable performance bond.

C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude CMAR from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for

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which Owner has paid CMAR but which are stored elsewhere, and complete the Work as Owner may deem expedient.

D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if CMAR within 7 days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.

E. If Owner proceeds as provided in Paragraph 16.02.B, CMAR shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages, including but not limited to all fees and charges of Owner's Advisors, engineers, architects, attorneys, and other professionals, sustained by Owner, such excess will be paid to CMAR. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, CMAR shall pay the difference to Owner. When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

F. Where CMAR's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against CMAR then existing or which may thereafter accrue, or any rights or remedies of Owner against CMAR or any surety under any payment bond or performance bond. Any retention or payment of money due CMAR by Owner will not release CMAR from liability.

G. If and to the extent that CMAR has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond will govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

16.03 Owner May Terminate for Convenience

A. Upon 5 days' written notice to CMAR and Owner's Advisor, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, CMAR shall be paid for without duplication of any items:

1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;

2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and

3. other reasonable expenses directly attributable to termination, , such as demobilization expenses, and including costs incurred to prepare a termination for convenience cost proposal. Attorneys' fees, accountant fees, home office overhead and similar expenses shall not be deemed reasonable expenses.

B. CMAR shall not be paid for any loss of anticipated profits or revenue, post-termination overhead costs, or other economic loss arising out of or resulting from such termination.

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16.04 CMAR May Stop Work or Terminate

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

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

ARTICLE 17—FINAL RESOLUTION OF DISPUTES

17.01 Methods and Procedures

1. Claims, disputes or other matters in question between the parties to this Agreement shall be first subject to pre-suit mediation prior to the filing of any legal claims or litigation. Completion of pre-suit mediation is a condition precedent to litigation. The obligation to mediate is a material and essential provision of the Agreement.

2. Unless otherwise agreed in writing, the Contractor shall carry on the Work and maintain its progress during any mediation or litigation, and the Owner shall continue to make payments to the Contractor in accordance with the Contract Documents.

3. Either party may initiate a mediation preceding by a request in writing to the other party within a reasonable time after the claim, dispute or other matter in question has arisen or as provided in subparagraph ___, but in no event after the expiration of the applicable statute of limitations.

4. The parties shall endeavor in good faith to mutually agree upon an acceptable mediator. In the event the parties have not agreed upon a mediator within thirty (30) days of the request for mediation, the Orlando office of the American Arbitration Association, upon the written request of either party, shall appoint a mediator from its pool of approved mediators.

5. Unless otherwise mutually agreed, the mediation shall be held in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect, each party to bear its own fees, costs and expenses.

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6. In the event that pre-suit mediation is unsuccessful, all claims, disputes or other matters in question shall be resolved in the Circuit Courts of Volusia County Florida. The Parties, including the Contractor's Surety, waive Venue and Jurisdiction of any Federal Court and expressly waive Trial by Jury.

ARTICLE 18—MISCELLANEOUS

18.01 Giving Notice

A. Whenever any provision of the Contract requires the giving of written notice to Owner, Owner's Advisor, CMAR, or Engineer when required, it will be deemed to have been validly given only if delivered:

1. in person, by a commercial courier service or otherwise, to the recipient's place of business;

2. by registered or certified mail, postage prepaid, to the recipient's place of business; or

3. by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line.

18.02 Computation of Times

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

18.03 Cumulative Remedies

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

18.04 Limitation of Damages

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

18.05 No Waiver

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

18.06 Survival of Obligations

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

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

18.07 Controlling Law

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

18.08 Assignment of Contract

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

18.09 Successors and Assigns

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

18.10 Headings

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

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

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION MANAGER AT RISK CONTRACT

Prepared By

EJCDC®
ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

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GUIDELINES FOR USE OF EJCDC® CMAR-700, STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION MANAGER AT RISK CONTRACT

1.0 PURPOSE AND INTENDED USE OF THE DOCUMENT

EJCDC® CMAR-700, Standard General Conditions of the Construction Manager at Risk Contract (2023), is the foundation document for the EJCDC Construction Manager at Risk Series. The General Conditions define the basic rights, responsibilities, risk allocations, and contractual relationship of the Owner and Construction Manager at Risk (CMAR) and establish how the Contract is to be administered.

The Contract between Owner and CMAR is fundamentally a construction contract; however, in addition to its construction obligations the CMAR also is responsible for providing specified Preconstruction Services, for example, providing information regarding constructability to the Engineer during the design phase and Procurement Services which include identifying qualified Subcontractors, and bringing them under contract. These CMAR Services are described and addressed in the Agreement between Owner and Construction Manager, CMAR-525. The General Conditions contain many construction-specific provisions (for example, the differing site conditions clauses) but also contain general clauses that are applicable to the CMAR Services as well as to construction (for example, the indemnification clause).

CMAR-700 is based on and organized in the same manner as EJCDC C-700, Standard General Conditions of the Construction Contract (2018). Users familiar with C-700 will find that the substance, wording, and risk allocations of that document are carried over into CMAR-700 whenever appropriate. The distinctions between the two documents most often involve procedural matters, such as the payment application process in Article 15 (for example, in C-700, applications for payment are submitted to the Engineer; in CMAR-700, such applications are submitted to the Owner's Advisor).

2.0 OTHER DOCUMENTS

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

These General Conditions have been prepared for use with EJCDC® CMAR-525, Agreement Between Owner and Construction Manager at Risk (2023). The provisions of the General Conditions and the Agreement are interrelated, and a change in one may necessitate a change in the other.

To prepare supplementary conditions that are coordinated with the General Conditions, use EJCDC® CMAR-800, Supplementary Conditions of the Construction Contract – Construction Manager at Risk Series (2023).

The full EJCDC Construction series of documents is discussed in the EJCDC® CMAR-001, Commentary on the 2023 EJCDC Construction Management Documents scheduled for publication in 2023.

3.0 ORGANIZATION OF INFORMATION

All parties involved in a construction project benefit significantly from a standardized approach in the location of subject matter throughout the documents. Experience confirms the danger of addressing the same subject matter in more than one location; doing so frequently leads to conflicting requirements,

confusion, and unanticipated legal consequences. Careful attention should be given to the guidance provided in EJCDC® N 122/AIA® A521™, Uniform Location of Subject Matter, when preparing construction documents. EJCDC® N 122/AIA® A521™, is available at no charge from the EJCDC website, www.ejcdc.org, and from the websites of EJCDC's sponsoring organizations.

In addition, the current editions of MasterFormat and SectionFormat, published by the Construction Specifications Institute, provide useful guidance on the location of information and requirements in construction documents.

4.0 EDITING THIS DOCUMENT

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

Although it is permissible to revise the Standard EJCDC Text of CMAR-700 (the content beginning at Page 1 and continuing to the end), it is common practice to leave the Standard EJCDC Text of CMAR-700 intact and unaltered, with modifications and supplementation of CMAR-700's provisions set forth in EJCDC® CMAR-800, Supplementary Conditions of the Construction Contract – Construction Manager at Risk Series (2023). If the Standard Text itself is revised, the user must comply with the terms of the License Agreement, Paragraph 4.0, Document-Specific Provisions, concerning the tracking or highlighting of revisions. The following is a summary of the relevant License Agreement provisions:

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

5.0 LICENSE AGREEMENT

This document is subject to the terms and conditions of the **License Agreement, 2023 EJCDC® Construction Manager at Risk Series Documents**. A copy of the License Agreement was furnished at the time of purchase of this document and is available for review at www.ejcdc.org and the websites of EJCDC's sponsoring organizations.

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION MANAGER AT RISK CONTRACT

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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION MANAGER AT RISK CONTRACT

ARTICLE 1—DEFINITIONS AND TERMINOLOGY

1.01 Defined Terms

A. Wherever used in the Proposal Documents or Contract Documents, a term printed with initial capital letters, including the term's singular and plural forms, will have the meaning indicated in the definitions below. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and Paragraphs, and the titles of other documents or forms.

1. Addenda—Written or graphic instruments issued prior to the receipt of Proposals by the Owner which clarify, correct, or change the Proposal Documents or the proposed Contract Documents.

2. Agreement—The written instrument, including its attached exhibits, executed by Owner and Construction Manager at Risk, that sets forth the Contract Price and Contract Times, identifies the Owner, Construction Manager at Risk, Owner's Advisor, and Engineer, and designates the specific items that are Contract Documents.

3. Application for Payment—The document prepared by Construction Manager at Risk, in a form acceptable to Owner's Advisor, to request progress or final payments, and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

4. Change Order—A document which is signed by Construction Manager at Risk and Owner after the Effective Date of a governing Work Authorization and authorizes an addition, deletion, or revision in the authorized Work, an adjustment in the applicable incremental Guaranteed Maximum Price or Contract Times, or other revision to such Work Authorization.

5. Change Proposal—A written request by Construction Manager at Risk, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment in Guaranteed Maximum Price or Contract Times; contesting a decision by Owner's Advisor, in consultation with Engineer, concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Contract.

6. Claim

a. A demand or assertion by Owner directly to Construction Manager at Risk, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment of Contract Price or Contract Times; contesting a decision rendered by Owner's Advisor, in consultation with Engineer, concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents, or regarding a Change Proposal; or seeking other relief with respect to the terms of the Contract.

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b. A demand or assertion by Construction Manager at Risk directly to Owner, duly submitted in compliance with the procedural requirements set forth herein, contesting Owner's Advisor's decision, made in consultation with Engineer, regarding a Change Proposal.

c. A demand or assertion by Owner or Construction Manager at Risk, duly submitted in compliance with the procedural requirements set forth herein, made pursuant to Paragraph 12.01.A.3, concerning disputes arising after Owner's Advisor has issued a recommendation of final payment.

d. A demand for money or services by a third party is not a Claim.

7. CMAR Contingency Allowance—An allowance used to reimburse CMAR for costs due to unforeseen causes, unintentional errors, or events which cannot specifically be anticipated at the time Work Authorizations are issued, as set forth in the Agreement, Article 8.

8. CMAR Fee—The component of the Guaranteed Maximum Price that supplements the CMAR's compensation for the Cost of the Work, consisting of either a fixed fee (a stipulated price or lump sum amount) or a percentage of the Cost of the Work, as set forth in the Agreement.

9. CMAR Services—Those specific planning, organizational, and advisory services to be performed or furnished by CMAR, consisting collectively of Preconstruction Services, Procurement Services, and any other services authorized by Owner's Advisor and expressly identified in such authorization as CMAR Services. CMAR Services are not part of the Work.

10. Constituent of Concern—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), lead-based paint (as defined by the HUD/EPA standard), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to Laws and Regulations regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

11. Construction Manager at Risk (CMAR)—The entity that has entered into the Contract with Owner. Under the Contract the CMAR will provide CMAR Services and construct the Work set out in the Drawings and Specifications, as duly authorized, using the Construction Manager at Risk project delivery method.

12. Construction Period—The period from the commencement of Work on the first Work Authorization until Substantial Completion of the Work. This is the number of days for which Construction Support Costs will be compensated.

13. Construction Support Costs—See Agreement, Article 5.

14. Contract—The entire and integrated written agreement between Owner and Construction Manager at Risk concerning the CMAR Services and the Work.

15. Contract Amendment—A document signed by Owner and Construction Manager at Risk which modifies the terms and conditions of the Contract, including but not limited to modifications of the time or compensation provisions of the Agreement and the scope of CMAR Services. A Contract Amendment is not used to make changes in the Work or

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to a Work Authorization, such changes properly being made in a Change Order or supplemental Work Authorization.

16. Contract Documents—Those items so designated in the Agreement, and which together comprise the Contract.

17. Contract Price—The money that Owner has agreed to pay Construction Manager at Risk for performance and completion of the CMAR Services and the Work, in accordance with the Contract Documents. The Contract Price may be subdivided into component parts based on authorized CMAR Services and Work Authorizations. The Contract Price includes the CMAR's compensation for CMAR Services, Construction Support Costs, Cost of the Work, the CMAR Fee, CMAR Contingency Allowances, and the Owner's Contingency Allowance.

18. Contract Times—The number of days or the dates by which Construction Manager at Risk shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work and all required services. The Contract Times may be subdivided into component parts based on Work Authorizations and authorized CMAR Services.

19. Contractor—The term "Contractor," if used in the Contract, means Construction Manager at Risk.

20. Cost of the Work—The sum of eligible costs incurred by CMAR for the performance of the Work, as allowed by the Cost of the Work provisions set forth in the Agreement. Cost of the Work as a defined term does not include Construction Support Costs.

21. Drawings—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Construction Manager at Risk.

22. Effective Date of the Contract—The date indicated in the Agreement, on which the Contract becomes effective.

23. Electronic Document—Any Project-related correspondence, attachments to correspondence, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.

24. Electronic Means—Electronic mail (email), upload/download from a secure Project website, or other communications methods that allow: (a) the transmission or communication of Electronic Documents; (b) the documentation of transmissions, including sending and receipt; (c) printing of the transmitted Electronic Document by the recipient; (d) the storage and archiving of the Electronic Document by sender and recipient; and (e) the use by recipient of the Electronic Document for purposes permitted by this Contract. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.

25. Engineer—The individual or entity that has primary responsibility for preparing or furnishing the Drawings and Specifications and is named as Engineer in the Agreement.

26. Estimated Cost of the Work—An estimate of the Cost of the Work prepared by the Owner for use (a) during the CMAR selection process in evaluating Proposals submitted in response to the Request for Proposals and (b) during the early stages of the Contract in calculating an Estimated Guaranteed Maximum Price until the design has progressed

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to the point where Owner and CMAR can mutually agree upon a Guaranteed Maximum Price.

27. Estimated Guaranteed Maximum Price—A preliminary Guaranteed Maximum Price calculated on the basis of the Estimated Cost of the Work. This is a non-binding price used on an interim basis for comparison or estimation of Owner's Construction Budget until the design has progressed to the point that a Guaranteed Maximum Price for the Work is established, or a Guaranteed Maximum Price for a portion of the Work is established by issuance of a Work Authorization by the Owner's Advisor.

28. Field Order—A written order issued by Owner's Advisor which requires minor changes in the Work but does not change the Guaranteed Maximum Price or the Contract Times.

29. Final Completion—The point at which the Work is complete in accordance with the Contract Documents, items and documents required by the Contract Documents have been accepted by the Owner, all required services have been completed, and the Contract is ready for final payment.

30. Guaranteed Maximum Price (GMP)—The maximum amount to be paid by Owner to CMAR for the sum of the Construction Support Costs, plus Cost of the Work, plus the CMAR Fee, all as set forth in the Agreement.

31. Hazardous Environmental Condition—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto.

    a. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated into the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, is not a Hazardous Environmental Condition.

    b. The presence of Constituents of Concern that are to be removed or remediated as part of the Work is not a Hazardous Environmental Condition.

    c. The presence of Constituents of Concern as part of the routine, anticipated, and obvious working conditions at the Site, is not a Hazardous Environmental Condition.

32. Laws and Regulations; Laws or Regulations—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and binding decrees, resolutions, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

33. Liens—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.

34. Milestone—A principal event in the performance of the Work that the Contract requires Construction Manager at Risk to achieve by an intermediate completion date, or by a time prior to Substantial Completion of all the Work.

35. Notice of Award—The written notice by Owner stating that Owner will enter into the Construction Manager at Risk contract with the selected Construction Manager at Risk.

36. Owner—The entity with which Construction Manager at Risk has contracted regarding the CMAR Services and the Work, and which has agreed to pay Construction Manager

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at Risk for the performance of the CMAR Services and the Work, pursuant to the terms of the Contract.

37. Owner's Advisor (OA)—The individual or entity named as Owner's Advisor in the Agreement. The Owner's Advisor provides services to the Owner, as an advisor and representative.

38. Owner's Construction Budget (Budget)—The amount budgeted by the Owner to pay CMAR to perform and complete the Work in accordance with the Contract Documents. This amount includes compensation for Cost of the Work, the CMAR Fee, and Construction Support Costs, but does not include compensation for CMAR Services.

39. Owner's Project Team (OPT)—As used in this Contract, refers to Owner, Owner's Advisor and Engineer, collectively.

40. Preconstruction Services—Those planning, management, and support services to be performed or furnished by CMAR as set forth in the Scope of CMAR Preconstruction Services Exhibit to the Agreement. Preconstruction Services are separate and distinct from Procurement Services, and from the performance of the Work itself, and are a component of CMAR Services.

41. Preconstruction Services Price—The total amount to be paid to CMAR for the Preconstruction Services described in the Scope of CMAR Preconstruction Services Exhibit to the Agreement.

42. Procurement Services—Those services relating to assembling Work Packages and procurement of construction Subcontractors, Suppliers, and materials and equipment, to be performed or furnished by CMAR as set forth in the procurement-related provisions of the Scope of CMAR Services Exhibit to the Agreement. Procurement Services are separate and distinct from Preconstruction Services, and from the performance of the Work itself, and are a component of CMAR Services.

43. Procurement Services Price—The total amount to be paid to CMAR for providing the Procurement Services described in the Scope of CMAR Procurement Services Exhibit to the Agreement.

44. Progress Schedule—A schedule, prepared and maintained by Construction Manager at Risk, describing the sequence and duration of the activities comprising Construction Manager at Risk's plan to accomplish the Work within the Contract Times.

45. Project—The total undertaking to be accomplished for Owner by construction managers, engineers, contractors, advisors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the CMAR Services and the Work to be performed under the Contract are a part.

46. Punch List - the detailed list of incomplete, unsatisfactory or unacceptable, or defective items that the CMAR is required to complete prior to final payment that is generated in accordance with Paragraph 15.06 of the General Conditions.

~~46.~~47. Samples—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.

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~~47.~~48. Schedule of Submittals—A schedule, prepared and maintained by Construction Manager at Risk, of required Submittals and the time requirements for review of the Submittals.

~~48.~~49. Shop Drawings—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Construction Manager at Risk and submitted by Construction Manager at Risk to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.

~~49.~~50. Site—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands or areas furnished by Owner which are designated for the use of Construction Manager at Risk.

~~50.~~51. Specifications—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.

~~51.~~52. Subcontractor—An individual or entity having a direct contract with Construction Manager at Risk or with any other Subcontractor for the performance of a part of the Work.

~~52.~~53. Submittal—A written or graphic document, prepared by or for Construction Manager at Risk, which the Contract Documents require Construction Manager at Risk to submit to Owner's Advisor, or that is indicated as a Submittal in the Schedule of Submittals accepted by Owner's Advisor. Submittals may include Shop Drawings and Samples; schedules; product data; Owner-delegated designs; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or Site quality-control testing and inspections; warranties and certifications; Suppliers' instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; Project photographic documentation; record documents; and other such documents required by the Contract Documents. Submittals, whether approved or accepted by Owner's Advisor or Engineer, are not Contract Documents. Change Proposals, Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.

~~53.~~54. Substantial Completion—The time and date at which the Work, or a specified part thereof, has progressed to the point where, the Work, or the specified part thereof, is sufficiently complete, in accordance with the Contract Documents, so that the Work, or the specified part thereof, can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion of such Work.

~~54.~~55. Supplementary Conditions—The part of the Contract that amends or supplements these General Conditions.

~~55.~~56. Supplier—A manufacturer, fabricator, supplier, distributor, or vendor having a direct contract with Construction Manager at Risk or with any Subcontractor to furnish

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materials or equipment to be incorporated in the Work by Construction Manager at Risk or a Subcontractor.

~~56.~~57. Technical Data

a. Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (1) existing subsurface conditions at or adjacent to the Site, or existing physical conditions at or adjacent to the Site including existing surface or subsurface structures, except Underground Facilities, or (2) Hazardous Environmental Conditions at the Site.

b. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then Technical Data is defined, with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06, as the data contained in boring logs, recorded measurements of subsurface water levels, assessments of the condition of subsurface facilities, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical, environmental, or other Site or facilities conditions report prepared for the Project and made available to Construction Manager at Risk.

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

~~57.~~58. Underground Facilities—All active or not-in-service underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems. An abandoned facility or system is not an Underground Facility.

~~58.~~59. Unit Price Work—Work to be paid for based on unit prices.

~~59.~~60. Work—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.

~~60.~~61. Work Authorization—A document issued by Owner's Advisor and signed by Owner and CMAR which identifies and defines new Work Packages and establishes the amount to be paid, times for completion, and any special or supplementary provisions applicable to the authorized Work.

~~61.~~62. Work Package–A specific portion of the Work developed by Engineer and Owner's Advisor in collaboration with the CMAR and subsequently authorized by a Work Authorization.

~~62.~~63. Emergency Work Change Directive—A written directive issued by Owner's Advisor to Construction Manager at Risk on or after the Effective Date of a governing

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Work Authorization, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work due to an emergency that prevents the parties from using the Change Order process.

1.02 Terminology

A. The words and terms discussed in Paragraphs 1.02.B, C, D, and E are not defined terms that require initial capital letters, but, when used in the Proposal Documents or Contract Documents, have the indicated meaning.

B. Intent of Certain Terms or Adjectives–The Contract Documents include the terms "as allowed," "as approved," "as ordered," "as directed" or terms of like effect or import to authorize an exercise of professional judgment by Owner's Advisor or Engineer. In addition, the adjectives "reasonable," "suitable," "acceptable," "proper," "satisfactory," or adjectives of like effect or import are used to describe an action or determination of Owner's Advisor or Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents, unless there is a specific statement indicating otherwise. The use of any such term or adjective is not intended to and will not be effective to assign to Owner's Advisor or Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.

C. Day–The word "day" means a period of 24 hours measured from midnight to the next midnight, including weekends and legal holidays unless otherwise specifically defined.

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

1. does not conform to the Contract Documents;

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

3. has been damaged prior to Owner's Advisor's recommendation of final payment unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.04 or Paragraph 15.05.

E. Furnish, Install, Perform, Provide

1. The word "furnish," when used in connection with services, materials, or equipment, means to supply and deliver said services, materials, or equipment to the Site, or some other specified location ready for use or installation and in usable or operable condition.

2. The word "install," when used in connection with services, materials, or equipment, means to put into use or place in final position said services, materials, or equipment complete and ready for their intended use.

3. The words "perform" or "provide," when used in connection with services, materials, or equipment, means to furnish and install said services, materials, or equipment complete and ready for their intended use.

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4. If the Contract Documents establish an obligation of CMAR with respect to specific services, materials, or equipment, but do not expressly use any of the four words "furnish," "install," "perform," or "provide," then CMAR shall furnish and install said services, materials, or equipment complete and ready for their intended use.

F. Contract Price or Contract Times–References to a change in "Contract Price or Contract Times" or "Contract Times or Contract Price" or similar, indicate that such change applies to (1) Contract Price, (2) Contract Times, or (3) both Contract Price and Contract Times, as warranted, even if the term "or both" is not expressed.

G. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2—PRELIMINARY MATTERS

2.01 Delivery of Performance and Payment Bonds; Evidence of Insurance

A. Performance and Payment Bonds–When CMAR delivers the signed counterparts of a Work Authorization to Owner, CMAR shall also deliver to Owner the performance bond and payment bond, if the Contract requires CMAR to furnish such bonds, or confirm that existing performance and payment bonds have been supplemented to account for the additional authorized Work.

B. Evidence of CMAR's Insurance–When CMAR delivers the signed counterparts of the Agreement to Owner, CMAR shall also deliver to Owner, with copies to each additional insured, as identified in the Contract, the certificates, endorsements, and other evidence of insurance required to be provided by CMAR in accordance with Article 6, except to the extent the Supplementary Conditions or Agreement expressly establish other dates for delivery of specific insurance policies.

C. ~~Evidence of Owner's Insurance–After receipt of the signed counterparts of the Agreement and all required insurance documentation, Owner shall promptly deliver to CMAR, with copies to each additional insured, as identified in the Contract, the certificates and other evidence of insurance required to be provided by Owner under Article 6.~~*[INTENTIONALLY DELETED]*

2.02 Copies of Documents

A. Owner shall furnish to CMAR four printed copies of the Contract, including one fully signed counterpart of the Agreement, and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.

B. Owner shall maintain and safeguard at least one original printed record version of the Contract, including Drawings and Specifications signed and sealed by Engineer and other design professionals. Owner shall make such original printed record version of the Contract available to CMAR for review. Owner may delegate the responsibilities under this provision to Owner's Advisor.

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2.03 Electronic Transmittals

A. Except as otherwise stated elsewhere in the Contract, the Owner, Owner's Advisor, Engineer, and CMAR may send, and shall accept, Electronic Documents transmitted by Electronic Means.

B. If the Contract does not establish protocols for Electronic Means, then Owner, Owner's Advisor, and CMAR shall jointly develop such protocols.

C. Subject to any governing protocols for Electronic Means, when transmitting Electronic Documents by Electronic Means, the transmitting party makes no representations as to long-term compatibility, usability, or readability of the Electronic Documents resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the Electronic Documents.

2.04 Construction Management

A. In addition to providing CMAR Services, during the course of the Contract, and especially during the performance of the Work, CMAR will:

1. Organize and manage the resources required for construction of the Work, commissioning, and correction of defective Work after Substantial Completion of the Work.

2. Administer, coordinate, monitor, and report on construction progress and associated activities.

3. Assist the Owner's Advisor in collecting, disseminating, and storing documents and information.

4. Manage the Work to meet Contract goals and objectives.

5. Recommend action to the Owner related to the management of the Work.

6. Develop schedule and cost control systems to monitor and report on the progress of the overall Contract.

ARTICLE 3—CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 Intent

A. The Contract Documents are complementary; what is required by one Contract Document is as binding as if required by all.

B. It is the intent of the Contract Documents to describe a functionally complete Project, or part thereof, to be constructed in accordance with the Contract Documents.

C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic versions of the Contract Documents, including any printed copies derived from such electronic versions, and the printed record version, the printed record version will govern.

D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.

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E. Owner's Advisor, in consultation with Engineer, will issue clarifications and interpretations of the Contract Documents as provided herein.

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

G. Nothing in the Contract Documents creates:

1. any contractual relationship between Owner, Owner's Advisor, or Engineer and any Subcontractor, Supplier, or other individual or entity performing or furnishing any of the Work, for the benefit of such Subcontractor, Supplier, or other individual or entity; or

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

3.02 Reference Standards

A. Standards, Specifications, Codes, Laws and Regulations

1. Reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, means the standard specification, manual, reference standard, code, or Laws or Regulations in effect at the time of receipt of Proposals, except as may be otherwise specifically stated in the Contract Documents.

2. No provision of any such standard specification, manual, reference standard, or code, and no instruction of a Supplier, will be effective to change the duties or responsibilities of Owner, CMAR, Owner's Advisor, or Engineer from those set forth in the Contract Documents. No such provision or instruction will be effective to assign to Owner, Owner's Advisor, or Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 Reporting and Resolving Discrepancies

A. Reporting Discrepancies

1. CMAR's Verification of Figures and Field Measurements–Before undertaking each part of the Work, CMAR shall carefully study the applicable Drawings and Specifications, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. CMAR shall promptly report in writing to Owner's Advisor any conflict, error, ambiguity, or discrepancy that CMAR discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict, error, ambiguity, or discrepancy is resolved by a clarification or interpretation by Owner's Advisor, in consultation with Engineer, and, if appropriate, an amendment or supplement to the Contract is issued by Owner's Advisor pursuant to Paragraph 11.01.

2. CMAR's Review of Drawings and Specifications–If, while performing or providing CMAR Services, or during the performance of the Work, CMAR discovers any conflict, error,

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ambiguity, or discrepancy within the Drawings and Specifications, whether in draft or final form, or between such documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then CMAR shall promptly report it to Owner's Advisor in writing. CMAR shall not proceed with the Work affected thereby, except in an emergency as required by Paragraph 7.18, until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Owner's Advisor, in consultation with Engineer, and, if appropriate, an amendment or supplement to the Contract is issued by Owner's Advisor pursuant to Paragraph 11.01.

B. Resolving Discrepancies

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

a. the provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier, whether or not specifically incorporated by reference as a Contract Document; or

b. the provisions of any Laws or Regulations applicable to the performance of the Work, unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation.

3.04 Interpretation of the Contract Documents

A. During the performance of the Work and until final payment, CMAR and Owner shall submit to the Owner's Advisor in writing all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation) or relating to the performance or acceptability of the Work under the Contract Documents, as soon as possible after such matters arise.

B. Owner's Advisor will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, and if appropriate initiate a change to the Contract Documents. In determining its response, Owner's Advisor will consider CMAR's prior involvement and obligations with respect to reviewing and commenting on draft design documents during CMAR's provision of CMAR Services. Owner's Advisor's written clarification, interpretation, or decision (1) will be based, when applicable, on consultation with Engineer, and (2) will be final and binding on CMAR, unless CMAR appeals by submitting a Change Proposal, and on Owner, unless Owner appeals by filing a Claim.

3.05 Reuse of Documents

A. CMAR and its Subcontractors and Suppliers shall not:

1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents, or copies of any thereof, prepared by or bearing the seal of Engineer or its consultants, including electronic media versions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer; or

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2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without Owner's express written consent, or violate any copyrights pertaining to such Contract Documents.

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

ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK

4.01 Commencement of Contract Times; Notice to Proceed

A. The Contract Times will commence to run on the Effective Date of the Contract, or as specified in Work Authorizations.

4.02 Starting the Work

A. CMAR shall start to perform the Work promptly upon receipt of the first Work Authorization. No Work may be done at the Site prior to such authorization.

4.03 Reference Points

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

4.04 Progress Schedule

A. CMAR shall adhere to the Progress Schedule established as part of Preconstruction Services, as it may be adjusted from time to time as provided below.

1. CMAR shall submit to Owner's Advisor for its information proposed adjustments in the Progress Schedule that will not result in changing the Contract Times.

2. Proposed adjustments in the Progress Schedule that will change the Contract Times must be submitted in accordance with the requirements of Article 11.

B. CMAR shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work will be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, except as permitted by Paragraph 16.04, or as Owner and CMAR may otherwise agree in writing.

4.05 Delays in CMAR's Progress

A. If Owner, Owner's Advisor, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then CMAR shall only be entitled to an equitable adjustment in ~~Guaranteed Maximum Price or~~ Contract Times.

B. CMAR shall not be entitled to an adjustment in Guaranteed Maximum Price or Contract Times for delay, disruption, or interference caused by or within the control of CMAR. Delay,

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disruption, and interference attributable to and within the control of a Subcontractor or Supplier will be deemed to be within the control of CMAR.

C. If CMAR's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, CMAR, and those for which they are responsible, then CMAR shall be entitled to an equitable adjustment in Contract Times. Such an adjustment will be CMAR's sole and exclusive remedy for the delays, disruption, and interference described in this Paragraph. Unanticipated ~~C~~causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this Paragraph include but are not limited to the following:

1. Severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
2. Abnormal weather conditions not anticipated or customary in Volusia County;
3. Acts or failures to act of third-party utility owners or other third-party entities, other than those third-party utility owners or other third-party entities performing other work at or adjacent to the Site as arranged by or under contract with Owner, as contemplated in Article 8; and
4. Acts of war or terrorism.

D. CMAR's entitlement to an adjustment of Contract Times ~~or Guaranteed Maximum Price~~ is limited as follows:

1. CMAR's entitlement to an adjustment of the Contract Times is conditioned on the delay, disruption, or interference adversely affecting an activity on the critical path to completion of the Work, as of the time of the delay, disruption, or interference.
2. ~~CMAR shall not be entitled to an adjustment in Guaranteed Maximum Price for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of CMAR. Such a concurrent delay by CMAR shall not preclude an adjustment of Contract Times to which CMAR is otherwise entitled.~~*[INTENTIONALLY DELETED]*
3. Adjustments of Contract Times ~~or Guaranteed Maximum Price~~ are subject to the provisions of Article 11.

E. Each CMAR request or Change Proposal seeking an increase in Contract Times or Guaranteed Maximum Price must be supplemented by supporting data that sets forth in detail the following:

1. The circumstances that form the basis for the requested adjustment;
2. The date upon which each cause of delay, disruption, or interference began to affect the progress of the Work;
3. The date upon which each cause of delay, disruption, or interference ceased to affect the progress of the Work;
4. The number of days' increase in Contract Times claimed because of each such cause of delay, disruption, or interference; and
5. ~~The impact on Guaranteed Maximum Price, in accordance with the provisions of Paragraph 11.07.~~*[INTENTIONALLY DELETED]*

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

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

G. Paragraph 8.03 addresses delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.

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

5.01 Availability of Lands

A. Owner shall furnish the Site. Owner shall notify CMAR in writing of any encumbrances or restrictions not of general application but specifically related to use of the Site with which CMAR must comply in performing the Work.

B. ~~Upon reasonable written request, Owner shall furnish CMAR with a current statement of record legal title and legal description of the lands upon which permanent improvements are to be made and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.~~*[INTENTIONALLY DELETED]*

C. CMAR shall provide for all additional lands and access thereto that may be required for temporary construction facilities, staging, or storage of materials and equipment. Contractor shall have the obligation to restore the additional lands to their original condition.

~~C.~~

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5.02 Use of Site and Other Areas

A. Limitation on Use of Site and Other Areas

1. CMAR shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that CMAR has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. CMAR shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for CMAR's operations; (c) damage to any other adjacent land or areas, or to improvements, structures, utilities, or similar facilities located at such adjacent lands or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the CMAR or those for which CMAR is responsible.

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2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the CMAR or those for which CMAR is responsible, CMAR shall (a) take immediate corrective or remedial action as required by Paragraph 7.18, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or in a court of competent jurisdiction; and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner, Owner's Advisor, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against any such claim, and against all costs, losses, and damages, including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs, arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Owner's Advisor, Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part by, or based upon, CMAR's performance of the Work, or because of other actions or conduct of the CMAR or those for which CMAR is responsible.

B. Removal of Debris During Performance of the Work–During the progress of the Work the CMAR shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. The CMAR shall prevent paint, mortar, and concrete splatter on concrete sidewalks and stairwell pads. Any such splatter shall be immediately removed so no evidence of splatter remains. All construction debris shall be removed in a timely manner. Surrounding graded and grassed areas shall be regularly magnetically scanned to collect miscellaneous nails and other sharp objects; the CMAR shall remove such objects from the construction site. Removal and disposal of such waste materials, rubbish, and other debris will conform to applicable Laws and Regulations.

C. Cleaning—Prior to Substantial Completion of the Work CMAR shall clean the Site and the Work and make it ready for utilization by Owner. Concrete and ceramic surfaces shall be cleaned and washed. Woodwork and resilient flooring shall be dusted and cleaned. Sash, fixtures and equipment shall be thoroughly cleaned. Stains, spots, dust. marks and smears shall be removed from all surfaces. Hardware and metal surfaces shall be cleaned and polished. Glass and plastic surfaces shall be thoroughly cleaned by professional window cleaners. All damaged, broken or scratched glass or plastic shall be replaced by the CMAR at the CMAR's expense. At the completion of the Work CMAR shall remove from the Site and adjacent areas all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

D. Loading of Structures—CMAR shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall CMAR subject any part of the Work or adjacent structures or land to stresses or pressures that could damage said structures or decrease their durability.

5.03 Subsurface and Physical Conditions

A. Reports and Drawings—The Supplementary Conditions identify:

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1. Those reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data;

2. Those drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site, except Underground Facilities, that contain Technical Data; and

3. Technical Data described in such reports and drawings.

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

C. Reliance by CMAR on Technical Data—CMAR may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents and shall under no circumstances relieve CMAR from visiting the Site and becoming familiar with and satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.. If no such express identification has been made, then CMAR may rely upon the accuracy of the Technical Data as defined in Paragraph 1.01.A.55.b.

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

1. the completeness of such reports and drawings for CMAR's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by CMAR, and safety precautions and programs incident thereto;

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

3. the contents of other Site-related documents made available to CMAR, such as record drawings from other projects at or adjacent to the Site, or Owner's archival documents concerning the Site; or

4. any CMAR interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

E. Confirmation of Site Conditions—As a part of Preconstruction Services CMAR will inform Owner if CMAR concludes that additional examination, investigation, exploration, testing, or study (Supplemental Investigations) of subsurface or physical conditions at the Site prior to commencement of construction would be advantageous, practical, and cost-effective, specifically identifying the nature and scope of any such recommended Supplemental Investigations. If Owner authorizes CMAR to conduct such Supplemental Investigations, through CMAR's own personnel or through a qualified consultant, or if Owner conducts such Supplemental Investigations, through Owner's Advisor, the Engineer, or a consultant, then CMAR will be entitled to rely on the results of the Supplemental Investigations, together with the Technical Data cited above, in planning and pricing construction at the Site.

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F. If Owner does not authorize any Supplemental Investigations of Site conditions, then CMAR will proceed with planning and pricing construction based on the Technical Data made available to it.

G. CMAR will be bound by any additional knowledge regarding Site conditions that CMAR gains while providing Preconstruction services.

5.04 Differing Subsurface or Physical Conditions

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

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

2. is of such a nature as to require a change in the Drawings or Specifications;

3. differs materially from that shown or indicated in the Contract Documents; or

4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then CMAR shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith, except in an emergency as required by Paragraph 7.18, notify Owner's Advisor in writing about such condition. CMAR shall not further disturb such condition or perform any Work in connection therewith, except with respect to an emergency, until receipt of a written statement permitting CMAR to do so.

B. Owner's Advisor's Review–After receipt of written notice as required by the preceding paragraph, Owner's Advisor, in consultation with Engineer, will promptly review the subsurface or physical condition in question; determine whether it is necessary for Owner to obtain additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A; obtain any pertinent cost or schedule information from CMAR; prepare recommendations to Owner regarding the CMAR's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Owner's Advisor's findings, conclusions, and recommendations.

C. Owner's Statement to CMAR Regarding Site Condition–After receipt of Owner's response and instructions regarding Owner's Advisor's written findings, conclusions, and recommendations, Owner's Advisor will issue a written statement to CMAR regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and informing CMAR of Owner's Advisor's written findings, conclusions, and recommendations, as revised based on Owner's response and instructions.

D. Early Resumption of Work–If at any time Owner's Advisor, in consultation with Engineer, determines that Work in connection with the subsurface or physical condition in question may resume prior to completion of Owner's Advisor's review or Owner's Advisor's issuance of its statement to CMAR, because the condition in question has been adequately

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documented, and analyzed on a preliminary basis, then Owner's Advisor may instruct CMAR to resume such Work.

E. Possible Price and Times Adjustments

1. CMAR shall be entitled to an equitable adjustment in Guaranteed Maximum Price or Contract Times, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in CMAR's cost of, or time required for, performance of the Work; subject, however, to the following:

a. Such condition must fall within any one or more of the categories described in Paragraph 5.04.A;

b. With respect to Work that is paid for on a unit price basis, any adjustment in Guaranteed Maximum Price will be subject to the provisions of Paragraph 13.02; and

c. CMAR's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E.

2. CMAR shall not be entitled to any adjustment in the Guaranteed Maximum Price or Contract Times with respect to a subsurface or physical condition if:

a. CMAR knew of the existence of such condition at the time CMAR made a commitment to Owner with respect to Guaranteed Maximum Price and Contract Times through a Work Authorization;

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

c. The existence of such condition reasonably could have been discovered or revealed as a result of practical and cost-effective Supplemental Investigations, as defined in Paragraph 5.03.E, but CMAR did not recommend any such Supplemental Investigations to Owner; or

d. CMAR failed to give the written notice required by Paragraph 5.04.A.

3. If Owner and CMAR agree regarding CMAR's entitlement to and the amount or extent of any adjustment in the Guaranteed Maximum Price or Contract Times, then any such adjustment will be set forth in a Change Order.

4. CMAR may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Guaranteed Maximum Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to CMAR regarding the subsurface or physical condition in question.

F. Underground Facilities; Hazardous Environmental Conditions–Paragraph 5.05 governs rights and responsibilities regarding the presence or location of Underground Facilities. Paragraph 5.06 governs rights and responsibilities regarding Hazardous Environmental Conditions. The provisions of Paragraphs 5.03 and 5.04 are not applicable to the presence or location of Underground Facilities, or to Hazardous Environmental Conditions.

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5.05 Underground Facilities

A. CMAR's Responsibilities–Unless it is otherwise expressly provided in the Supplementary Conditions, the cost of all the following is included in the Guaranteed Maximum Price, and CMAR shall have full responsibility for:

1. collaborating with Engineer during the design phase, as part of Preconstruction Services, to improve the accuracy and completeness of information regarding Underground Facilities that Engineer gathers and depicts in the final Contract Documents;

2. complying with applicable state and local utility damage prevention Laws and Regulations;

3. verifying the actual location of those Underground Facilities shown or indicated in the Contract Documents as being within the area affected by the Work, by exposing such Underground Facilities prior to construction;

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

5. the safety and protection of all existing Underground Facilities at the Site and repairing any damage thereto resulting from the Work.

B. Notice by CMAR–If CMAR believes that an Underground Facility that is uncovered or revealed at the Site during construction was not shown or indicated on the Drawings, or was not shown or indicated on the Drawings with reasonable accuracy, then CMAR shall, promptly after first becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith, except in an emergency as required by Paragraph 7.18, notify Owner and Owner's Advisor in writing regarding such Underground Facility within 5 days.

C. Owner's Advisor's Review

1. Owner's Advisor will:

a. promptly review the Underground Facility in consultation with Engineer, and conclude whether such Underground Facility was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy;

b. identify and communicate with the owner of the Underground Facility; prepare recommendations to Owner, and if necessary, issue any preliminary instructions to CMAR regarding the CMAR's resumption of Work in connection with the Underground Facility in question;

c. obtain any pertinent cost or schedule information from CMAR; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and

d. advise Owner and Engineer in writing of Owner's Advisor's findings, conclusions, and recommendations.

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

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D. Owner's Advisor's Statement to CMAR Regarding Underground Facility–After receipt of Owner's response to and recommendations regarding Owner's Advisor's written findings, conclusions, and recommendations, Owner's Advisor will issue a written statement to CMAR regarding the Underground Facility in question, addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and informing CMAR of Owner's Advisor's written findings, conclusions, and recommendations, as revised based on Owner's response and instructions.

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

F. Possible Price and Times Adjustments

1. CMAR shall be entitled to an equitable adjustment in the Guaranteed Maximum Price or Contract Times, to the extent that any existing Underground Facility at the Site that was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in CMAR's cost of, or time required for, performance of the Work; subject, however, to the following:

   a. With respect to Work that is paid for on a unit price basis, any adjustment in Guaranteed Maximum Price will be subject to the provisions of Paragraph 13.02;

   b. CMAR's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E; and

   c. CMAR gave the notice required in Paragraph 5.05.B.

2. If Owner and CMAR agree regarding CMAR's entitlement to and the amount or extent of any adjustment in the Guaranteed Maximum Price or Contract Times, then any such adjustment will be set forth in a Change Order.

3. CMAR may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Guaranteed Maximum Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to CMAR regarding the Underground Facility in question.

4. The information and data shown or indicated on the Drawings with respect to existing Underground Facilities at the Site is based on information and data (a) furnished by the owners of such Underground Facilities, or by others, (b) obtained from available records, or (c) gathered in an investigation conducted in accordance with the current edition of ASCE Manual 38, Standard Guideline for Investigating and Documenting Existing Utilities, by the American Society of Civil Engineers. If such information or data is incorrect or incomplete, CMAR's remedies are limited to those set forth in this Paragraph 5.05.F.

5.06 Hazardous Environmental Conditions at Site

A. Reports and Drawings–The Supplementary Conditions identify:

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

B. Reliance by CMAR on Technical Data Authorized–CMAR may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then CMAR may rely on the accuracy of the Technical Data as defined in Paragraph 1.01.A.55.b. Except for such reliance on Technical Data, CMAR may not rely upon or make any claim against Owner, Owner's Advisor, or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

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

C. CMAR shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.

D. CMAR shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by CMAR, Subcontractors, Suppliers, or anyone else for whom CMAR is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.

E. If CMAR encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if CMAR or anyone for whom CMAR is responsible creates a Hazardous Environmental Condition, then CMAR shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby, except in an emergency as required by Paragraph 7.18; and (3) notify Owner, Owner's Advisor, and Engineer, and promptly thereafter confirm such notice in writing) within 5 days of first becoming aware of the condition. Owner shall promptly consult with Owner's Advisor and Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Owner's Advisor and Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide CMAR with the written notice required by Paragraph 5.06.E. If CMAR or anyone for whom CMAR is responsible created the

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Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition and impose a set-off against payments to account for the associated costs.

F. CMAR shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto and delivered written notice to CMAR either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely. An equitable adjustment shall be made in the Contract Price or Contract Time, or both, to the extent that (i) they are attributable to the existence or location of any Hazardous Environmental Condition that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents or a report listed in the Supplemental Conditions, (ii) Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated the Hazardous Environmental Conditions, (iii) Contractor did not negligently, recklessly, or intentionally cause the Hazardous Environmental Condition, and (iv) Contractor notifies Owner and Engineer of such condition within 5 days after first becoming aware of such condition.

G. If Owner and CMAR cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Guaranteed Maximum Price or Contract Times, as a result of such Work stoppage, such special conditions under which Work is agreed to be resumed by CMAR, or any costs or expenses incurred in response to the Hazardous Environmental Condition, then within 30 days of Owner's written notice regarding the resumption of Work, CMAR may submit a Change Proposal, or Owner may impose a set-off. Entitlement to any such adjustment is subject to the provisions of Paragraphs 4.05.D, 4.05.E, 11.07, and 11.08.

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

I. ~~To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless CMAR, Subcontractors, Owner's Advisor, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages, including but not limited to all fees and charges of construction managers, engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs, arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (1) was not shown or indicated in the Drawings, Specifications, or other Contract Documents, identified as Technical Data entitled to limited reliance pursuant to Paragraph 5.06.B, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by CMAR or by anyone for whom CMAR is responsible. Nothing in this Paragraph 5.06.I obligates Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.~~ *[INTENTIONALLY DELETED]*

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J. ~~To the fullest extent permitted by Laws and Regulations, CMAR shall indemnify and hold harmless Owner, Owner's Advisor, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages, including but not limited to all fees and charges of construction managers engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs, arising out of or relating to the failure to control, contain, or remove a Constituent of Concern brought to the Site by CMAR or by anyone for whom CMAR is responsible, or to a Hazardous Environmental Condition created by CMAR or by anyone for whom CMAR is responsible. Nothing in this Paragraph 5.06.J obligates CMAR to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.~~*[INTENTIONALLY DELETED]*

K. ~~The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of Constituents of Concern or to a Hazardous Environmental Condition uncovered or revealed at the Site.~~*[INTENTIONALLY DELETED]*

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ARTICLE 6—BONDS AND INSURANCE

6.01 Performance, Payment, and Other Bonds

A. No later than the execution of the first Work Authorization the CMAR shall furnish a payment and performance bond in accordance with Sec. 255.05, Florida Statutes, ~~and a payment bond~~, ~~each~~ in an amount at least equal to the Guaranteed Maximum Price, as security for the faithful performance and payment of CMAR's obligations under the Contract. These bonds must remain in effect until one year after the date when final payment on the Contract becomes due or until completion of the correction period for the Contract specified in Paragraph 15.09, whichever is later, except as provided otherwise by Laws or Regulations, the terms of a prescribed bond form, the Supplementary Conditions, or other provisions of the Contract. The obligations, duties, responsibilities, and requirements of Contractor set forth in this Contract shall be incorporated into CMAR's performance bond. The premium costs of such bonds are:

1. included in Construction Support Cost if purchased for the Work based on the Estimated Guaranteed Maximum Price established with the Agreement; or
2. a reimbursable Cost of the Work if the bonds are purchased with the first Work Authorization and increased as subsequent Work Authorizations are approved.

B. CMAR shall also furnish such other bonds, if any, as are required by the Supplementary Conditions or other provisions of the Contract.

C. All bonds must be in the form included in the Contract Documents or otherwise specified by Owner prior to execution of the Contract~~, except as provided otherwise by Laws or Regulations, and must be issued and signed by a surety named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Department Circular 570, as amended and supplemented by the Bureau of the Fiscal Service, U.S. Department of the Treasury~~. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority must show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond. The

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payment and performance bonds shall be recorded in the public records of Volusia County, Florida.

D. CMAR shall obtain the required bonds from surety companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue bonds in the required amounts.

E. If the surety on a bond furnished by CMAR is declared bankrupt or becomes insolvent, or the surety ceases to meet the requirements above, then CMAR shall promptly notify Owner and Owner's Advisor in writing and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which must comply with the bond and surety requirements above.

F. If CMAR has failed to obtain a required bond, Owner may exclude the CMAR from the Site and exercise Owner's termination rights under Article 16.

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

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

I. Performance Bonds required of certain Subcontractors and Suppliers—see Paragraph 7.10.O.

6.02 Insurance—General Provisions

A. ~~Owner and~~ CMAR shall obtain and maintain insurance as required in this Article and in the Supplementary Conditions. In the event of any conflict between this Paragraph 6.02 and the specific insurance requirements of CMAR set forth in Supplemental Conditions, the specific requirements in Supplementary Conditions shall govern.

B. All insurance required by the Contract to be purchased and maintained by Owner or CMAR shall be obtained from insurance companies that are duly licensed or authorized in the ~~s~~State ~~or jurisdiction~~of Florida in which the Project is located to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract must have an A.M. Best Financial Strength Rating of A- or better, and an A.M. Best Financial Size Category of VII or larger.

C. Alternative forms of insurance coverage, including but not limited to self-insurance and "Occupational Accident and Excess Employer's Indemnity Policies," are not adequate to meet the insurance requirements of this Contract, unless expressly allowed in the Supplementary Conditions.

D. CMAR shall deliver to Owner, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that CMAR has obtained and is maintaining the policies and coverages required by the Contract. Upon request by Owner or any other insured, CMAR shall also furnish other evidence of such required insurance, including but not limited to copies of policies, documentation of applicable self-insured retentions, if allowed, and deductibles, full disclosure of all relevant exclusions, and evidence of insurance required to be purchased and maintained by Subcontractors or

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Suppliers. In any documentation furnished under this provision, CMAR, Subcontractors, and Suppliers may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those applicable to this Contract.

E. ~~Owner shall deliver to CMAR, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Owner has obtained and is maintaining the policies and coverages required of Owner by the Contract, if any. Upon request by CMAR or any other insured, Owner shall also provide other evidence of such required insurance, if any, including but not limited to copies of policies, documentation of applicable self-insured retentions, if allowed, and deductibles, and full disclosure of all relevant exclusions. In any documentation furnished under this provision, Owner may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those relevant to this Contract.~~ *[INTENTIONALLY DELETED]*

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F. Failure of Owner ~~or CMAR~~ to demand such certificates or other evidence of the CMAR ~~other party~~'s full compliance with these insurance requirements, or failure of Owner or CMAR to identify a deficiency in compliance from the evidence provided, will not be construed as a waiver of the ~~other party~~CMAR's obligation to obtain, and maintain such insurance.

G. In addition to the liability insurance required to be provided by CMAR, the Owner, at Owner's option, may purchase and maintain Owner's own liability insurance. Owner's liability policies, if any, operate separately and independently from policies required to be provided by CMAR, and CMAR cannot rely upon Owner's liability policies for any of CMAR's obligations to the Owner, Owner's Advisor, Engineer, or third parties.

H. CMAR shall require:

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

2. Suppliers to purchase and maintain insurance that is appropriate for their participation in the Project.

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

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

K. Without prejudice to any other right or remedy, if CMAR~~a party~~ has failed to obtain required insurance, the ~~other party~~Owner may elect, but is in no way obligated, to obtain equivalent insurance to protect such ~~other party~~Owner's interests at the expense of the CMAR~~party~~

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who was required to provide such coverage, and the Contract Price will be adjusted accordingly.

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

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

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

6.03 CMAR's Insurance

A. Required Insurance–CMAR shall purchase and maintain worker's compensation, commercial general liability, and other insurance pursuant to the specific requirements of the Supplementary Conditions.

B. General Provisions–The policies of insurance required by this Paragraph 6.03 as supplemented must:

1. include at least the specific coverages required;

2. be written for not less than the limits provided, or those required by Laws or Regulations, whichever is greater;

3. remain in effect at least until the Work is complete, as set forth in Paragraph 15.07.D, and longer if expressly required elsewhere in this Contract, and at all times thereafter when CMAR may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract;

4. apply with respect to the performance of the Work, whether such performance is by CMAR, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable; and

5. include completed operations coverage:

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

b. CMAR shall furnish Owner and each additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment.

6. make the CMAR solely responsible for any insurance deductible or self-insured retention.

~~5.~~7. include all necessary endorsements to support the stated requirements.

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C. Additional Insureds–The CMAR's commercial general liability, automobile liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies, if required by this Contract, must:

1. include and list as additional insureds Owner, Owner's Advisor, and Engineer, and any individuals or entities identified as additional insureds in the Supplementary Conditions;
2. include coverage for the respective officers, directors, members, partners, employees, and consultants of all such additional insureds;
3. afford primary coverage to these additional insureds for all claims covered thereby, including as applicable those arising from both ongoing and completed operations;
4. not seek contribution from insurance maintained by the additional insured; and
5. as to commercial general liability insurance, apply to additional insureds with respect to liability caused in whole or in part by CMAR's acts or omissions, or the acts and omissions of those working on CMAR's behalf, in the performance of CMAR's operations.

6.04 Builder's Risk and Other Property Insurance

A. Builder's Risk–Unless otherwise provided in the Supplementary Conditions, beginning at the commencement of construction CMAR shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the Work's full insurable replacement cost, subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations. The specific requirements applicable to the builder's risk insurance are set forth in the Supplementary Conditions.

For purposes of the builder's risk and other required property insurance, "commencement of construction" first occurs when materials are in the course of delivery to the Site or an off-site storage location required to be insured if transit coverage is required, or if transit coverage is not required, when materials are delivered to the Site, or an off-site storage location required to be insured.

B. Property Insurance for Facilities of Owner Where Work Will Occur–CMAR~~Owner~~ is responsible for obtaining and maintaining property insurance covering each existing structure, building, or facility in which any part of the Work will occur, or to which any part of the Work will attach or be adjoined. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, providing coverage consistent with that required for the builder's risk insurance, and will be maintained until the Work is complete, as set forth in Paragraph 15.07.D. Such policy shall identify both CMAR and Owner as additional insureds. CMAR shall be solely responsible for any deductible.

C. Property Insurance for Substantially Complete Facilities–Promptly after Substantial Completion, and before actual occupancy or use of the substantially completed Work, CMAR~~Owner~~ will obtain property insurance for such substantially completed Work and maintain such property insurance at least until the Work is complete, as set forth in Paragraph 15.07.D. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, and provide coverage consistent with that required for the builder's risk insurance. The builder's risk insurance may terminate upon written confirmation of CMAR~~Owner~~'s procurement of such property insurance.

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D. Partial Occupancy or Use by Owner–If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, as provided in Paragraph 15.05, then Owner, ~~directly, if it is the purchaser of the builder's risk policy,~~ or through CMAR, will provide advance notice of such occupancy or use to the builder's risk or all-risk insurer and CMAR shall obtain coverage or an endorsement consenting to the continuation of coverage prior to Owner commencing such partial occupancy or use.

E. Insurance of Other Property; Additional Insurance–If the express insurance provisions of the Contract do not require or address the insurance of a property Item or interest, then the entity or individual owning such property Item will be responsible for insuring it. If CMAR elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.04, CMAR may do so at its expense.

6.05 Property Losses; Subrogation

A. The builder's risk insurance policy purchased and maintained in accordance with Paragraph 6.04, or an installation floater policy if authorized by the Supplementary Conditions, will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against Owner's Advisor, Engineer, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors.

1. Owner and CMAR waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils, risks, or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Owner's Advisor, Engineer, its consultants, all individuals or entities identified in the Supplementary Conditions as builder's risk or installation floater insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused.

2. None of the above waivers extends to the rights that any party making such waiver may have to the proceeds of insurance held by ~~Owner or~~ CMAR as trustee or fiduciary, or otherwise payable under any policy so issued.

B. ~~Any property insurance policy maintained by Owner covering any loss, damage, or consequential loss to Owner's existing structures, buildings, or facilities in which any part of the Work will occur, or to which any part of the Work will attach or adjoin; to adjacent structures, buildings, or facilities of Owner; or to part or all of the completed or substantially completed Work, during partial occupancy or use pursuant to Paragraph 15.05, after Substantial Completion pursuant to Paragraph 15.04, or after final payment pursuant to Paragraph 15.07, will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against CMAR, Subcontractors, Owner's Advisor, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them, and that the insured is allowed to waive the insurer's rights of subrogation in a written contract executed prior to the loss, damage, or consequential loss.~~ *[INTENTIONALLY DELETED]*

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C. ~~Owner waives all rights against CMAR, Subcontractors, Owner's Advisor, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from fire or any of the perils, risks, or causes of loss covered by such policies. The waivers in this Paragraph 6.05 include the waiver of rights due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other insured peril, risk, or cause of loss.~~*[INTENTIONALLY DELETED]*

D. CMAR shall assure that each subcontract contains provisions whereby the Subcontractor waives all rights against Owner, CMAR, Owner's Advisor, Engineer, all individuals or entities identified in the Supplementary Conditions as insureds, their consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from fire or other peril, risk, or cause of loss covered by builder's risk insurance, installation floater, and any other property insurance applicable to the Work.

6.06 Receipt and Application of Property Insurance Proceeds

A. Any insured loss under the builder's risk and other policies of property insurance required by Paragraph 6.04 will be adjusted and settled with the named insured that purchased the policy. Such named insured will act as fiduciary for the other insureds and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.

B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.04 must maintain such proceeds in a segregated account and distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.

C. If no other special agreement is reached, CMAR shall repair or replace the damaged Work, using allocated insurance proceeds.

D. Owner, at its sole discretion, may elect to fund the costs associated with any property insurance claim, excluding the deductible, and seek reimbursement from CMAR's policy that identifies both CMAR and Owner as named insureds. If Owner exercises this right, it shall have sole authority to settle and adjust any claim and receive reimbursement under the policy with the proceeds made payable to Owner. CMAR shall have the obligation to cooperate and comply with all terms and provisions of the policy and its failure to do so shall constitute a material breach of the Contract. If Owner does not elect this right, CMAR shall be required to fund the costs associated with any property insurance claim and seek reimbursement under the policy.

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

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ARTICLE 7—CMAR'S RESPONSIBILITIES

7.01 CMAR's Means and Methods of Construction

A. CMAR shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.

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

7.02 Supervision and Superintendence

A. CMAR shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents.

B. At all times during the progress of the Work, CMAR shall assign a competent resident superintendent who will not be replaced without written notice to Owner and Owner's Advisor except under extraordinary circumstances.

7.03 CMAR Services—Key Personnel and Subconsultants

A. CMAR will provide the services of the key individuals identified in the Agreement for CMAR Services (Preconstruction Services and Procurement Services) for the duration of the time required to provide these services. CMAR may substitute other individuals for the key individuals identified in the Agreement or for individuals previously approved only upon good cause and with the written consent of the Owner. Subject to the foregoing, not providing the individuals proposed may be the grounds for termination of this Contract.

B. CMAR may provide CMAR Services through one or more subconsultants under contract to CMAR provided, however, that CMAR remains responsible to the Owner for all duties and obligations of the CMAR under this Contract, and in rendering services any such subconsultant must comply with all applicable terms and conditions of the Contract Documents. If the Agreement identifies a specific subconsultant, CMAR will provide the services of such subconsultant for the duration of the time required to complete the subcontracted tasks. CMAR may substitute other subconsultants for the subconsultants identified in the Agreement or previously approved only with the written consent of the Owner. Subject to the foregoing, not providing the subconsultants proposed may be the grounds for termination of this Contract.

7.04 Quality of CMAR Services

A. The Owner's Advisor, with the concurrence of Owner and Engineer, has the right to reject or disapprove any substandard portion of the CMAR Services. Owner's Advisor will provide written notice stating the reason for the rejection or disapproval. CMAR will revise the services in question to address the inadequacies identified by Owner's Advisor.

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B. CMAR acknowledges that any review or approval of CMAR Services by the Owner or Owner's Advisor does not relieve CMAR of its responsibility to properly and timely perform such services.

7.05 Continuation or Termination of CMAR Services

A. Owner may terminate this Contract for Owner's convenience at the completion of Preconstruction Services if Owner determines that doing so is in Owner's best interest. Owner is not obligated to cite a reason for such a termination, but in making its determination Owner may wish to consider factors such as the quality of the CMAR Services, facts that indicate that the Project cannot be constructed for a cost within the Owner's budget, and changes in key personnel.

B. The Owner may terminate the Contract for Owner's convenience at the end of Procurement Services if Owner determines that doing so is in Owner's best interest. Owner is not obligated to cite a reason for such a termination, but in making its determination Owner may wish to consider factors such as whether CMAR is unable to offer a Guaranteed Maximum Price within the Owner's Construction Budget, or whether it will be advantageous to bid out the Work as a whole on a stipulated price basis.

7.06 Labor; Working Hours

A. CMAR shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. CMAR shall maintain good discipline and order at the Site.

B. CMAR shall provide or furnish:

1. Construction-related services as described in Division 00 and Division 01 of the Contract Documents;

2. Post-construction services as described in Division 00 and Division 01 of the Contract Documents; and

3. All other construction-related and post-construction services described in the Contract Documents.

C. CMAR shall be fully responsible to Owner, Owner's Advisor, and Engineer for all acts and omissions of CMAR's employees; of subconsultants, Suppliers, and Subcontractors, and their employees; and of any other individuals or entities performing or furnishing any of the CMAR Services or the Work, just as CMAR is responsible for CMAR's own acts and omissions. The CMAR agrees to remove from the Project an employee, Subcontractor, or Subcontractor employee that commits any breach of the Contract Documents or any breach of the Owner's written rules and regulations regarding the jobsite conduct.

D. The CMAR shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. CMAR shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The CMAR shall require all construction personnel to maintain a neat general appearance at all times. Shirts, trousers and proper shoes are required apparel. The display of vulgar words, signs or figures is prohibited. Sandals and flip-flops are prohibited on the Project site. The use of radios, tape players, CD players, boom boxes, sound producing devices and the like are prohibited on the Project site. The CMAR shall not be permitted to use restrooms or other sanitary facilities within the Owner's existing buildings or on-site facilities.

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

7.07 Services, Materials, and Equipment

A. Unless otherwise specified in the Contract Documents, CMAR shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.

B. All materials and equipment incorporated into the Work must be new and of good quality, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications will expressly run to the benefit of Owner. If required by Owner's Advisor, the CMAR shall furnish satisfactory evidence, including reports of required tests, as to the source, kind, and quality of materials and equipment.

C. All materials and equipment must be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

D. CMAR will be fully responsible for the quality and effectiveness (1) of all services performed or provided by CMAR, including but not limited to CMAR Services and general services in support of construction, and (2) of the deliverables and documentation associated with all such services.

7.08 "Or Equals"

A. CMAR's Request; Governing Criteria–Whenever an Item of equipment or material is specified or described in the Contract Documents by using the names of one or more proprietary items or specific Suppliers, the Guaranteed Maximum Price has been based upon CMAR furnishing such Item as specified. The specification or description of such an Item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" Item is permitted, CMAR may request that Owner's Advisor authorize the use of other items of equipment or material, or items from other proposed Suppliers, under the circumstances described below.

1. If Owner's Advisor, in consultation with Engineer, determines that an Item of equipment or material proposed by CMAR is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Owner's Advisor will deem it an "or equal" item. For the purposes of this paragraph, a proposed Item of equipment or material will be considered functionally equal to an Item so named if:

a. in the exercise of reasonable judgment Owner's Advisor, in consultation with Engineer, determines that the proposed item:

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

2) will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;

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

4) is not objectionable to Owner.

b. CMAR certifies that if the proposed Item is approved and incorporated into the Work:

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

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

B. CMAR's Expense–CMAR shall provide all data in support of any proposed "or equal" Item at CMAR's expense.

C. Owner's Advisor's Evaluation and Determination–Owner's Advisor, in consultation with Engineer, will be allowed a reasonable time to evaluate each "or-equal" request. Owner's Advisor may require CMAR to furnish additional data about the proposed "or-equal" item. Owner's Advisor, in consultation with Engineer, will be the sole judge of acceptability. No "or-equal" Item will be ordered, furnished, installed, or utilized until Owner's Advisor's review is complete and Owner's Advisor, in consultation with Engineer, has determined that the proposed Item is equal, which will be evidenced by an approved Shop Drawing or other written communication. Owner's Advisor will advise CMAR in writing of any negative determination.

D. Effect of Owner's Advisor's Determination–Neither approval nor denial of an "or-equal" request will result in any change in Guaranteed Maximum Price. The Owner's Advisor's denial of an "or-equal" request will be final and binding and may not be reversed through an appeal under any provision of the Contract.

E. Treatment as a Substitution Request–If Owner's Advisor determines that an Item of equipment or material proposed by CMAR does not qualify as an "or-equal" item, CMAR may request that Owner's Advisor consider the Item a proposed substitute pursuant to Paragraph 7.09.

7.09 Substitutes

A. CMAR's Request; Governing Criteria–Unless the specification or description of an Item of equipment or material required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, CMAR may request that Owner's Advisor authorize the use of other items of equipment or material under the circumstances described below.

B. To the extent possible such requests must be made as part of Preconstruction Services, before the completion of the applicable portion of the design, the Procurement of Subcontractors, construction pricing, and execution of the governing Work Authorization (Preconstruction Substitute Requests). Preconstruction Substitute Requests are further

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addressed in Paragraph 7.09.E below; substitute requests made after the applicable Work Authorization are addressed in Paragraph 7.09.F.

C. The following provisions apply to all substitute requests:

1. CMAR shall submit adequate information as provided below to allow Owner's Advisor, in consultation with Engineer, to determine if the Item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Owner's Advisor will not accept requests for review of proposed substitute items of equipment or material from anyone other than CMAR.

2. The requirements for review by Owner's Advisor, in consultation with Engineer, will be as set forth in Paragraph 7.09.D, as supplemented by the Specifications, and as Owner's Advisor may decide is appropriate under the circumstances.

3. CMAR shall make written application to Owner's Advisor for review of a proposed substitute Item of equipment or material that CMAR seeks to furnish or use. The application:

a. will certify that the proposed substitute Item will:

1) adequately perform the functions and achieve the results called for by the general design;

2) be similar in substance to the Item specified; and

3) be suited to the same use as the Item specified.

b. will state:

1) the extent, if any, to which the use of the proposed substitute Item will necessitate a change in Contract Times;

2) whether use of the proposed substitute Item in the Work will require a change in any of the Contract Documents, or in the provisions of any other direct contract with Owner for other work on the Project, to adapt the design to the proposed substitute item; and

3) whether incorporation or use of the proposed substitute Item in connection with the Work is subject to payment of any license fee or royalty.

c. will identify:

1) all variations of the proposed substitute Item from the Item specified; and

2) available engineering, sales, maintenance, repair, and replacement services.

d. will contain, to the extent applicable, an itemized estimate of all costs, anticipated price impacts, or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Guaranteed Maximum Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.

D. Owner's Advisor's Evaluation and Determination–Owner's Advisor, in consultation with Engineer, will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Owner's Advisor may require CMAR to furnish additional data about the proposed substitute item. Owner's Advisor, in consultation with

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Engineer, will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Owner's Advisor's review is complete and Owner's Advisor determines that the proposed Item is an acceptable substitute.

E. Preconstruction Substitute Requests—CMAR will research potential substitutes, furnish data, and prepare a Preconstruction Substitute Request as compensable Basic Preconstruction Services. CMAR will not be responsible for costs incurred by Owner, Owner's Advisor, or Engineer in response to a Preconstruction Substitute Request. If such a request is approved, CMAR will not be required to issue a special guarantee with respect to the substitute's inclusion in the final design.

F. For substitute requests made after a Work Authorization, or in an untimely manner such that the substitution cannot be made part of the final design on which binding construction pricing is based, the following apply:

1. Owner's Advisor's determination will be evidenced by a Field Order, or a proposed Change Order issued by the Owner's Advisor accounting for the substitute itself and all related impacts, including changes in Guaranteed Maximum Price or Contract Times. Owner's Advisor will advise CMAR in writing of any negative determination.

2. Special Guarantee –Owner's Advisor may require CMAR to furnish at CMAR's expense a special performance guarantee or other surety with respect to the substitute.

3. Reimbursement of Review Cost–Owner's Advisor and Engineer will record their costs in evaluating the substitute proposed or submitted by CMAR. Whether or not Owner's Advisor approves a substitute so proposed or submitted by CMAR, CMAR shall reimburse Owner for the reasonable charges of Owner's Advisor and Engineer for evaluating each such proposed substitute. CMAR shall also reimburse Owner for the reasonable charges of Owner's Advisor and Engineer for making changes in the Contract Documents, or in the provisions of any other direct contract with Owner resulting from the acceptance of each proposed substitute.

4. CMAR's Expense–CMAR shall provide all data in support of any proposed substitute at CMAR's expense.

5. Effect of Owner's Advisor's Determination–If Owner's Advisor approves the substitute request, CMAR shall execute a Change Order and proceed with the substitute. The Owner's Advisor's denial of a substitution request will be final and binding and may not be reversed through an appeal under any provision of the Contract. CMAR may challenge the scope of reimbursement costs imposed under Paragraph 7.09.F.3, by timely submittal of a Change Proposal.

7.10 Concerning Subcontractors and Suppliers

A. CMAR may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner. The CMAR's retention of a Subcontractor or Supplier for the performance of parts of the Work will not relieve CMAR's obligation to Owner to perform and complete the Work in accordance with the Contract Documents.

B. CMAR shall retain specific Subcontractors and Suppliers for the performance of designated parts of the Work if required by the Contract to do so.

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C. As a general matter, CMAR shall retain Subcontractors and Suppliers for Work Packages through the procurement process described in the Agreement, including but not limited to the Procurement Strategy Plan and Exhibit A Article 3 of the Agreement. If there is a conflict between such provisions of the Agreement and this paragraph, the provisions of the Agreement will govern.

D. Subsequent to the submittal of CMAR's Proposal or final negotiation of the terms of the Contract, Owner may not require CMAR to retain any Subcontractor or Supplier against which CMAR has reasonable objection to furnish or perform any of the Work.

E. Prior to entry into any binding subcontract or purchase order, CMAR shall submit to Owner the identity of the proposed Subcontractor or Supplier, unless Owner has already deemed such proposed Subcontractor or Supplier acceptable during the CMAR selection process, the Subcontractor and Supplier procurement process, or otherwise. Such proposed Subcontractor or Supplier will be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within 5 days.

F. Owner may require the replacement of a Subcontractor or Supplier. Owner also may require CMAR to retain specific replacements; provided, however, that Owner may not require a replacement to which CMAR has a reasonable objection. If CMAR has submitted the identity of certain Subcontractors or Suppliers for acceptance by Owner, through the Subcontractor and Supplier procurement process or otherwise, and Owner has accepted it, either in writing or by failing to make written objection thereto, then Owner may subsequently revoke the acceptance of any such Subcontractor or Supplier so identified solely on the basis of substantive, reasonable objection after due investigation. CMAR shall submit an acceptable replacement for the rejected Subcontractor or Supplier.

G. If Owner requires the replacement of any Subcontractor or Supplier retained by CMAR to perform any part of the Work, then CMAR shall be entitled to an adjustment in Guaranteed Maximum Price or Contract Times, with respect to the replacement; and CMAR shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.

H. No acceptance by Owner of any such Subcontractor or Supplier, whether initially or as a replacement, will constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.

I. On a monthly basis, CMAR shall submit to Owner's Advisor a complete list of all Subcontractors and Suppliers having a direct contract with CMAR, and of all other Subcontractors and Suppliers known to CMAR at the time of submittal.

J. CMAR shall be solely responsible for scheduling and coordinating the work of Subcontractors and Suppliers.

K. The divisions and sections of the Specifications and the identifications of any Drawings do not control CMAR in dividing the Work among Subcontractors or Suppliers, or in delineating the Work to be performed by any specific trade.

L. All Work performed for CMAR by a Subcontractor or Supplier must be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract for the benefit of Owner, Owner's Advisor, and Engineer.

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M. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to CMAR for Work performed for CMAR by the Subcontractor or Supplier.

N. CMAR shall restrict all Subcontractors and Suppliers from communicating with Owner's Advisor or Owner, except through CMAR or in case of an emergency, or as otherwise expressly allowed in this Contract.

O. CMAR will perform or undertake the responsibilities of any Subcontractor or Supplier that defaults, fails to perform, declares bankruptcy, or meets any of the other requirements for termination for cause listed as applying to the CMAR as described in Paragraph 16.02 of the General Conditions.

1. If, for a specific Subcontractor or Supplier, CMAR determines that CMAR would not reasonably be able to self-perform the Subcontractor's work or meet the Supplier's obligations in the event of the Subcontractor or Supplier default, then CMAR may require a subcontract/supplier performance bond, the costs of which will be reimbursed as a Cost of the Work under the Subcontract costs category (Paragraph 6.02, Agreement). Before requiring such a bond, CMAR will consult with Owner's Advisor and consider whether other protective measures are feasible and more cost-effective.

2. If Owner requires that CMAR enter into a subcontract with a Subcontractor to which the CMAR has reasonable objections, CMAR may require subcontract performance and payment bonds, the costs of which will be reimbursed as a Cost of the Work under the Subcontract costs category (Paragraph 6.02, Agreement).

7.11 Patent Fees and Royalties

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

B. ~~To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless CMAR, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors, from and against all claims, costs, losses, and damages, including but not limited to all fees and charges of construction managers, engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs, arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.~~ *[INTENTIONALLY DELETED]*

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C. ~~To the fullest extent permitted by Laws and Regulations, CMAR shall indemnify and hold harmless Owner, Owner's Advisor, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against all claims, costs, losses, and damages, including but not limited to all fees and~~

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~~charges of construction managers, engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs, arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.~~[INTENTIONALLY DELETED]

7.12 Permits

A. Unless otherwise provided in the Contract Documents, CMAR shall obtain and pay for all construction permits, licenses, and certificates of occupancy. Owner shall assist CMAR, when necessary, in obtaining such permits and licenses. CMAR shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of the submission of CMAR's Proposal. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

7.13 Taxes

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

7.14 Laws and Regulations

A. CMAR shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of CMAR Services or the Work. Neither Owner, Owner's Advisor, nor Engineer will be responsible for monitoring CMAR's compliance with Laws or Regulations.

B. If CMAR performs any CMAR Services or Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, CMAR shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner, Owner's Advisor, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages, including but not limited to all fees and charges of construction managers, engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs, arising out of or relating to such CMAR Services, Work, or other action.

C. It is not CMAR's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this does not relieve CMAR of its obligations under Paragraph 3.03.

D. Owner or CMAR may give written notice to the other party of any changes after the Effective Date of the Contract in Laws or Regulations having an effect on the cost or time of performance of the Work, including but not limited to changes in Laws or Regulations having an effect on procuring permits and on sales, use, value-added, consumption, and other similar taxes. If Owner and CMAR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in Guaranteed Maximum Price or Contract Times resulting from such changes, then within 30 days of such written notice CMAR may submit a Change Proposal, or Owner may initiate a Claim.

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7.15 Record Documents

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

7.16 Safety and Protection

A. CMAR shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations.

B. CMAR shall designate a qualified and experienced safety representative whose duties and responsibilities are the prevention of Work-related accidents and the maintenance and supervision of safety precautions and programs.

C. CMAR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:

1. all persons on the Site or who may be affected by the Work;

2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and

3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

D. All damage, injury, or loss to any property referred to in Paragraph 7.16.C.2 or 7.16.C.3 caused, directly or indirectly, in whole or in part, by CMAR, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, will be remedied by CMAR at its expense, except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner, Owner's Advisor, or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of CMAR or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them.

E. CMAR shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection.

F. CMAR shall notify Owner's Advisor; Owner; the owners of adjacent property; the owners of Underground Facilities and other utilities, if the identity of such owners is known to CMAR; and other contractors and utility owners performing work at or adjacent to the Site, in writing, when CMAR knows that prosecution of the Work may affect them, and shall

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cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.

G. CMAR shall comply with the applicable requirements of Owner's safety programs, if any. Any Owner's safety programs that are applicable to the Work are identified or included in the Supplementary Conditions or Specifications.

H. CMAR shall inform Owner, Owner's Advisor, and Engineer of the specific requirements of CMAR's safety program with which Owner's, Owner's Advisor's, and Engineer's employees and representatives must comply while at the Site.

I. CMAR's duties and responsibilities for safety and protection will continue until all the Work is completed, Owner's Advisor has issued a written notice to Owner and CMAR in accordance with Paragraph 15.07.C that the Work is acceptable, and CMAR has left the Site, except as otherwise expressly provided in connection with Substantial Completion.

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

7.17 Hazard Communication Programs

A. CMAR shall be responsible for coordinating any exchange of safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

7.18 Emergencies

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

7.19 Submittals

A. Shop Drawing and Sample Requirements

1. Before submitting a Shop Drawing or Sample, CMAR shall:

a. review and coordinate the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;

b. determine and verify:

1) all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect to the Submittal;

2) the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and

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3) all information relative to CMAR's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto;

c. confirm that the Submittal is complete with respect to all related data included in the Submittal.

2. Each Shop Drawing or Sample must bear a stamp or specific written certification that CMAR has satisfied CMAR's obligations under the Contract Documents with respect to CMAR's review of that Submittal, and that CMAR approves the Submittal.

3. With each Shop Drawing or Sample, CMAR shall give Owner's Advisor specific written notice of any variations that the Submittal may have from the requirements of the Contract Documents. This notice must be set forth in a written communication separate from the Submittal; and, in addition, in the case of a Shop Drawing by a specific notation made on the Shop Drawing itself.

B. Submittal Procedures for Shop Drawings and Samples–CMAR shall label and submit Shop Drawings and Samples to Owner's Advisor for review by Engineer in accordance with the accepted Schedule of Submittals.

1. Shop Drawings

a. CMAR shall submit the number of copies required in the Specifications.

b. Data shown on the Shop Drawings must be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show the services, materials, and equipment CMAR proposes to provide, and to enable the information to be reviewed for the limited purposes required by Paragraph 7.19.D.

2. Samples

a. CMAR shall submit the number of Samples required in the Specifications.

b. CMAR shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Owner's Advisor may require to enable Engineer to review the Sample for the limited purposes required by Paragraph 7.19.D.

C. Proceeding without Engineer's Approval—Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, Owner will not pay for related Work, including equipment or materials, until Engineer approves the Shop Drawing or Sample. If CMAR proceeds without such approval, CMAR will bear the full risk of all resulting delays, costs, and losses, including but not limited to removal, corrective, purchase, and installation costs, if such approval is not granted.

D. Engineer's Review of Shop Drawings and Samples

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the accepted Schedule of Submittals. Engineer's review will be only to determine if the items covered by the Submittals will, after installation or incorporation in the Work, comply with the requirements of the Contract Documents, and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

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2. Engineer's review and approval, if any, will not extend to means, methods, techniques, sequences, or procedures of construction, or to safety precautions or programs incident thereto.

3. Engineer's review and approval, if any, of a separate Item as such will not indicate approval of the assembly in which the Item functions.

4. Engineer's review and approval, if any, of a Shop Drawing or Sample will not relieve CMAR from responsibility for any variation from the requirements of the Contract Documents unless CMAR has complied with the requirements of Paragraph 7.19.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Owner's Advisor, in consultation with Engineer, will document any such approved variation from the requirements of the Contract Documents in a Field Order or other appropriate Contract modification.

5. Engineer's review and approval, if any, of a Shop Drawing or Sample will not relieve CMAR from responsibility for complying with the requirements of Paragraphs 7.19.A and B.

6. Engineer's review and approval, if any, of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, will not, under any circumstances, change the Contract Times or Guaranteed Maximum Price, unless such changes are included in a Change Order.

7. Neither receipt, review, acceptance, or approval of a Shop Drawing or Sample will result in such Item becoming a Contract Document.

8. CMAR shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.19.D.4.

E. Resubmittal Procedures for Shop Drawings and Samples

1. CMAR shall make required corrections and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. CMAR shall direct specific attention in writing to revisions other than the corrections called for on previous Submittals.

2. CMAR shall furnish required Shop Drawing and Sample submittals with adequate information and accuracy to obtain required approval of an Item with no more than two resubmittals. Engineer will record Engineer's time for reviewing a third or subsequent resubmittal of a Shop Drawing or Sample, and CMAR shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due CMAR to secure reimbursement for such charges.

3. If CMAR requests a change of a previously approved Shop Drawing or Sample, CMAR shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due CMAR to secure reimbursement for such charges, unless the need for such change is beyond the control of CMAR.

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

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1. The following provisions apply to all Submittals other than Shop Drawings, Samples, and Owner-delegated designs:

    a. CMAR shall submit all such Submittals to Owner's Advisor in accordance with the Schedule of Submittals and pursuant to the applicable terms of the Contract Documents.

    b. A timely review will be made of all such Submittals in accordance with the Schedule of Submittals and return such Submittals with a notation of either Accepted or Not Accepted. Any such Submittal that is not returned within the time established in the Schedule of Submittals will be deemed accepted.

    c. Review will be only to determine if the Submittal is acceptable under the requirements of the Contract Documents as to general form and content of the Submittal.

    d. If any such Submittal is not accepted, CMAR shall confer with Owner's Advisor regarding the reason for the non-acceptance and resubmit an acceptable document.

2. Procedures for the submittal and acceptance of the Progress Schedule, the Schedule of Submittals, and the Schedule of Values are set forth in Paragraphs 4.04, 7.19, and 15.02.

G. Owner-delegated Designs–Submittals pursuant to Owner-delegated designs are governed by the provisions of Paragraph 7.22.

7.20 CMAR's General Warranty and Guarantee

A. CMAR warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Owner's Advisor and Engineer are entitled to rely on CMAR's warranty and guarantee.

B. Owner's rights under this warranty and guarantee are in addition to, and are not limited by, Owner's rights under the correction period provisions of Paragraph 15.09. The time in which Owner may enforce its warranty and guarantee rights under this Paragraph 7.20 is limited only by applicable Laws and Regulations restricting actions to enforce such rights; provided, however, that after the end of the correction period under Paragraph 15.09:

1. Owner shall give CMAR written notice of any defective Work within 60 days of the discovery that such Work is defective; and

2. Such notice will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the notice.

C. CMAR's warranty and guarantee hereunder excludes defects or damage caused by:

1. abuse, or improper modification, maintenance, or operation, by persons other than CMAR, Subcontractors, Suppliers, or any other individual or entity for whom CMAR is responsible; or

2. normal wear and tear under normal usage.

D. CMAR shall perform or provide CMAR Services in accordance with the Contract Documents and good construction management practice.

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E. CMAR's obligation to perform and complete the CMAR Services and the Work in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of CMAR Services or Work that is not in accordance with the Contract Documents, a release of CMAR's obligation to perform the CMAR Services or Work in accordance with the Contract Documents, or a release of Owner's warranty and guarantee rights under this Paragraph 7.20:

1. Observations by Owner's Advisor or Engineer;
2. Recommendation by Owner's Advisor or payment by Owner of any progress or final payment;
3. The acceptance of CMAR Services without objection;
4. The issuance of a certificate of Substantial Completion by Owner's Advisor or any payment related thereto by Owner;
5. Use or occupancy of the Work or any part thereof by Owner;
6. Any review and approval of a Shop Drawing or Sample submittal;
7. The issuance of a notice of acceptability by Owner's Advisor;
8. The end of the correction period established in Paragraph 15.09;
9. Any inspection, test, or approval by others; or
10. Any correction of defective Work by Owner.

F. If the Contract requires CMAR to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract will govern with respect to CMAR's performance obligations to Owner for the Work described in the assigned contract.

7.21 Indemnification

A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of CMAR under the Contract or otherwise, CMAR shall indemnify and hold harmless Owner, Owner's Advisor, ~~and Engineer,~~ and the Owner's officers, ~~directors, members, partners,~~ employees, ~~agents, consultants and subcontractors of each and any of them,~~ from losses, damages, costs, and judgments, including but not limited to all reasonable fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs, arising from third-party claims or actions relating to or resulting from the performance or furnishing of CMAR Services or the Work, provided that any such claim, action, loss, cost, judgment or damage is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property, other than the Work itself, including the loss of use resulting therefrom, and caused in whole or in part by any act or omission of the CMAR, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which otherwise exists as to any party or person described in this subsection ~~but only to the extent caused by any negligent act or omission of CMAR, any Subcontractor, any Supplier, subconsultant, or any individual or entity directly or indirectly employed by any of~~

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them to perform any of the CMAR Services or Work, or anyone for whose acts any of them may be liable.

B. In claims against Owner, Owner's Advisor, or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, by any CMAR employee, or the survivor or personal representative of such employee, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.21.A will not be limited by a limitation on the amount or type of damages, compensation, or benefits payable by or for CMAR or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.The CMAR acknowledges the limit of dollar amount of CMAR's indemnity obligations required by the Contract specifically for those claims caused in whole or in part by the Owner or Engineer shall be $1,000,000 or the Contract Sum of the Project, whichever is more. The parties agree that the indemnity provided herein bears a reasonable commercial relationship to the Contract and is incorporated by this reference into the Project specifications and bid documents. if any.

C. Notwithstanding the above and without monetary limitation, the CMAR hereby indemnifies and holds harmless the Owner, their officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by negligence, recklessness, or intentional wrongful misconduct of the CMAR and persons employed or utilized by the Contractor in the performance of the Contract.

B.D. CMAR agrees and understands that its obligation to indemnify, hold harmless, and defend as set forth in Paragraphs 7.21.A and B. above includes without limitation, claims, losses, etc., for personal injury, death, property damage, Hazardous Environmental Conditions, infringement of patent rights or copyrights incidental to the use or incorporation in the performance of the Work, etc., to the extent caused by the negligence, recklessness, or intentional misconduct of CMAR and the persons or entities employed or utilized by CMAR in the performance of the Contract.

7.22 Delegation of Professional Design Services

A. Owner may require CMAR to provide professional design services for a portion of the Work by express delegation in the Contract Documents. Such delegation will specify the performance and design criteria that such services must satisfy, and the Submittals that CMAR must furnish to Owner's Advisor with respect to the Owner-delegated design.

B. CMAR shall cause such Owner-delegated professional design services to be provided pursuant to the professional standard of care by a properly licensed design professional, whose signature and seal must appear on all drawings, calculations, specifications, certifications, and Submittals prepared by such design professional. Such design professional must issue all certifications of design required by Laws and Regulations.

C. If a Shop Drawing or other Submittal related to the Owner-delegated design is prepared by CMAR, a Subcontractor, or others for submittal to Owner's Advisor, then such Shop Drawing or other Submittal must bear the written approval of CMAR's design professional when submitted by CMAR to Owner's Advisor.

D. Owner, Owner's Advisor, and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the

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design professionals retained or employed by CMAR under an Owner-delegated design, subject to the professional standard of care and the performance and design criteria stated in the Contract Documents.

E. Pursuant to this Paragraph 7.22, Engineer's review, approval, and determinations regarding design drawings, calculations, specifications, certifications, and other Submittals furnished by CMAR pursuant to an Owner-delegated design will be only for the following limited purposes:

1. Checking for conformance with the requirements of this Paragraph 7.22;

2. Confirming that CMAR, through its design professionals, has used the performance and design criteria specified in the Contract Documents; and

3. Establishing that the design furnished by CMAR is consistent with the design concept expressed in the Contract Documents.

F. CMAR shall not be responsible for the adequacy of performance or design criteria specified by Owner or Engineer.

G. CMAR is not required to provide professional services in violation of applicable Laws and Regulations.

ARTICLE 8—OTHER WORK AT THE SITE

8.01 Other Work

A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.

B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give CMAR written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any third-party utility work that Owner has arranged to take place at or adjacent to the Site, Owner shall provide such information to CMAR.

C. CMAR shall afford proper and safe access to the Site to each contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work.

D. CMAR shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. CMAR shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that CMAR may cut or alter others' work with the written consent of Owner's Advisor and the others whose work will be affected.

E. If the proper execution or results of any part of CMAR's Work depends upon work performed by others, CMAR shall inspect such other work and promptly report to Owner's Advisor in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of CMAR's Work. CMAR's failure to so report

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will constitute an acceptance of such other work as fit and proper for integration with CMAR's Work except for latent defects and deficiencies in such other work.

F. The provisions of this Article are not applicable to work that is performed by third-party utilities or other third-party entities without a contract with Owner, or that is performed without having been arranged by Owner. If such work occurs, then any related delay, disruption, or interference incurred by CMAR is governed by the provisions of Paragraph 4.05.C.3.

8.02 Coordination

A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be set forth in the Supplementary Conditions or provided to CMAR prior to the start of any such other work:

1. The identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;

2. An itemization of the specific matters to be covered by such authority and responsibility; and

3. The extent of such authority and responsibilities.

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

8.03 Legal Relationships

A. If, in the course of performing other work for Owner at or adjacent to the Site, the Owner's employees, any other contractor working for Owner, or any utility owner that Owner has arranged to perform work, causes damage to the Work or to the property of CMAR or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then CMAR shall be entitled to an equitable adjustment in the Guaranteed Maximum Price or the Contract Times. CMAR must submit any Change Proposal seeking an equitable adjustment in the Guaranteed Maximum Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment will consider information, if any regarding such other work that was provided to CMAR in the Contract Documents prior to the submittal of the Proposal or the final negotiation of the terms of the Contract, and any remedies available to CMAR under Laws or Regulations concerning utility action or inaction. When applicable, any such equitable adjustment in Guaranteed Maximum Price will be conditioned on CMAR assigning to Owner all CMAR's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. CMAR's entitlement to an adjustment of the Contract Times or Guaranteed Maximum Price is subject to the provisions of Paragraphs 4.05.D and 4.05.E.

B. CMAR shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site.

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1. If CMAR fails to take such measures, and as a result, damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due CMAR, and assign to such other contractor or utility owner the Owner's contractual rights against CMAR with respect to the breach of the obligations set forth in this Paragraph 8.03.B.

2. When Owner is performing other work at or adjacent to the Site with Owner's employees, CMAR shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of CMAR's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due CMAR.

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

ARTICLE 9—OWNER'S RESPONSIBILITIES

9.01 Communications to CMAR

A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to CMAR through Owner's Advisor.

9.02 Replacement of Owner's Advisor or Engineer

A. Owner may at its discretion appoint a replacement for Owner's Advisor, provided CMAR makes no reasonable objection to the replacement. The replacement's status under the Contract Documents will be that of the former Owner's Advisor.

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

9.03 Furnish Data

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

9.04 Pay CMAR

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

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9.05 Lands and Easements; Reports, Tests, and Drawings

A. Owner's duties with respect to providing lands and easements are set forth in Paragraph 5.01.

B. Owner's duties with respect to providing engineering surveys to establish reference points are set forth in Paragraph 4.03.

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

9.06 Insurance

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

9.07 Change Orders

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

9.08 Inspections, Tests, and Approvals

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

9.09 Owner's Tasks in Support of CMAR Services

A. Owner shall provide CMAR with all criteria and full information as to Owner's requirements for the Project including drafts of proposed Contract Documents, general schedules and completion requirements, reports, surveys, permits, record documents from related previous projects, and other information as required for CMAR to provide services. Owner shall be responsible for, and CMAR may rely upon, the accuracy and completeness of all such criteria and information, and of any other programs, instructions, data, and other information furnished by Owner to CMAR pursuant to this Agreement. CMAR may use such criteria and information in performing or furnishing CMAR Services.

B. Owner shall provide reasonable assistance to CMAR in securing the release of documents and information held by private entities and by public agencies as needed to provide services required by this Agreement.

C. Owner shall arrange for safe access to and make all provisions for CMAR to enter upon public and private property as required for CMAR to perform services.

D. Owner shall review documents presented by CMAR, make decisions, and carry out Owner's other responsibilities in a timely manner so as not to delay the CMAR's performance of its services.

E. Owner shall provide the services of attorneys, insurance consultants, financial advisors, and other professional advisors or consultants required for the Project, but not provided by the CMAR.

1. Advise CMAR of the identity and scope of services of any independent consultant, designer, contractor, or other construction manager employed by Owner to perform or furnish services in regard to the Project, including cost estimating, project peer reviews, value engineering, and constructability reviews.

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2. Define and set forth the duties, responsibilities, and limitations of authority of these other parties as they relate to the duties, responsibilities, and authority of CMAR.

F. Owner is not responsible for discovering deficiencies in the CMAR's Services. CMAR will correct any deficiencies without additional compensation, except to the extent this corrective action is directly attributable to deficiencies in Owner-furnished information.

9.10 Limitations on Owner's Responsibilities

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

9.11 Undisclosed Hazardous Environmental Condition

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

9.12 Evidence of Financial Arrangements

A. ~~Upon request of CMAR, Owner shall furnish CMAR reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract, including obligations under proposed changes in the Work.~~[INTENTIONALLY DELETED

9.13 Safety Programs

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

B. Owner shall furnish copies of any applicable Owner safety programs to CMAR.

ARTICLE 10—STATUS OF OWNER'S ADVISOR AND ENGINEER DURING CONSTRUCTION

10.01 Owner's Advisor

A. Owner's Advisor will be Owner's representative during the construction period.

B. The general duties, responsibilities, and the limitations of authority of Owner's Advisor and Engineer during construction are set forth below.

10.02 Visits to Site

A. Owner's Advisor will either be based at the Site or make visits to the Site on a regular basis. Owner's Advisor will observe the Work; check the quality, quantity, and progress of the Work; implement Owner's quality assurance program; and administer the Contract as Owner's representative.

B. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe, as an experienced and qualified design professional, the progress that has been made and the quality of the various aspects of CMAR's executed Work. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer will

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report to Owner's Advisor regarding information obtained during such Site visits and observations.

C. Owner's Advisor's and Engineer's visits and observations are subject to all the limitations on Owner's Advisor's and Engineer's authority and responsibility set forth in Paragraph 10.05. Particularly, but without limitation, during or as a result of Owner's Advisor's and Engineer's visits or observations of CMAR's Work, neither Owner's Advisor nor Engineer will supervise, direct, control, or have authority over or be responsible for CMAR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CMAR to comply with Laws and Regulations applicable to the performance of the Work.

10.03 Determinations for Unit Price Work

A. Owner's Advisor will determine the actual quantities and classifications of Unit Price Work performed or furnished by CMAR as set forth in Paragraph 13.02.

10.04 Decisions on Requirements of Contract Documents and Acceptability of Work; Exercise of Authority

A. Owner's Advisor will render decisions regarding the requirements of the Contract Documents, and judge the quality and acceptability of the Work, pursuant to the specific procedures set forth herein for interpretations, Change Proposals, Applications for Payment, and acceptance of the Work.

1. Before rendering such decisions or judgments, and before exercising its authority with respect to differing subsurface or physical conditions, Underground Facilities, "or equal" and substitute requests, emergencies, Field Orders, and similar matters, Owner's Advisor will consult with Engineer as to all matters in question involving (a) the design, as set forth in the Drawings, Specifications, or otherwise, (b) the quality or acceptability of the Work under the Contract Documents, or (c) other engineering matters.

2. With respect to such matters, Owner's Advisor's decisions and judgments as rendered will be in accord with Engineer's professional analysis, opinions, recommendations, and conclusions.

B. In rendering such decisions and judgments, exercising such authority, or providing professional analysis, opinions, recommendations, or conclusions underlying such decisions and judgments, neither Owner's Advisor nor Engineer will show partiality to Owner or CMAR, and neither Owner's Advisor nor Engineer will be liable to Owner, CMAR, or others in connection with any proceedings, interpretations, analysis, opinions, recommendations, conclusions, decisions, or judgments conducted or rendered in good faith.

C. Owner's Advisor may at any time request that CMAR furnish proposed changes to Guaranteed Maximum Price and Contract Times that would result from specified proposed changes to the Contract Documents.

10.05 Limitations on Owner's Advisor's and Engineer's Authority and Responsibilities

A. Neither Owner's Advisor's nor Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by Owner's Advisor or Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Owner's Advisor or Engineer, will create, impose, or give rise to any duty in contract, tort, or otherwise

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owed by Owner's Advisor or Engineer to CMAR, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

B. Neither Owner's Advisor nor Engineer will supervise, direct, control, or have authority over or be responsible for CMAR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CMAR to comply with Laws and Regulations applicable to the performance of the Work. Neither Owner's Advisor nor Engineer will be responsible for CMAR's failure to perform the Work in accordance with the Contract Documents.

C. Neither Owner's Advisor nor Engineer will be responsible for the acts or omissions of CMAR or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

D. Owner's Advisor's review of the final Application for Payment and accompanying documentation, and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by CMAR under Paragraph 15.07.A, will only be to determine generally that their content complies with the requirements of the Contract Documents, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.

10.06 Compliance with Safety Program

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

ARTICLE 11—CHANGES TO THE CONTRACT

11.01 Amending and Supplementing the Contract

A. The Contract may be amended or supplemented by a Contract Amendment, Work Authorization, Change Order, Emergency Work Change Directive, or Field Order.

B. A Work Authorization, as more fully defined in Paragraph 1.01, is used to authorize specified Work, and establish related compensation. Change Orders, Work Change Directives, and Field Orders are used to modify a Work Authorization, including but not limited to modifications of the authorized Work and changes to the Guaranteed Maximum Price and Contract Times associated with the Work Authorization.

If a modification under a Work Authorization includes a change in the Guaranteed Maximum Price or the Contract Times, such amendment or supplement must be set forth in a Change Order.

C. A Contract Amendment, as more fully defined in Paragraph 1.01, is used for general contract modification purposes.

D. All changes to the Contract that involve (1) the performance or acceptability of the Work, (2) the design, as set forth in the Drawings, Specifications, or otherwise, or (3) other engineering matters, must be supported by Engineer's recommendation. Owner and CMAR may amend other terms and conditions of the Contract without the recommendation of the Engineer.

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11.02 Change Orders

A. With respect to a governing Work Authorization, Owner and CMAR shall execute appropriate Change Orders covering:

1. Changes in Guaranteed Maximum Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work performed in accordance with a Emergency Work Change Directive;

2. Changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.05, (b) required because of Owner's acceptance of defective Work under Paragraph 14.04 or Owner's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Work involves the design, as set forth in the Drawings, Specifications, or otherwise, or other engineering matters; and

3. Changes that embody the substance of any final and binding results under: Paragraph 11.03.B, resolving the impact of an Emergency Work Change Directive; Paragraph 11.09, concerning Change Proposals; Paragraph 13.02.D, final adjustments relating to determination of quantities for Unit Price Work; and similar provisions.

B. If Owner or CMAR refuses to execute a Change Order that is required to be executed under the terms of Paragraph 11.02.A, it will be deemed to be of full force and effect, as if fully executed.

C. Owner and CMAR will enter into either a Change Order, if related to a specific Work Authorization, or a Contract Amendment with respect to the following:

1. Changes in Guaranteed Maximum Price resulting from an Owner set-off, unless CMAR has duly contested such set-off;

2. Changes that embody the substance of any final and binding results under Article 12, Claims; Paragraph 13.01, final adjustments resulting from allowances; and similar provisions.

11.03 Emergency Work Change Directives

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

B. If Owner has issued a written Emergency Work Change Directive and:

1. CMAR believes that an adjustment in Contract Times or Guaranteed Maximum Price is necessary, then CMAR shall submit any Change Proposal seeking such an adjustment no later than 30 days after the completion of the Work set out in the Work Change Directive.

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2. Owner believes that an adjustment in Contract Times or Guaranteed Maximum Price is necessary, then Owner shall submit ~~any Claim seeking such~~a Change Order including an adjustment no later than 60 days after issuance of the Work Change Directive.

11.04 Field Orders

A. Owner's Advisor, in consultation with Engineer, may authorize minor changes in the Work if the changes do not involve an adjustment in the Guaranteed Maximum Price or the Contract Times. Such changes will be accomplished by a Field Order and will be binding on Owner and on CMAR, which shall perform the Work involved promptly.

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

11.05 Owner-Authorized Changes in the Work

A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work. Changes involving the design, as set forth in the Drawings, Specifications, or otherwise, or other engineering matters will be supported by Engineer's recommendation.

B. Such changes in the Work may be accomplished by a Change Order, if Owner and CMAR have agreed as to the effect, if any, of the changes on Contract Times or Guaranteed Maximum Price; or by a Work Change Directive. Upon receipt of any such document, CMAR shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work must be performed under the applicable conditions of the Contract Documents.

C. Nothing in this Paragraph 11.05 obligates CMAR to undertake work that CMAR reasonably concludes cannot be performed in a manner consistent with CMAR's safety obligations under the Contract Documents or Laws and Regulations.

11.06 Unauthorized Changes in the Work

A. CMAR shall not be entitled to an increase in the Guaranteed Maximum Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents, as amended, modified, or supplemented, except in the case of an emergency as provided in Paragraph 7.18 or in the case of uncovering Work as provided in Paragraph 14.05.C.2.

11.07 Change of Contract Price

A. The Contract Price may be changed by a Work Authorization, Change Order, or Contract Amendment. Any Change Proposal for an adjustment in the Guaranteed Maximum Price must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment of Contract Price must comply with the provisions of Article 12.

B. An adjustment in the Guaranteed Maximum Price with respect to the Work will be determined as follows:

1. Where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved;

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2. Where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum; or

3. Where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the basis of the Cost of the Work determined in accordance with the Cost of the Work provisions in the Agreement, plus the CMAR Fee, applied proportionally, for overhead and profit determined in accordance with the terms in the Agreement.

11.08 Change of Contract Times

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

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

11.09 Change Proposals

A. Purpose and Content—CMAR shall submit a Change Proposal to Owner's Advisor to request an adjustment in the Contract Times or Guaranteed Maximum Price; contest a decision by Owner's Advisor concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; challenge a set-off against payment due; or seek other relief under the Contract. The Change Proposal will specify any proposed change in Contract Times or Guaranteed Maximum Price, or other proposed relief; identify any governing Work Authorization; indicate CMAR's recommendation for the correct means of amending the Contract (Work Authorization, Change Order, or Contract Amendment) if the proposed change is accepted; and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents. Each Change Proposal will address only one issue, or a set of closely related issues.

B. Determination of Changes in Guaranteed Maximum Price for Work—If a Change Order under a Work Authorization entails a change in Guaranteed Maximum Price, then:

1. The change will include the applicable increase or decrease in Cost of the Work, pursuant to the provisions Article 6 of the Agreement.

2. The CMAR Fee for changes will be those agreed to Article 7 of the Agreement.

3. If there is a Guaranteed Maximum Price, it will increase or decrease in an amount equal to the increase or decrease in the Cost of the Work and CMAR Fee, as duly determined.

4. The amount of any increases or decreases in the CMAR Fee, or in Guaranteed Maximum Price, will be set forth in the applicable Change Order.

C. Change Proposal Procedures

1. Submittal—CMAR shall submit each Change Proposal to Owner's Advisor within 30 days after the start of the event giving rise thereto, or after such decision.

2. Supporting Data—The CMAR shall submit supporting data, including the proposed change in Guaranteed Maximum Price or Contract Time, if any, to the Owner's Advisor within 15 days after the submittal of the Change Proposal.

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a. Change Proposals based on or related to delay, interruption, or interference must comply with the provisions of Paragraphs 4.05.D and 4.05.E.

b. Change Proposals related to a change of Guaranteed Maximum Price based on Cost of the Work must include full and detailed account of eligible costs, such as materials incorporated into the Work, labor and equipment used for the subject Work, and Subcontract costs.

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

3. Owner's Advisor's Initial Review—Owner's Advisor, in consultation with Engineer, will advise Owner regarding the Change Proposal and consider any comments or response from Owner regarding the Change Proposal. If in its discretion Owner's Advisor concludes that additional supporting data is needed before conducting a full review and making a recommendation~~deciding~~ regarding the Change Proposal, then Owner's Advisor may request that CMAR submit such additional supporting data by a date specified by Owner's Advisor, prior to Owner's Advisor beginning its full review of the Change Proposal.

4. Owner's Advisor's Full Review and Recommendation~~Action~~ on the Change Proposal—Upon receipt of CMAR's supporting data, including any additional data requested by Owner's Advisor, Owner's Advisor, in consultation with Engineer, will conduct a full review of each Change Proposal and, within 30 days after such receipt of the CMAR's supporting data, either recommend ~~approve~~approval of the Change Proposal in whole, deny it in whole, or approve it in part and deny it in part. Such actions must be in writing, with a copy provided to Owner and CMAR. If Owner's Advisor does not act on the Change Proposal within 30 days, then either Owner or CMAR may at any time thereafter submit a letter to the other party indicating that as a result of Owner's Advisor's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.

5. Binding Decision—Owner's Advisor's recommendation is sent to the Owner who shall render a final . The Owner's decision is final and binding upon ~~Owner and~~ CMAR, unless ~~Owner or~~ CMAR appeals the decision by filing a Claim under Article 1~~2~~7.

D. Post-Completion—CMAR shall not submit any Change Proposals after Owner's Advisor issues a written recommendation of final payment pursuant to Paragraph 15.07.B.

11.10 Notification to Surety

A. CMAR shall notify the performance and payment bond surety of the issuance of each Work Authorization and confirm that the bonds have been adjusted to reflect the changes in Guaranteed Maximum Price and Contract Times.

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

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ARTICLE 12—CLAIMS *[INTENTIONALLY DELETED]*

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~~12.01 Claims~~

~~A. Claims Process—The following disputes between Owner and CMAR are subject to the Claims process set forth in this article:~~

~~1. Appeals by Owner or CMAR of Owner's Advisor's decisions regarding Change Proposals;~~

~~2. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents; and~~

~~3. Subject to the waiver provisions of Paragraph 15.08, any dispute arising after Owner's Advisor has issued a written recommendation of final payment pursuant to Paragraph 15.07.B.~~

~~B. Submittal of Claim—The party submitting a Claim shall deliver it directly to the other party to the Contract promptly, but in no event later than 30 days after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Owner's Advisor and Engineer, for their information only. The responsibility to substantiate a Claim rests with the party making the Claim. In the case of a Claim by CMAR seeking an increase in the Contract Times or Contract Price, CMAR shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of CMAR's knowledge and belief the amount of time or money requested accurately reflects the full amount to which CMAR is entitled.~~

~~C. Review and Resolution—The party receiving a Claim shall review it thoroughly and consider its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim will be stated in writing and submitted to the other party, with a copy to Owner's Advisor and Engineer.~~

~~D. Mediation~~

~~1. At any time after initiation of a Claim, Owner and CMAR may mutually agree to mediation of the underlying dispute. The agreement to mediate will stay the Claim submittal and response process.~~

~~2. If Owner and CMAR agree to mediation, then after 60 days from such agreement, either Owner or CMAR may unilaterally terminate the mediation process, and the Claim submittal and decision process will resume as of the date of the termination. If the mediation proceeds but is unsuccessful in resolving the dispute, the Claim submittal and decision process will resume as of the date of the conclusion of the mediation, as determined by the mediator.~~

~~3. Owner and CMAR shall each pay one-half of the mediator's fees and costs.~~

~~E. Partial Approval—If the party receiving a Claim approves the Claim in part and denies it in part, such action will be final and binding unless within 30 days of such action the other party invokes the procedure set forth in Article 17 for final resolution of disputes.~~

~~F. Denial of Claim—If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does~~

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~~not act on the Claim within 90 days, then either Owner or CMAR may at any time thereafter submit a letter to the other party indicating that as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal of the denial. A denial of the Claim will be final and binding unless within 30 days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.~~

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

ARTICLE 13—ALLOWANCES; UNIT PRICE WORK

13.01 Allowances

A. The CMAR Contingency Allowance (Agreement, Article 8) and Owner's Contingency Allowance (Agreement, Article 12) are governed by the applicable provisions of the Agreement.

B. CMAR confirms that it has included the CMAR Contingency Allowance in the Guaranteed Maximum Price and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Owner's Advisor.

C. CMAR confirms that it has included the Owner's Contingency Allowance in the Contract Price and that use of Owner's Contingency Allowance is subject to the provisions of Article 12 in the Agreement.

D. Cash Allowances—CMAR agrees that:

1. the cash allowances include the cost to CMAR, less any applicable trade discounts, of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and

2. CMAR's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Guaranteed Maximum Price and not in the allowances, and no demand for additional payment for any of the foregoing will be valid.

E. Prior to final payment, an appropriate Change Order will be issued as recommended by Owner's Advisor to reflect actual amounts due CMAR for Work covered by allowances, and the Guaranteed Maximum Price will be correspondingly adjusted.

13.02 Unit Price Work

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

B. The estimated quantities of items of Unit Price Work are ~~not guaranteed~~estimates and are solely for the purpose of comparison of Proposals and determining an Estimated Guaranteed Maximum Price. Payments to CMAR for Unit Price Work will be based on actual quantities.

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

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

E. Adjustments in Unit Price

1. CMAR or Owner shall be entitled to an adjustment in the unit price with respect to an Item of Unit Price Work if:

a. the quantity of the Item of Unit Price Work performed by CMAR differs materially and significantly from the estimated quantity of such Item indicated in the Agreement; and

b. CMAR's unit costs to perform the Item of Unit Price Work have changed materially and significantly as a result of the quantity change.

2. The adjustment in unit price will account for and be coordinated with any related changes in quantities of other items of Work, and in CMAR's costs to perform such other Work, such that the resulting overall change in Guaranteed Maximum Price is equitable to Owner and CMAR.

3. Adjusted unit prices will apply to all units of that item.

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

14.01 Access to Work

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

14.02 Tests, Inspections, and Approvals

A. CMAR shall give Owner's Advisor timely notice of readiness of the Work, or specific parts thereof, for all required inspections and tests and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.

B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except those costs incurred in connection with tests or inspections of covered Work will be governed by the provisions of Paragraph 14.05.

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C. If Laws or Regulations of any public body having jurisdiction require any Work, or part thereof, specifically to be inspected, tested, or approved by an employee or other representative of such public body, CMAR shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Owner's Advisor the required certificates of inspection or approval.

D. CMAR shall be responsible for arranging, obtaining, and paying for all inspections and tests required:

1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
2. to attain acceptance of materials or equipment to be incorporated in the Work;
3. by manufacturers of equipment furnished under the Contract Documents;
4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
5. for acceptance of materials, mix designs, or equipment submitted for approval prior to CMAR's purchase thereof for incorporation in the Work.

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

E. If the Contract Documents require the Work, or part thereof, to be accepted by Owner, Owner's Advisor, Engineer, or another designated individual or entity, then CMAR shall assume full responsibility for arranging and obtaining such approvals.

F. If any Work, or the work of others that is to be inspected, tested, or approved is covered by CMAR without written concurrence of Owner's Advisor, CMAR shall, if requested by Owner's Advisor, uncover such Work for observation. Such uncovering will be at CMAR's expense unless CMAR has given Owner's Advisor timely notice of CMAR's intention to cover the same and Owner's Advisor had not acted with reasonable promptness in response to such notice.

14.03 Defective Work

A. CMAR's Obligation—It is CMAR's obligation to assure that the Work is not defective.

B. Owner's Advisor's Authority—Owner's Advisor has the authority to determine, in consultation with Engineer, whether Work is defective, and to reject defective Work.

C. Notice of Defects—Prompt written notice of all defective Work of which Owner, Owner's Advisor, or Engineer has actual knowledge will be given to CMAR.

D. Correction, or Removal and Replacement—Promptly after receipt of written notice of defective Work, CMAR shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if Owner's Advisor has rejected the defective Work, remove it from the Project and replace it with Work that is not defective.

E. Preservation of Warranties—When correcting defective Work, CMAR shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

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F. Costs and Damages—In addition to its correction, removal, and replacement obligations with respect to defective Work, CMAR shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Owner by governmental authorities because the Work is defective, and the costs of repair or replacement of work of others resulting from defective Work. Prior to final payment, if Owner and CMAR are unable to agree as to the measure of such claims, costs, losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 15.

14.04 Acceptance of Defective Work

A. If, instead of requiring correction or removal and replacement of defective Work, Owner prefers to accept it, Owner may do so. If such acceptance occurs prior to final payment, to Engineer's confirmation that such acceptance is in general accord with the design intent and applicable engineering principles and will not endanger public safety. CMAR shall pay all claims, costs, losses, and damages attributable to Owner's evaluation of and determination to accept such defective Work; such costs to be approved by Owner's Advisor as to reasonableness, and for the diminished value of the Work to the extent not otherwise paid by CMAR. If any such acceptance occurs prior to final payment, the necessary revisions in the Contract Documents with respect to the Work will be incorporated in a Change Order. If the parties are unable to agree as to the decrease in the Guaranteed Maximum Price, reflecting the diminished value of Work so accepted, then Owner may impose a reasonable set-off against payments due under Article 15. If the acceptance of defective Work occurs after final payment, CMAR shall pay an appropriate amount to Owner.

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

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14.05 Uncovering Work

A. Owner's Advisor has the authority to require additional inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.

B. If any Work is covered contrary to the written request of Owner's Advisor, then CMAR shall, if requested by Owner's Advisor, uncover such Work for Owner's Advisor's or Engineer's observation, and then replace the covering, all at CMAR's expense.

C. If Engineer or Owner's Advisor considers it necessary or advisable that covered Work be observed by Owner's Advisor or Engineer, or inspected or tested by others, then Owner's Advisor will so advise CMAR, and CMAR shall uncover, expose, or otherwise make available for observation, inspection, or testing as Owner's Advisor may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.

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1. If it is found that the uncovered Work is defective, CMAR shall be responsible for all claims, costs, losses, and damages arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction, including but not limited to all costs of repair or replacement of work of others, and pending CMAR's full discharge of this responsibility the Owner shall be entitled to impose a reasonable set-off against payments due under Article 15.

2. If the uncovered Work is not found to be defective, CMAR shall be allowed an increase in the Guaranteed Maximum Price or an extension of the Contract Times, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, then CMAR may submit a Change Proposal within 30 days of the determination that the Work is not defective.

14.06 Owner May Stop the Work

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

14.07 Owner May Correct Defective Work

A. If CMAR fails within a reasonable time after written notice from Owner's Advisor to correct defective Work, or to remove and replace defective Work as required by Owner's Advisor, then Owner may, after 7 days' written notice to CMAR, correct or remedy any such deficiency.

B. In exercising the rights and remedies under this Paragraph 14.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude CMAR from all or part of the Site, take possession of all or part of the Work and suspend CMAR's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid CMAR but which are stored elsewhere. CMAR shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, Owner's Advisor, Engineer, and their consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.

C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against CMAR as set-offs against payments due under Article 15. Such claims, costs, losses, and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of CMAR's defective Work.

D. CMAR shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 14.07.

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

15.01 Payment for CMAR Services

A. The basis and procedures for payment for CMAR Services are set forth in the Agreement, Article 3. The provisions of this Article 15 pertain to payment for performance and furnishing of the Work, unless noted otherwise.

15.02 Progress Payments

A. Basis for Progress Payments

1. CMAR will, at least 10 days prior to applying for Payment, prepare and submit for approval by Owner's Advisor a schedule allocating portions of the Guaranteed Maximum Price to various portions of the Work, as determined by the applicable Work Authorizations.

2. The Schedule of Values will serve as the basis for progress payments and will be incorporated by Owner's Advisor into an Application for Payment form. Progress payments for Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.02. Progress payments for cost-based Work will be based on Cost of the Work completed by CMAR during the pay period.

B. Applications for Payments

1. At least 20 days before the date established in the Agreement for each progress payment, but not more often than once a month, CMAR, on the 25th of each month, shall submit to Owner's Advisor for review an Application for Payment filled out and signed by CMAR covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents.

2. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment must also be accompanied by: (a) a bill of sale, invoice, copies of subcontract or purchase order payments, or other documentation establishing full payment by CMAR for the materials and equipment; (b) at Owner's request, documentation warranting that Owner has received the materials and equipment free and clear of all Liens; and (c) evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.

3. Beginning with the second Application for Payment, each Application must include an affidavit of CMAR stating that all previous progress payments received by CMAR have been applied to discharge CMAR's legitimate obligations associated with prior Applications for Payment.

4. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

C. Review of Applications

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1. Owner's Advisor will, within 10 days after ~~receipt of~~ each Application for Payment is stamped as received by Owner's Advisor, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to CMAR indicating in writing Owner's Advisor's reasons for refusing to recommend payment and the action necessary to make payment application proper. In the latter case, CMAR shall~~may~~ make the necessary corrections and resubmit the Application.

2. Owner's Advisor's recommendation of any payment requested in an Application for Payment will constitute a representation by Owner's Advisor to Owner, based on Owner's Advisor's (a) observations of the executed Work, (b) consultations with Engineer, and (c) review of the Application for Payment and the accompanying data and schedules, that to the best of Owner's Advisor's knowledge, information, and belief:

    a. the Work has progressed to the point indicated;

    b. the quality of the Work is generally in accordance with the Contract Documents subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.02, and any other qualifications stated in the recommendation; and

    c. the conditions precedent to CMAR's being entitled to such payment appear to have been fulfilled in so far as it is Owner's Advisor's responsibility to observe the Work.

3. By recommending any such payment Owner's Advisor will not thereby be deemed to have represented that:

    a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Owner's Advisor in the Contract; or

    b. there may not be other matters or issues between the parties that might entitle CMAR to be paid additionally by Owner or entitle Owner to withhold payment to CMAR.

4. Neither Owner's Advisor's review of CMAR's Work for the purposes of recommending payments nor Owner's Advisor's recommendation of any payment, including final payment, will impose responsibility on Owner's Advisor:

    a. to supervise, direct, or control the Work;

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

    c. for CMAR's failure to comply with Laws and Regulations applicable to CMAR's performance of the Work;

    d. to make any examination to ascertain how or for what purposes CMAR has used the money paid by Owner; or

    e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.

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5. Neither Owner Advisor's review of CMAR's Work for purposes of recommending payments nor Owner's Advisor's recommendation of any payment shall relieve CMAR of responsibility or liability for defects in the Work.

~~5.~~6. Owner's Advisor may refuse to recommend the whole or any part of any payment if, in Owner's Advisor's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.02.C.2.

~~6.~~7. Owner's Advisor will recommend reductions in payment (set-offs) necessary in Owner's Advisor's opinion to protect Owner from loss because:

a. the Work is defective, requiring correction or replacement;

b. the Guaranteed Maximum Price has been reduced by Change Orders or other Contract modifications;

c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;

d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which CMAR is responsible; or

e. Owner's Advisor has actual knowledge of the occurrence of any of the events that would constitute a default by CMAR and therefore justify termination for cause under the Contract Documents.

D. Payment Becomes Due

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

E. Reductions in Payment by Owner

1. In addition to any reductions in payment (set-offs) recommended by Owner's Advisor, Owner is entitled to impose a set-off against payment based on any of the following:

a. Claims have been made against Owner based on CMAR's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages resulting from CMAR's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;

b. CMAR has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;

c. CMAR has failed to provide and maintain required bonds or insurance;

d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which CMAR is responsible;

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e. Owner has incurred extra charges for advisory services or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests, and inspections, or return visits to manufacturing or assembly facilities;

f. The Work is defective, requiring correction or replacement;

g. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;

h. The Guaranteed Maximum Price has been reduced by Change Orders or other Contract modifications;

i. An event has occurred that would constitute a default by CMAR and therefore justify a termination for cause;

j. Liquidated or other damages have accrued as a result of CMAR's failure to achieve Milestones, Substantial Completion, or final completion of the Work;

k. Liens have been filed in connection with the Work, except where CMAR has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;

l. Claims have been made or costs have been incurred arising from CMAR Services; or

m. Other items entitle Owner to a set-off against the amount recommended.

2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Owner's Advisor, Owner will give CMAR immediate written notice, with a copy to Owner's Advisor, stating the reasons for such action and the specific amount of the reduction, and promptly pay CMAR any amount remaining after deduction of the amount so withheld. Owner shall promptly pay CMAR the amount so withheld, or any adjustment thereto agreed to by Owner and CMAR, if CMAR remedies the reasons for such action. The reduction imposed will be binding on CMAR unless it duly submits a Change Proposal contesting the reduction.

3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld will be treated as an amount due as determined by Paragraph 15.02.D.1 and subject to interest as provided in the Agreement.

F. Where the Contract Price is based on the Cost of Work, if Owner determines that progress payments made to date substantially exceed the actual progress of the Work, as measured by reference to the Schedule of Values, or present a potential conflict with the Guaranteed Maximum Price, then Owner may require that CMAR prepare and submit a plan for the remaining anticipated Applications for Payment that will bring payments and progress into closer alignment and take into account the Guaranteed Maximum Price, if any, through reductions in billings, increases in retainage, or other equitable measures. Owner will review the plan, discuss any necessary modifications, and implement the plan as modified for all remaining Applications for Payment.

15.03 CMAR's Warranty of Title

A. CMAR warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (1) all Liens and other title defects,

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and (2) all patent, licensing, copyright, or royalty obligations, no later than 7 days after the time of payment by Owner.

15.04 Substantial Completion

A. When CMAR considers the entire Work ready for its intended use CMAR shall notify Owner's Advisor in writing that the entire Work is substantially complete and request that Owner's Advisor issue a certificate of Substantial Completion. CMAR shall at the same time submit to Owner's Advisor CMAR's proposed Ppunch lList of items to be completed or corrected before final payment. Substantial Completion cannot occur before the Owner is able to begin to utilize the entire Work for the purposes for which it was intended.

B. Promptly after CMAR's notification, Owner, CMAR, Owner's Advisor, and Engineer will inspect the Work to determine the status of completion. If the Work is not determined to be substantially complete, Owner's Advisor will notify CMAR in writing, giving the reasons for the determination.

C. If the Work is deemed substantially complete, Owner's Advisor will deliver to Owner a preliminary certificate of Substantial Completion which will fix the date of Substantial Completion. Owner's Advisor will attach to the certificate the Owner's Advisor's proposed Ppunch lList of items to be completed or corrected before final payment. Owner shall have 7 days after receipt of the preliminary certificate during which to make written objection to Owner's Advisor as to any provisions of the certificate or attached ppunch lList. If, after considering the objections to the provisions of the preliminary certificate, Owner's Advisor, in consultation with Engineer, concludes that the Work is not substantially complete, Owner's Advisor will, within 14 days after submission of the preliminary certificate to Owner, notify CMAR in writing that the Work is not substantially complete, stating the reasons for the conclusion. If Owner does not object to the provisions of the certificate, or if despite consideration of Owner's objections Owner's Advisor, in consultation with Engineer, concludes that the Work is substantially complete, then Owner's Advisor will, within said 14 days, execute and deliver to Owner and CMAR a final certificate of Substantial Completion, with a revised ppunch lList of items to be completed or corrected, reflecting such changes from the preliminary certificate as Owner's Advisor believes justified after consideration of any objections from Owner.

D. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and CMAR will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and CMAR agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.

E. After Substantial Completion the CMAR shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases CMAR may submit monthly Applications for Payment for completed ppunch lList items, following the progress payment procedures set forth above.

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F. Owner shall have the right to exclude CMAR from the Site after the date of Substantial Completion subject to allowing CMAR reasonable access to remove its property and complete or correct items on the ~~p~~Punch ~~l~~List.

15.05 Partial Use or Occupancy; Completion of Authorized Work

A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Owner's Advisor, Engineer, and CMAR agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with CMAR's performance of the remainder of the Work, subject to the following conditions:

1. At any time, Owner may request in writing that CMAR permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when CMAR agrees that such part of the Work is substantially complete, CMAR, Owner, Owner's Advisor and Engineer will follow the procedures of Paragraph 15.04.A through 15.04.E for that part of the Work.

2. At any time, CMAR may notify Owner and Owner's Advisor in writing that CMAR considers any such part of the Work substantially complete and request Owner's Advisor to issue a certificate of Substantial Completion for that part of the Work.

3. Within a reasonable time after either such request, Owner, CMAR, Owner's Advisor and Engineer will inspect that part of the Work to determine its status of completion. If Owner's Advisor, in consultation with Engineer, does not consider that part of the Work to be substantially complete, Owner's Advisor will notify Owner and CMAR in writing, giving the reasons for its determination. If Owner's Advisor, in consultation with the Engineer, considers that part of the Work to be substantially complete, then for that part of the Work the provisions of Paragraph 15.04 will apply with respect to certification of Substantial Completion, the Division of responsibility, and access.

4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.04 regarding builder's risk or other property insurance.

5. Neither the organization of the Work into Work Packages, nor the authorization of specified parts of the Work in a Work Authorization, establishes (a) that such packages or parts of the Work have been identified in the Contract Documents or otherwise as a part of the Work that Owner may use or occupy upon completion, or (b) that any such Work constitutes a separately functioning and usable part of the Work that upon completion can be used by Owner for its intended purpose without significant interference with CMAR's performance of the remainder of the Work. The determination of whether any part of the Work qualifies for partial use or occupancy under this Paragraph 15.05 will be made on the merits without reference to Work Packages or Work Authorizations.

B. Substantial Completion of Authorized Work

1. When CMAR considers the entire Work authorized under a specific Work Authorization is ready for its intended use, CMAR shall notify Owner's Advisor in writing that such authorized Work is substantially complete and request that Owner's Advisor issue a

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certificate of Substantial Completion applicable solely to such authorized Work. CMAR shall at the same time submit to Owner's Advisor the CMAR's proposed punch list of items to be completed or corrected before such authorized Work is deemed complete.

2. CMAR, Owner, Owner's Advisor, and Engineer will follow the procedures of Paragraphs 15.04.A, B, C, E, and F for such authorized Work. The terms of Paragraph 15.04.D are not applicable to the determination of Substantial Completion of the Work authorized under a Work Authorization.

3. Until Substantial Completion of the entire Work under this Contract under Paragraph 15.04, such authorized Work will not be eligible for Owner's use or occupancy, unless otherwise eligible for partial use or occupancy under Paragraph 15.05.A; the determination of a date of Substantial Completion for such authorized Work will not mark the commencement of the contractual correction period and applicable warranties required by the Contract for such authorized Work; and the authorized Work will remain the responsibility of CMAR.

15.06 Final Inspection – Punch List

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

15.07 Final Payment

A. Application for Final Payment

1. After Owner's Advisor, in consultation with Engineer, determines that CMAR has (a) satisfactorily completed all corrections identified during the final inspection, (b) has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents, as provided in Paragraph 7.15, and other documents, and (c) completed performance of all services required by the Contract, CMAR may make application for final payment.

2. The final Application for Payment must be accompanied, except as previously delivered by:

a. all documentation called for in the Contract Documents, including but not limited to, the evidence that CMAR maintains completed operations coverage for its required commercial general liability (CGL) insurance;

b. consent of the surety, if any, to final payment;

c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects or will so pass upon final payment;

d. a list of all duly pending Change Proposals and Claims; and

e. complete and legally effective final releases or waivers, satisfactory to Owner, of all Lien rights ~~arising out of the Work,~~ and ~~of~~ Liens filed in connection with the Work.

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3. In lieu of the final releases or waivers of Liens specified in Paragraph 15.07.A.2 and as approved by Owner, CMAR may furnish receipts or releases in full and an affidavit of CMAR whereby CMAR swears and affirms that: (a) ~~the releases and receipts include~~ all payroll~~labor~~, services, material, and equipment bills and other indebtedness connected with the Work for which Owner has paid CMAR through the date of CMAR's final Application for Payment have been paid by CMAR~~a Lien could be filed~~; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner will pay CMAR in the final Application for Payment will represent CMAR's receipt of all payments for the Work except for the specifically enumerated Claims (and Claims not specifically enumerated are deemed released and waived) and that CMAR will promptly pay its Subcontractors and Suppliers upon its receipt of the final payment. ~~might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied.~~ If any Subcontractor or Supplier fails to furnish such a release or receipt in full, CMAR may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its option may issue joint checks payable to CMAR and specified Subcontractors and Suppliers.

~~3.~~4. The documents and materials that CMAR is required to submit to accompany its Final Application for Payment (as set forth in this Paragraph 15.07) are conditions precedent to issuance of final payment.

B. Owner's Advisor's Review of Final Application and Recommendation of Payment—If, on the basis of Owner's Advisor's observation of the Work during construction and final inspection, consultation with Engineer regarding completion, and review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Owner's Advisor is satisfied that CMAR has completed the Work and fulfilled CMAR's other obligations under the Contract, Owner's Advisor will, within 10 days after receipt of the final Application for Payment, indicate in writing Owner's Advisor's recommendation of final payment and present the final Application for Payment to Owner for payment. Such recommendation will account for any set-offs against payment that are necessary in Owner's Advisor's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. Otherwise, Owner's Advisor will return the Application for Payment to CMAR, indicating in writing the reasons for refusing to recommend final payment, in which case CMAR shall make the necessary corrections and complete the Work and all remaining services, and resubmit the Application for Payment.

C. Notice of Acceptability of the Work—In support of its recommendation of payment of the final Application for Payment, Owner's Advisor, with Engineer's express approval, will also give written notice to Owner and CMAR that the Work is acceptable, subject to stated limitations in the notice and to the provisions of Paragraph 15.08.

D. Completion of Work—The Work is complete, subject to surviving obligations, when it is ready for final payment as established by the Owner's Advisor's written recommendation of final payment and issuance of Notice of Acceptability of the Work.

E. Final Payment Becomes Due—Upon receipt from Owner's Advisor of the final Application for Payment and accompanying documentation, Owner shall set off against the amount recommended by Owner's Advisor for final payment any further sum to which Owner is entitled, including but not limited to set-offs for liquidated damages and set-offs allowed

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under the provisions of this Contract with respect to progress payments. Owner shall pay the resulting balance due to CMAR within ~~30~~25 days of the final Application for Payment being stamped as received by ~~Owner's receipt of the final Application for Payment from~~ Owner's Advisor.

15.08 Waiver of Claims

A. By making final payment, Owner waives its claim or right to liquidated damages or other damages for late completion by CMAR, except as set forth in an outstanding Claim, appeal under the provisions of Article 17, set-off, or express reservation of rights by Owner. Owner reserves all other claims or rights after final payment.

B. The acceptance of final payment by CMAR will constitute a waiver by CMAR of all claims and rights against Owner other than those pending matters that have been duly submitted as a Claim or appealed under the provisions of Article 17.

15.09 Correction Period

A. Scheduled Correction Period Inspection—Within one month before the end of the Contract's correction period, CMAR will participate in an inspection of the Work with the Owner, Owner's Advisor, and Engineer to ascertain whether any portion of the Work or the repair of any damage to the Site or adjacent areas is defective and therefore subject to correction by CMAR.

B. If within one year after the date of Substantial Completion, or such longer period of time as may be prescribed by the Supplementary Conditions or the terms of any applicable special guarantee required by the Contract Documents, Owner gives CMAR written notice that any Work has been found to be defective, whether as a result of the scheduled correction period inspection or otherwise, or that CMAR's repair of any damages to the Site or adjacent areas has been found to be defective, then after receipt of such notice of defect CMAR shall promptly, without cost to Owner and in accordance with Owner's written instructions:

1. return to the Site with Owner, Owner's Advisor and Engineer to inspect any apparent or discovered defects in the Work, or unrepaired damage to the Site or adjacent areas;
2. consult with Owner's Advisor and Engineer regarding recommendations as to replacement or correction of such defective Work, or the repair of any damage;
3. correct the defective repairs to the Site or such adjacent areas;
4. correct such defective Work;
5. remove the defective Work from the Project and replace it with Work that is not defective, if the defective Work has been rejected by Owner, and
6. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting from the corrective measures.

C. Owner shall give any such notice of defect within 60 days of the discovery that such Work or repairs is defective. If such notice is given within 60 days but after the end of the correction period, the notice will be deemed a notice of defective Work under Paragraph 7.20.B.

D. If, after receipt of a notice of defect within 60 days and within the correction period, CMAR does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the

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defective Work corrected or repaired or may have the rejected Work removed and replaced. CMAR shall pay all costs, losses, and damages, including but not limited to all fees and charges of construction managers, engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs, arising out of or relating to such correction or repair or such removal and replacement, including but not limited to all costs of repair or replacement of work of others. CMAR's failure to pay such costs, losses, and damages within 10 days of invoice from Owner will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the failure to pay.

E. In special circumstances where a particular Item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that Item may start to run from an earlier date if so provided in the Specifications.

F. Where defective Work, and damage to other Work resulting therefrom, has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

G. CMAR's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph are not to be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

ARTICLE 16—SUSPENSION AND TERMINATION

16.01 Owner May Suspend CMAR Services or Work

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

16.02 Owner May Terminate for Cause

A. The occurrence of any one or more of the following events will constitute a default by CMAR and justify termination for cause:

1. CMAR's persistent failure to perform the Work in accordance with the Contract Documents, including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment, or failure to adhere to the Progress Schedule;

2. Failure of CMAR to perform or otherwise to comply with a material term of the Contract Documents;

3. CMAR's disregard of Laws or Regulations of any public body having jurisdiction; or

4. CMAR's repeated disregard of the authority of Owner, Owner's Advisor or Engineer.

5. CMAR's failure to timely pay Subcontractors and Suppliers after it receives payment from Owner, or

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~~4.~~6. CMAR's failure to obtain or maintain the insurance required of it in the Contract.

B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving CMAR and any surety ~~10~~ 5 days' written notice that Owner is considering a declaration that CMAR is in default and termination of the Contract, Owner may proceed to:

1. declare CMAR to be in default, and give CMAR, and any surety, written notice that the Contract is terminated; and

2. enforce the rights available to Owner under any applicable performance bond.

C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude CMAR from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid CMAR but which are stored elsewhere, and complete the Work as Owner may deem expedient.

D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if CMAR within 7 days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.

E. If Owner proceeds as provided in Paragraph 16.02.B, CMAR shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages, including but not limited to all fees and charges of Owner's Advisors, engineers, architects, attorneys, and other professionals, sustained by Owner, such excess will be paid to CMAR. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, CMAR shall pay the difference to Owner. ~~Such claims, costs, losses, and damages incurred by Owner will be reviewed by Owner's Advisor as to their reasonableness and, when so approved by Owner's Advisor, incorporated in a Change Order.~~ When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

F. Where CMAR's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against CMAR then existing or which may thereafter accrue, or any rights or remedies of Owner against CMAR or any surety under any payment bond or performance bond. Any retention or payment of money due CMAR by Owner will not release CMAR from liability.

G. If and to the extent that CMAR has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond will govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

16.03 Owner May Terminate for Convenience

A. Upon ~~7~~5 days' written notice to CMAR and Owner's Advisor, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, CMAR shall be paid for without duplication of any items:

1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;

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2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and

3. other reasonable expenses directly attributable to termination, , such as demobilization expenses, and including costs incurred to prepare a termination for convenience cost proposal. Attorneys' fees, accountant fees, home office overhead and similar expenses shall not be deemed reasonable expenses.

~~3.~~

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B. CMAR shall not be paid for any loss of anticipated profits or revenue, post-termination overhead costs, or other economic loss arising out of or resulting from such termination.

16.04 CMAR May Stop Work or Terminate

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

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

ARTICLE 17—FINAL RESOLUTION OF DISPUTES

17.01 Methods and Procedures

~~A. Disputes Subject to Final Resolution—The following disputed matters are subject to final resolution under the provisions of this article:~~

~~1. A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full, pursuant to Article 12; and~~

~~2. Disputes between Owner and CMAR concerning the Work, or obligations under the Contract Documents, that arise after final payment has been made.~~

~~B. Final Resolution of Disputes—For any dispute subject to resolution under this article, Owner or CMAR may:~~

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~~1. elect in writing to invoke the dispute resolution process provided for in the Supplementary Conditions;~~

~~2. agree with the other party to submit the dispute to another dispute resolution process; or~~

~~3. if no dispute resolution process is provided for in the Supplementary Conditions or mutually agreed to, give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction.~~

1. Claims, disputes or other matters in question between the parties to this Agreement shall be first subject to pre-suit mediation prior to the filing of any legal claims or litigation. Completion of pre-suit mediation is a condition precedent to litigation. The obligation to mediate is a material and essential provision of the Agreement.

2. Unless otherwise agreed in writing, the Contractor shall carry on the Work and maintain its progress during any mediation or litigation, and the Owner shall continue to make payments to the Contractor in accordance with the Contract Documents.

3. Either party may initiate a mediation preceding by a request in writing to the other party within a reasonable time after the claim, dispute or other matter in question has arisen or as provided in subparagraph ___, but in no event after the expiration of the applicable statute of limitations.

4. The parties shall endeavor in good faith to mutually agree upon an acceptable mediator. In the event the parties have not agreed upon a mediator within thirty (30) days of the request for mediation, the Orlando office of the American Arbitration Association, upon the written request of either party, shall appoint a mediator from its pool of approved mediators.

5. Unless otherwise mutually agreed, the mediation shall be held in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect, each party to bear its own fees, costs and expenses.

6. In the event that pre-suit mediation is unsuccessful, all claims, disputes or other matters in question shall be resolved in the Circuit Courts of Volusia County Florida. The Parties, including the Contractor's Surety, waive Venue and Jurisdiction of any Federal Court and expressly waive Trial by Jury.

ARTICLE 18—MISCELLANEOUS

18.01 Giving Notice

A. Whenever any provision of the Contract requires the giving of written notice to Owner, Owner's Advisor, CMAR, or Engineer when required, it will be deemed to have been validly given only if delivered:

1. in person, by a commercial courier service or otherwise, to the recipient's place of business;

2. by registered or certified mail, postage prepaid, to the recipient's place of business; or

3. by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line.

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18.02 Computation of Times

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

18.03 Cumulative Remedies

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

18.04 Limitation of Damages

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

18.05 No Waiver

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

18.06 Survival of Obligations

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

18.07 Controlling Law

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

18.08 Assignment of Contract

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

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18.09 Successors and Assigns

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

18.10 Headings

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

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

SUPPLEMENTARY CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared By

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ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

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SUPPLEMENTARY CONDITIONS OF THE CONSTRUCTION CONTRACT

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SUPPLEMENTARY CONDITIONS OF THE CONSTRUCTION CONTRACT

ARTICLE 1—DEFINITIONS AND TERMINOLOGY

No suggested Supplementary Conditions in this Article.

ARTICLE 2—PRELIMINARY MATTERS

2.01 *Delivery of Bonds and Evidence of Insurance*

2.02 *Copies of Documents*

SC-2.02

SC-2.02 Delete Paragraph 2.02.A in its entirety and insert the following new paragraph in its place:

A. Owner shall furnish to Contractor **[number]** printed copies of conformed Contract Documents incorporating and integrating all Addenda and any amendments negotiated prior to the Effective Date of the Contract (including one fully signed counterpart of the Agreement), and one copy in electronic portable document format (PDF). Additional printed copies of the conformed Contract Documents will be furnished upon request at the cost of reproduction.

ARTICLE 3—CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE

ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK

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

SC-5.03 Add the following new paragraphs immediately after Paragraph 5.03.D:

E. The following table lists the reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data, and specifically identifies the Technical Data in the report upon which Contractor may rely: **[If there are no such reports, so indicate in the table.]**

Report Title	Date of Report	Technical Data
		[Identify Technical Data]

F. The following table lists the drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data, and specifically

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identifies the Technical Data upon which Contractor may rely: **[If there are no such drawings, so indicate in the table.]**

Drawings Title	Date of Drawings	Technical Data
		[Identify Technical Data]

G. Contractor may examine copies of reports and drawings identified in SC-5.03.E and SC-5.03.F that were not included with the Bidding Documents at **[location]** during regular business hours, or may request copies from Engineer.

5.06 *Hazardous Environmental Conditions*

SC-5.06 Add the following new paragraphs immediately after Paragraph 5.06.A.3:

4. The following table lists the reports known to Owner relating to Hazardous Environmental Conditions at or adjacent to the Site, and the Technical Data (if any) upon which Contractor may rely: **[If there are no such reports, so indicate in the table]**

Report Title	Date of Report	Technical Data
		[Identify Technical Data]

5. The following table lists the drawings known to Owner relating to Hazardous Environmental Conditions at or adjacent to the Site, and Technical Data (if any) contained in such Drawings upon which Contractor may rely: **[If there are no such drawings, so indicate in the table]**

Drawings Title	Date of Drawings	Technical Data
		[Identify Technical Data]

ARTICLE 6—BONDS AND INSURANCE

6.03 *Contractor's Insurance*

SC-6.03 Supplement Paragraph 6.03 with the following provisions after Paragraph 6.03.C:

D. *Other Additional Insureds:* As a supplement to the provisions of Paragraph 6.03.C of the General Conditions, the commercial general liability, automobile liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies must include as additional insureds (in addition to Owner and Engineer) the following: **[Here list by legal name (not category, role, or classification) other persons or entities to be included as additional insureds. See GC-6.03.C.]**

E. *Workers' Compensation and Employer's Liability:* Contractor shall purchase and maintain workers' compensation and employer's liability insurance, including, as applicable, United States Longshoreman and Harbor Workers' Compensation Act, Jones Act, stop-gap employer's liability coverage for monopolistic states, and foreign voluntary workers'

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compensation (from available sources, notwithstanding the jurisdictional requirement of Paragraph 6.02.B of the General Conditions).

Workers' Compensation and Related Policies	Policy limits of not less than:
Workers' Compensation	
State	Statutory
Applicable Federal (e.g., Longshoreman's)	Statutory
Foreign voluntary workers' compensation (employer's responsibility coverage), if applicable	Statutory
Jones Act (if applicable)	
Bodily injury by accident—each accident	$
Bodily injury by disease—aggregate	$
Employer's Liability	
Each accident	$
Each employee	$
Policy limit	$
Stop-gap Liability Coverage	
For work performed in monopolistic states, stop-gap liability coverage must be endorsed to either the worker's compensation or commercial general liability policy with a minimum limit of:	$

F. *Commercial General Liability—Claims Covered:* Contractor shall purchase and maintain commercial general liability insurance, covering all operations by or on behalf of Contractor, on an occurrence basis, against claims for:

1. damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees,
2. damages insured by reasonably available personal injury liability coverage, and
3. damages because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom.

G. *Commercial General Liability—Form and Content:* Contractor's commercial liability policy must be written on a 1996 (or later) Insurance Services Organization, Inc. (ISO) commercial general liability form (occurrence form) and include the following coverages and endorsements:

1. Products and completed operations coverage.
    a. Such insurance must be maintained for three years after final payment.
    b. Contractor shall furnish Owner and each other additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract) evidence of continuation of such insurance at final payment and three years thereafter.
2. Blanket contractual liability coverage, including but not limited to coverage of Contractor's contractual indemnity obligations in Paragraph 7.18.
3. Severability of interests and no insured-versus-insured or cross-liability exclusions.
4. Underground, explosion, and collapse coverage.

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5. Personal injury coverage.

6. Additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together). If Contractor demonstrates to Owner that the specified ISO endorsements are not commercially available, then Contractor may satisfy this requirement by providing equivalent endorsements.

7. For design professional additional insureds, ISO Endorsement CG 20 32 07 04 "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent.

H. *Commercial General Liability—Excluded Content:* The commercial general liability insurance policy, including its coverages, endorsements, and incorporated provisions, must not include any of the following:

1. Any modification of the standard definition of "insured contract" (except to delete the railroad protective liability exclusion if Contractor is required to indemnify a railroad or others with respect to Work within 50 feet of railroad property).

2. Any exclusion for water intrusion or water damage.

3. Any provisions resulting in the erosion of insurance limits by defense costs other than those already incorporated in ISO form CG 00 01.

4. Any exclusion of coverage relating to earth subsidence or movement.

5. Any exclusion for the insured's vicarious liability, strict liability, or statutory liability (other than worker's compensation).

6. Any limitation or exclusion based on the nature of Contractor's work.

7. Any professional liability exclusion broader in effect than the most recent edition of ISO form CG 22 79.

I. *Commercial General Liability—Minimum Policy Limits*

Commercial General Liability	**Policy limits of not less than:**
General Aggregate	$
Products—Completed Operations Aggregate	$
Personal and Advertising Injury	$
Bodily Injury and Property Damage—Each Occurrence	$

J. *Automobile Liability:* Contractor shall purchase and maintain automobile liability insurance for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy must be written on an occurrence basis.

Automobile Liability	**Policy limits of not less than:**
Bodily Injury	
Each Person	$
Each Accident	$

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Automobile Liability	Policy limits of not less than:
Property Damage	
Each Accident	$
[or]	
Combined Single Limit	
Combined Single Limit (Bodily Injury and Property Damage)	$

K. *Umbrella or Excess Liability:* Contractor shall purchase and maintain umbrella or excess liability insurance written over the underlying employer's liability, commercial general liability, and automobile liability insurance described in the Paragraphs above. The coverage afforded must be at least as broad as that of each and every one of the underlying policies.

Excess or Umbrella Liability	Policy limits of not less than:
Each Occurrence	$
General Aggregate	$

L. *Using Umbrella or Excess Liability Insurance to Meet CGL and Other Policy Limit Requirements:* Contractor may meet the policy limits specified for employer's liability, commercial general liability, and automobile liability through the primary policies alone, or through combinations of the primary insurance policy's policy limits and partial attribution of the policy limits of an umbrella or excess liability policy that is at least as broad in coverage as that of the underlying policy, as specified herein. If such umbrella or excess liability policy was required under this Contract, at a specified minimum policy limit, such umbrella or excess policy must retain a minimum limit of $**[specify amount]** after accounting for partial attribution of its limits to underlying policies, as allowed above.

M. *Contractor's Pollution Liability Insurance:* Contractor shall purchase and maintain a policy covering third-party injury and property damage, including cleanup costs, as a result of pollution conditions arising from Contractor's operations and completed operations. This insurance must be maintained for no less than three years after final completion.

Contractor's Pollution Liability	Policy limits of not less than:
Each Occurrence/Claim	$
General Aggregate	$

N. *Contractor's Professional Liability Insurance:* If Contractor will provide or furnish professional services under this *Contract*, through a delegation of professional design services or otherwise, then Contractor shall be responsible for purchasing and maintaining applicable professional liability insurance. This insurance must cover negligent acts, errors, or omissions in the performance of professional design or related services by the insured or others for whom the insured is legally liable. The insurance must be maintained throughout the duration of the Contract and for a minimum of two years after Substantial Completion. The retroactive date on the policy must pre-date the commencement of furnishing services on the Project.

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Contractor's Professional Liability	Policy limits of not less than:
Each Claim	$
Annual Aggregate	$

O. *Railroad Protective Liability Insurance:* Prior to commencing any Work within 50 feet of railroad-owned and controlled property, Contractor shall (1) endorse its commercial general liability policy with ISO CG 24 17, removing the contractual liability exclusion for work within 50 feet of a railroad, (2) purchase and maintain railroad protective liability insurance meeting the following requirements, (3) furnish a copy of the endorsement to Owner, and (4) submit a copy of the railroad protective policy and other railroad-required documentation to the railroad, and notify Owner of such submittal.

[Insert additional specific requirements, commonly set by the railroad, here.]

Railroad Protective Liability Insurance	Policy limits of not less than:
Each Claim	$
Aggregate	$

P. *Unmanned Aerial Vehicle Liability Insurance:* If Contractor uses unmanned aerial vehicles (UAV—commonly *referred* to as drones) at the Site or in support of any aspect of the Work, Contractor shall obtain UAV liability insurance in the amounts stated; name Owner, Engineer, and all individuals and entities identified in the Supplementary Conditions as additional insureds; and provide a certificate to Owner confirming Contractor's compliance with this requirement. Such insurance will provide coverage for property damage, bodily injury or death, and invasion of privacy.

Unmanned Aerial Vehicle Liability Insurance	Policy limits of not less than:
Each Claim	$
General Aggregate	$

Q. *Other Required Insurance:* **[Here list additional types and amounts of insurance that Contractor is required to carry.]**

6.04 *Builder's Risk and Other Property Insurance*

SC-6.04 Supplement Paragraph 6.04 of the General Conditions with the following provisions:

F. *Builder's Risk Requirements:* The builder's risk insurance must:

1. be written on a builder's risk "all risk" policy form that at a minimum includes insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment stored and in transit, and must not exclude the coverage of the following risks: fire; windstorm; hail; flood; earthquake, volcanic activity, and other earth movement; lightning; riot; civil commotion; terrorism; vehicle impact; aircraft; smoke; theft; vandalism and malicious mischief; mechanical breakdown, boiler explosion, and artificially generated electric current; collapse; explosion; debris removal; demolition

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occasioned by enforcement of Laws and Regulations; and water damage (other than that caused by flood).

a. Such policy will include an exception that results in coverage for ensuing losses from physical damage or loss with respect to any defective workmanship, methods, design, or materials exclusions.

b. If insurance against mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake, volcanic activity, and other earth movement; or flood, are not commercially available under builder's risk policies, by endorsement or otherwise, such insurance will be provided through other insurance policies acceptable to Owner and Contractor.

2. cover, as insured property, at least the following: (a) the Work and all materials, supplies, machinery, apparatus, equipment, fixtures, and other property of a similar nature that are to be incorporated into or used in the preparation, fabrication, construction, erection, or completion of the Work, including Owner-furnished or assigned property; (b) spare parts inventory required within the scope of the Contract; and (c) temporary works which are not intended to form part of the permanent constructed Work but which are intended to provide working access to the Site, or to the Work under construction, or which are intended to provide temporary support for the Work under construction, including scaffolding, form work, fences, shoring, falsework, and temporary structures.

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

4. extend to cover damage or loss to insured property while in temporary storage at the Site or in a storage location outside the Site (but not including property stored at the premises of a manufacturer or Supplier). If this coverage is subject to a sublimit, such sublimit will be a minimum of $**[amount]**.

5. extend to cover damage or loss to insured property while in transit. If this coverage is subject to a sublimit, such sublimit will be a minimum of $**[amount]**.

6. allow for the waiver of the insurer's subrogation rights, as set forth in this Contract.

7. allow for partial occupancy or use by Owner by endorsement, and without cancellation or lapse of coverage.

8. include performance/hot testing and start-up, if applicable.

9. be maintained in effect until the Work is complete, as set forth in Paragraph 15.06.D of the General Conditions, or until written confirmation of Owner's procurement of property insurance following Substantial Completion, whichever occurs first.

10 include as named insureds the Owner, Contractor, Subcontractors (of every tier), and any other individuals or entities required by this Contract to be insured under such builder's risk policy. For purposes of Paragraphs 6.04, 6.05, and 6.06 of the General Conditions, and this and all other corresponding Supplementary Conditions, the parties required to be insured will be referred to collectively as "insureds." In addition to Owner, Contractor, and Subcontractors of every tier, include as insureds the following:

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a. **[Here list by legal name (not category, role, or classification) other persons or entities to be included on the builder's risk policy as named insureds. It is generally recommended to list the insured's full legal/contractual name, address, contact person, telephone, and e-mail address. Include only persons or entities that have property at the Site that is to be insured by the builder's risk insurance. If applicable, separately identify any mortgagee or lender required to be named as a loss payee.]**

11. include, in addition to the Contract Price amount, the value of the following equipment and materials to be installed by the Contractor but furnished by the Owner or third parties:

    a. **[Here list or provide cross-reference to specific items of Owner-furnished (or third-party furnished) equipment, and purchase value; do not list items whose value is already included in the Contract Price.]**

12. If debris removal in connection with repair or replacement of insured property is subject to a coverage sublimit, such sublimit will be a minimum of $**[amount]**.

13. In addition to the coverage sublimits stated above, the following coverages are also subject to sublimits, as follows:

    a. **[Here list a specific coverage, or cause of loss, that has been determined to be likely to be subject to a sublimit. If not applicable, then delete Paragraph SC-6.04.F.13 in its entirety.]** If this coverage is subject to a sublimit, such sublimit will be a minimum of $**[amount]**.

SC-6.04 Supplement Paragraph 6.04 of the General Conditions with the following provision:

G. *Coverage for Completion Delays:* The builder's risk policy will include, for the benefit of Owner, loss of revenue and soft cost coverage for losses arising from delays in completion that result from covered physical losses or damage. Such coverage will include, without limitation, fixed expenses and debt service for a minimum of 12 months with a maximum deductible of 30 days, compensation for loss of net revenues, rental costs, and attorneys' fees and engineering or other consultants' fees, if not otherwise covered.

SC-6.04 Supplement Paragraph 6.04 of the General Conditions with the following provisions:

H. *Builder's Risk and Other Property Insurance Deductibles:* The purchaser of any required builder's risk, installation floater, or other property insurance will be responsible for costs not covered because of the application of a policy deductible.

1. The builder's risk policy (or if applicable the installation floater) will be subject to a deductible amount of no more than $**[number]** for direct physical loss in any one occurrence.

ARTICLE 7—CONTRACTOR'S RESPONSIBILITIES

7.03 *Labor; Working Hours*

SC-7.03 Add the following new subparagraphs immediately after Paragraph 7.03.C:

1. Regular working hours will be **[Here insert schedule of regular working hours]**.

2. Owner's legal holidays are **[Here insert list of legal holidays]**.

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SC-7.03 Amend the first and second sentences of Paragraph 7.03.C to state "…all Work at the Site must be performed during regular working hours, **[day of the week]** through **[day of the week]**. Contractor will not perform Work on a **[day of the week]**, **[day of the week]**, or any legal holiday."

ARTICLE 8—OTHER WORK AT THE SITE

ARTICLE 9—OWNER'S RESPONSIBILITIES

ARTICLE 10—ENGINEER'S STATUS DURING CONSTRUCTION

10.03 *Resident Project Representative*

SC-10.03 Add the following new paragraphs immediately after Paragraph 10.03.B:

C. The Resident Project Representative (RPR) will be Engineer's representative at the Site. RPR's dealings in matters pertaining to the Work in general will be with Engineer and Contractor. RPR's dealings with Subcontractors will only be through or with the full knowledge or approval of Contractor. The RPR will:

1. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings (but not including Contractor's safety meetings), and as appropriate prepare and circulate copies of minutes thereof.

2. *Safety Compliance:* Comply with Site safety programs, as they apply to RPR, and if required to do so by such safety programs, receive safety training specifically related to RPR's own personal safety while at the Site.

3. *Liaison*

   a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the provisions and intent of the Contract Documents.

   b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.

   c. Assist in obtaining from Owner additional details or information, when required for Contractor's proper execution of the Work.

4. *Review of Work; Defective Work*

   a. Conduct on-Site observations of the Work to assist Engineer in determining, to the extent set forth in Paragraph 10.02, if the Work is in general proceeding in accordance with the Contract Documents.

   b. Observe whether any Work in place appears to be defective.

   c. Observe whether any Work in place should be uncovered for observation, or requires special testing, inspection or approval.

5. *Inspections and Tests*

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a. Observe Contractor-arranged inspections required by Laws and Regulations, including but not limited to those performed by public or other agencies having jurisdiction over the Work.

b. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Work.

6. *Payment Requests:* Review Applications for Payment with Contractor.

7. *Completion*

a. Participate in Engineer's visits regarding Substantial Completion.

b. Assist in the preparation of a punch list of items to be completed or corrected.

c. Participate in Engineer's visit to the Site in the company of Owner and Contractor regarding completion of the Work, and prepare a final punch list of items to be completed or corrected by Contractor.

d. Observe whether items on the final punch list have been completed or corrected.

D. The RPR will not:

1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).

2. Exceed limitations of Engineer's authority as set forth in the Contract Documents.

3. Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers.

4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction.

5 Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.

6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.

7. Authorize Owner to occupy the Project in whole or in part.

ARTICLE 11—CHANGES TO THE CONTRACT

No suggested Supplementary Conditions in this Article.

ARTICLE 12—CLAIMS

No suggested Supplementary Conditions in this Article.

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

13.01 *Cost of the Work*

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SC-13.01 Supplement Paragraph 13.01.C.2 by adding the following definition of small tools and hand tools:

a. For purposes of this paragraph, "small tools and hand tools" means any tool or equipment whose current price if it were purchased new at retail would be less than $500. **[or insert other threshold price.]**

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

No suggested Supplementary Conditions in this Article.

ARTICLE 15—PAYMENTS TO CONTRACTOR, SET OFFS; COMPLETIONS; CORRECTION PERIOD

15.03 *Substantial Completion*

SC-15.03 Add the following new subparagraph to Paragraph 15.03.B:

1. If some or all of the Work has been determined not to be at a point of Substantial Completion and will require re-inspection or re-testing by Engineer, the cost of such re-inspection or re-testing, including the cost of time, travel and living expenses, will be paid by Contractor to Owner. If Contractor does not pay, or the parties are unable to agree as to the amount owed, then Owner may impose a reasonable set-off against payments due under this Article 15.

15.08 *Correction Period*

SC-15.08 Add the following new Paragraph 15.08.G:

G. The correction period specified as one year after the date of Substantial Completion in Paragraph 15.08.A of the General Conditions is hereby revised to be the number of years set forth in SC-6.01.B.1; or if no such revision has been made in SC-6.01.B, then the correction period is hereby specified to be **[number]** years after Substantial Completion.

ARTICLE 16—SUSPENSION OF WORK AND TERMINATION

No suggested Supplementary Conditions in this Article.

ARTICLE 17—FINAL RESOLUTIONS OF DISPUTES

ARTICLE 18—MISCELLANEOUS

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EXHIBIT A—SOFTWARE REQUIREMENTS FOR ELECTRONIC DOCUMENT EXCHANGE

Item	Electronic Documents	Transmittal Means	Data Format	Note (1)
a.1	General communications, transmittal covers, meeting notices and responses to general information requests for which there is no specific prescribed form.	Email	Email	
a.2	Meeting agendas, meeting minutes, RFI's and responses to RFI's, and Contract forms.	Email w/ Attachment	PDF	(2)
a.3	Contactors Submittals (Shop Drawings, "or equal" requests, substitution requests, documentation accompanying Sample submittals and other submittals) to Owner and Engineer, and Owner's and Engineer's responses to Contractor's Submittals, Shop Drawings, correspondence, and Applications for Payment.	Email w/ Attachment	PDF	
a.4	Correspondence; milestone and final version Submittals of reports, layouts, Drawings, maps, calculations and spreadsheets, Specifications, Drawings and other Submittals from Contractor to Owner or Engineer and for responses from Engineer and Owner to Contractor regarding Submittals.	Email w/ Attachment or LFE	PDF	
a.5	Layouts and drawings to be submitted to Owner for future use and modification.	Email w/ Attachment or LFE	DWG	
a.6	Correspondence, reports and Specifications to be submitted to Owner for future word processing use and modification.	Email w/ Attachment or LFE	DOC	
a.7	Spreadsheets and data to be submitted to Owner for future data processing use and modification.	Email w/ Attachment or LFE	EXC	
a.8	Database files and data to be submitted to Owner for future data processing use and modification.	Email w/ Attachment or LFE	DB	

Notes	
(1)	All exchanges and uses of transmitted data are subject to the appropriate provisions of Contract Documents.
(2)	Transmittal of written notices is governed by Paragraph 18.01 of the General Conditions.

Key	
Email	Standard Email formats (.htm, .rtf, or .txt). Do not use stationery formatting or other features that impair legibility of content on screen or in printed copies
LFE	Agreed upon Large File Exchange method (FTP, CD, DVD, hard drive)
PDF	Portable Document Format readable by Adobe® Acrobat Reader Version **[number]** or later
DWG	Autodesk® AutoCAD .dwg format Version **[number]**
DOC	Microsoft® Word .docx format Version **[number]**
EXC	Microsoft® Excel .xls or .xml format Version **[number]**
DB	Microsoft® Access .mdb format Version **[number]**

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EXHIBIT B—FORESEEABLE BAD WEATHER DAYS

Month	Number of Foreseeable Bad Weather Days in Month Based on Precipitation as Rain Equivalent (inches) (1)	Ambient Outdoor Air Temperature (degrees F)	
		Number of Foreseeable Bad Weather Days in Month Based on Low Temperature (at 11:00 a.m.)	Number of Foreseeable Bad Weather Days in Month Based on High Temperature (at 3:00 p.m.)
January			
February			
March			
April			
May			
June			
July			
August			
September			
October			
November			
December			

Notes:

1. Two inches of sleet equal one inch of rain. Five inches of wet, heavy snow equal one inch of rain. Fifteen inches of "dry" powder snow equals one inch of rain.

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EXHIBIT C—GEOTECHNICAL BASELINE REPORT SUPPLEMENT TO THE SUPPLEMENTARY CONDITIONS

1.01 *Definitions*

SC-1.01 Add to the list of definitions in Paragraph 1.01.A by inserting the following as numbered items in their proper alphabetical positions:

1. *Geotechnical Baseline Report (GBR)*—The interpretive report prepared by or for Owner regarding subsurface conditions at the Site, and containing specific baseline geotechnical conditions that may be anticipated or relied upon for bidding and contract administration purposes, subject to the controlling provisions of the Contract, including the GBR's own terms. The GBR is a Contract Document.

2. *Geotechnical Data Report (GDR)*—The factual report that collects and presents data regarding actual subsurface conditions at or adjacent to the Site, including Technical Data and other geotechnical data, prepared by or for Owner in support of the Geotechnical Baseline Report. The GDR's content may include logs of borings, trenches, and other site investigations, recorded measurements of subsurface water levels, the results of field and laboratory testing, and descriptions of the investigative and testing programs. The GDR does not include an interpretation of the data. If opinions, or interpretive or speculative non-factual comments or statements appear in a document that is labeled a GDR, such opinions, comments, or statements are not operative parts of the GDR and do not have contractual standing. Subject to that exception, the GDR is a Contract Document.

5.03 *Subsurface and Physical Conditions*

SC-5.03 Delete Paragraph 5.03 in its entirety and replace with the following:

5.03 *Subsurface and Physical Conditions*

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

1. those reports of explorations and tests of subsurface conditions at or adjacent to the Site (other than any Geotechnical Data Report or Geotechnical Baseline Report) that contain Technical Data. Such reports are as follows:

   a. *Report Title:* **[Exact title of the document]**

   b. *Date of Report:* **[Date report was issued]**

   c. *Technical Data in report upon which Contractor may rely*: **[Identify Technical Data (for example, "Boring Log, Test Site 3") and specify page number or other reference where Technical Data is located within the report. List multiple Technical Data line items per entry when appropriate.]**

2. those drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data. Such drawings are as follows:

   a. *Drawings Title:* **[Exact title of the drawings]**

   b. *Date of Drawings:* **[Date drawings were issued]**

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c. *Technical Data in drawings upon which Contractor may rely:* **[Identify Technical Data (for example, "Plan View of Rock Outcroppings") in drawings, or state "All information in drawing" if entire content is Technical Data entitled to reliance; and specify drawing number, page number, or other reference where the Technical Data is located. List multiple Technical Data line items per entry when appropriate.]**

3. Contractor may examine copies of reports and drawings identified immediately above that were not included with the Bidding Documents at **[location]** during regular business hours, or may request copies from Engineer, at the cost of reproduction.

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

C. *Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely upon the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b.

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

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or

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

3. the contents of other Site-related documents made available to Contractor, such as record drawings from other projects at or adjacent to the Site, or Owner's archival documents concerning the Site; or

4. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

E. *Geotechnical Baseline Report*

1. This Contract contains a Geotechnical Baseline Report ("GBR"), identified as follows: **[Example: Geotechnical Baseline Report for Northwest Interceptor, dated February 12, 2013, prepared by ABC Geotechnical Engineers, Inc., Sacramento, California]**. This Contract also contains a Geotechnical Data Report (GDR), identified as follows: **[Example: Geotechnical Data Report for Northwest Interceptor, dated June 15, 2012, prepared by ABC Geotechnical Engineers, Inc., Sacramento, California]**.

2. The GBR and GDR are incorporated as Contract Documents. The GBR and GDR are to be used in conjunction with other Contract Documents, including the Drawings and

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Specifications. If there is a conflict between the terms of the GBR and the GDR, the GBR's terms prevail.

3. The GBR describes certain select subsurface conditions that are anticipated to be encountered by Contractor during construction in specified locations (referred to here in the Supplementary Conditions as "Baseline Conditions"). These may include ground, geological, groundwater, and other subsurface geotechnical conditions, and baselines of anticipated Underground Facilities or subsurface structures.

4. The Baseline Conditions will be used to assist in the administration of the Contract's differing site conditions clause at locations where subsurface conditions have been baselined. If a condition is baselined in the GBR, then only the pertinent Baseline Conditions will be used to determine whether there is a differing site condition; and no other indication of that condition in the Contract Documents or Technical Data, or of a condition that describes, quantifies, or measures a similar characteristic of the subsurface, will be used for the differing site condition determination.

5. The Baseline Conditions will not be used to make differing site conditions determinations at locations that have not been baselined in the GBR, or at any location with respect to subsurface conditions that the Baseline Conditions do not address. If Underground Facilities or Hazardous Environmental Conditions are expressly addressed in the Baseline Conditions, then comparison to such Baseline Conditions will be the primary means of determining (a) whether an Underground Facility was shown or indicated with reasonable accuracy, as provided in Paragraph 5.05 of the General Conditions, or (b) whether a Hazardous Environmental Condition was shown or indicated in the Contract Documents as indicated in Paragraph 5.06.H of the General Conditions. As indicated in Paragraph SC-5.04 below, the GDR will be the primary resource for differing site conditions determinations in cases in which the GBR is inapplicable.

6. The descriptions of subsurface conditions provided in the GBR are based on geotechnical investigations, laboratory tests, interpretation, interpolation, extrapolation, and analyses. Neither Owner, Engineer, nor any geotechnical or other consultant warrants or guarantees that actual subsurface conditions will be as described in the GBR, nor is the GBR intended to warrant or guarantee the use of specific means or methods of construction.

7. The behavior of the ground during construction depends substantially upon the Contractor's selected means, methods, techniques, sequences, and procedures of construction. If ground behavior conditions are baselined in the GBR, they are based on stated assumptions regarding construction means and methods.

8. The GBR will not reduce or relieve Contractor of its responsibility for the planning, selection, and implementation of safety precautions and programs incident to Contractor's means, methods, techniques, sequences, and procedures of construction, or to the Work.

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5.04 *Differing Subsurface or Physical Conditions*

SC-5.04 Delete Paragraph 5.04 in its entirety and replace with the following:

5.04 *Differing Subsurface or Physical Conditions*

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

1. differs materially from conditions shown or indicated in the GBR; or

2. differs materially from conditions shown or indicated in the GDR, to the extent the GBR is inapplicable; or

3. differs materially from conditions shown or indicated in Contract Documents other than the GBR or GDR, to the extent the GBR and GDR are inapplicable; or

4. to the extent the GBR and GDR are inapplicable, is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate; or

5. to the extent the GBR and GDR are inapplicable, is of such a nature as to require a change in the Drawings or Specifications; or

6. to the extent the GBR and GDR are inapplicable, is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

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

B. *Engineer's Review:* After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine the necessity of Owner's obtaining additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph SC-5.04.A above; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption or continuation of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.

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

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D. *Early Resumption of Work:* If at any time Engineer determines that Work in connection with the subsurface or physical condition in question may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the condition in question has been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.

E. *Possible Price and Times Adjustments*

1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

    a. such condition must fall within any one or more of the categories described in Paragraph SC-5.04.A;

    b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03 of the General Conditions; and

    c. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E.

2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:

    a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise; or

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

    c. Contractor failed to give the written notice as required by Paragraph SC-5.04.A.

3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment must be set forth in a Change Order.

4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.

F. *Underground Facilities; Hazardous Environmental Conditions:* Paragraph 5.05 of the General Conditions governs rights and responsibilities regarding the presence or location of Underground Facilities. Paragraph 5.06 of the General Conditions governs rights and responsibilities regarding Hazardous Environmental Conditions. The provisions of

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Paragraphs SC-5.03 and SC-5.04 are not applicable to the presence or location of Underground Facilities, or to Hazardous Environmental Conditions.

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

SUPPLEMENTARY CONDITIONS
OF THE CONSTRUCTION CONTRACT

Prepared By

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ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

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SUPPLEMENTARY CONDITIONS OF THE CONSTRUCTION CONTRACT

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SUPPLEMENTARY CONDITIONS OF THE CONSTRUCTION CONTRACT

ARTICLE 1—DEFINITIONS AND TERMINOLOGY

No suggested Supplementary Conditions in this Article.

ARTICLE 2—PRELIMINARY MATTERS

2.01 *Delivery of Bonds and Evidence of Insurance*

~~**Guidance Notes—Furnishing Copies of Insurance Policies—** Paragraph 2.01.B of the General Conditions requires that Contractor furnish certificates of insurance and copies of endorsements. Paragraph 6.02.D states that upon request by Owner or other additional insureds, Contractor must provide evidence of insurance such as copies of required policies, and documentation of applicable self-insured retentions and deductibles, such as a copy of the portion of the insurance policy establishing the retention or deductible amount. Parallel provisions (GC 2.01.C; GC 6.02.E) apply to Owner and the insurance that Owner is required to provide. Rather than relying on this two-step process (delivery of certificates of insurance and endorsements at the outset; subsequent requests for additional evidence of insurance), some contract drafters may elect to require from the outset that copies of the insurance policies, rather than certificates of insurance, be delivered to the other party. If exchange of copies of insurance policies is required, the following should be used:~~

~~SC-2.01 Delete Paragraphs 2.01.B. and C. in their entirety and insert the following in their place:~~

~~B. *Evidence of Contractor's Insurance:* When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner copies of the policies (including all endorsements, and identification of applicable self-insured retentions and deductibles) of insurance required to be provided by Contractor in this Contract. Contractor may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.~~

~~C. *Evidence of Owner's Insurance:* After receipt from Contractor of the signed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Contractor copies of the policies of insurance to be provided by Owner in this Contract (if any). Owner may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.~~

2.02 *Copies of Documents*

SC-2.02 ~~Amend the first sentence of Paragraph 2.02.A. to read as follows:~~

~~Owner shall furnish to Contractor **[number]** printed copies of the Contract Documents (including one fully signed counterpart of the Agreement), and **[one copy] [none]** in electronic portable document format (PDF).~~

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SC-2.02 Delete Paragraph 2.02.A in its entirety and insert the following new paragraph in its place:

A. Owner shall furnish to Contractor **[number]** printed copies of conformed Contract Documents incorporating and integrating all Addenda and any amendments negotiated prior to the Effective Date of the Contract (including one fully signed counterpart of the

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Agreement), and one copy in electronic portable document format (PDF). Additional printed copies of the conformed Contract Documents will be furnished upon request at the cost of reproduction.

~~2.06 *Electronic Transmittals*~~

~~SC-2.06 Delete Paragraphs 2.06.B and 2.06.C in their entirety and insert the following in their place:~~

~~B. *Electronic Documents Protocol:* The parties shall conform to the following provisions in Paragraphs 2.06.B and 2.06.C, together referred to as the Electronic Documents Protocol ("EDP" or "Protocol") for exchange of electronic transmittals.~~

~~1. *Basic Requirements*~~

~~a. To the fullest extent practical, the parties agree to and will transmit and accept Electronic Documents in an electronic or digital format using the procedures described in this Protocol. Use of the Electronic Documents and any information contained therein is subject to the requirements of this Protocol and other provisions of the Contract.~~

~~b. The contents of the information in any Electronic Document will be the responsibility of the transmitting party.~~

~~c. Electronic Documents as exchanged by this Protocol may be used in the same manner as the printed versions of the same documents that are exchanged using non-electronic format and methods, subject to the same governing requirements, limitations, and restrictions, set forth in the Contract Documents.~~

~~d. Except as otherwise explicitly stated herein, the terms of this Protocol will be incorporated into any other agreement or subcontract between a party and any third party for any portion of the Work on the Project, or any Project related services, where that third party is, either directly or indirectly, required to exchange Electronic Documents with a party or with Engineer. Nothing herein will modify the requirements of the Contract regarding communications between and among the parties and their subcontractors and consultants.~~

~~e. When transmitting Electronic Documents, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the receiving party's use of software application packages, operating systems, or computer hardware differing from those established in this Protocol.~~

~~f. Nothing herein negates any obligation 1) in the Contract to create, provide, or maintain an original printed record version of Drawings and Specifications, signed and sealed according to applicable Laws and Regulations; 2) to comply with any applicable Law or Regulation governing the signing and sealing of design documents or the signing and electronic transmission of any other documents; or 3) to comply with the notice requirements of Paragraph 18.01 of the General Conditions.~~

~~2. *System Infrastructure for Electronic Document Exchange*~~

~~a. Each party will provide hardware, operating system(s) software, internet, e-mail, and large file transfer functions ("System Infrastructure") at its own cost and sufficient for complying with the EDP requirements. With the exception of~~

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minimum standards set forth in this EDP, and any explicit system requirements specified by attachment to this EDP, it is the obligation of each party to determine, for itself, its own System Infrastructure.

1) The maximum size of an email attachment for exchange of Electronic Documents under this EDP is **[number]** MB. Attachments larger than that may be exchanged using large file transfer functions or physical media.

2) Each Party assumes full and complete responsibility for any and all of its own costs, delays, deficiencies, and errors associated with converting, translating, updating, verifying, licensing, or otherwise enabling its System Infrastructure, including operating systems and software, for use with respect to this EDP.

b. Each party is responsible for its own system operations, security, back-up, archiving, audits, printing resources, and other Information Technology ("IT") for maintaining operations of its System Infrastructure during the Project, including coordination with the party's individual(s) or entity responsible for managing its System Infrastructure and capable of addressing routine communications and other IT issues affecting the exchange of Electronic Documents.

c. Each party will operate and maintain industry-standard, industry-accepted, ISO-standard, commercial-grade security software and systems that are intended to protect the other party from: software viruses and other malicious software like worms, trojans, adware; data breaches; loss of confidentiality; and other threats in the transmission to or storage of information from the other parties, including transmission of Electronic Documents by physical media such as CD/DVD/flash drive/hard drive. To the extent that a party maintains and operates such security software and systems, it shall not be liable to the other party for any breach of system security.

d. In the case of disputes, conflicts, or modifications to the EDP required to address issues affecting System Infrastructure, the parties shall cooperatively resolve the issues; but, failing resolution, the Owner is authorized to make and require reasonable and necessary changes to the EDP to effectuate its original intent. If the changes cause additional cost or time to Contractor, not reasonably anticipated under the original EDP, Contractor may seek an adjustment in price or time under the appropriate process in the Contract.

e. Each party is responsible for its own back-up and archive of documents sent and received during the term of the contract under this EDP, unless this EDP establishes a Project document archive, either as part of a mandatory Project website or other communications protocol, upon which the parties may rely for document archiving during the specified term of operation of such Project document archive. Further, each party remains solely responsible for its own post-Project back-up and archive of Project documents after the term of the Contract, or after termination of the Project document archive, if one is established, for as long as required by the Contract and as each party deems necessary for its own purposes.

f. If a receiving party receives an obviously corrupted, damaged, or unreadable Electronic Document, the receiving party will advise the sending party of the incomplete transmission.

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g. The parties will bring any non-conforming Electronic Documents into compliance with the EDP. The parties will attempt to complete a successful transmission of the Electronic Document or use an alternative delivery method to complete the communication.

h. The Owner will operate a Project information management system (also referred to in this EDP as "Project Website") for use of Owner, Engineer and Contractor during the Project for exchange and storage of Project related communications and information. Except as otherwise provided in this EDP or the General Conditions, use of the Project Website by the parties as described in this Paragraph will be mandatory for exchange of Project documents, communications, submittals, and other Project related information. The following conditions and standards will govern use of the Project Website:

1) **[Describe the period of time during which the Project Website will be operated and be available for reliance by the parties]**;

2) **[Provide any minimum system infrastructure, software licensing and security standards for access to and use of the Project Website]**;

3) **[Describe the types and extent of services to be provided at the Project Website (such as large file transfer, email, communication and document archives, etc.)]**; and

4) **[Include any other Project Website attributes that may be pertinent to Contractor's use of the facility and pricing of such use]**.

C. Software Requirements for Electronic Document Exchange; Limitations

1. Each party will acquire the software and software licenses necessary to create and transmit Electronic Documents and to read and to use any Electronic Documents received from the other party (and if relevant from third parties), using the software formats required in this section of the EDP.

a. Prior to using any updated version of the software required in this section for sending Electronic Documents to the other party, the originating party will first notify and receive concurrence from the other party for use of the updated version or adjust its transmission to comply with this EDP.

2. The parties agree not to intentionally edit, reverse engineer, decrypt, remove security or encryption features, or convert to another format for modification purposes any Electronic Document or information contained therein that was transmitted in a software data format, including Portable Document Format (PDF), intended by sender not to be modified, unless the receiving party obtains the permission of the sending party or is citing or quoting excerpts of the Electronic Document for Project purposes.

3. Software and data formats for exchange of Electronic Documents will conform to the requirements set forth in Exhibit A to this EDP, including software versions, if listed.

SC-2.06 Supplement Paragraph 2.06 of the General Conditions by adding the following paragraph:

D. Requests by Contractor for Electronic Documents in Other Formats

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1. Release of any Electronic Document versions of the Project documents in formats other than those identified in the Electronic Documents Protocol (if any) or elsewhere in the Contract will be at the sole discretion of the Owner.

2. To extent determined by Owner, in its sole discretion, to be prudent and necessary, release of Electronic Documents versions of Project documents and other Project information requested by Contractor ("Request") in formats other than those identified in the Electronic Documents Protocol (if any) or elsewhere in the Contract will be subject to the provisions of the Owner's response to the Request, and to the following conditions to which Contractor agrees:

   a. The content included in the Electronic Documents created by Engineer and covered by the Request was prepared by Engineer as an internal working document for Engineer's purposes solely, and is being provided to Contractor on an "AS IS" basis without any warranties of any kind, including, but not limited to any implied warranties of fitness for any purpose. As such, Contractor is advised and acknowledges that the content may not be suitable for Contractor's application, or may require substantial modification and independent verification by Contractor. The content may include limited resolution of models, not to scale schematic representations and symbols, use of notes to convey design concepts in lieu of accurate graphics, approximations, graphical simplifications, undocumented intermediate revisions, and other devices that may affect subsequent reuse.

   b. Electronic Documents containing text, graphics, metadata, or other types of data that are provided by Engineer to Contractor under the request are only for convenience of Contractor. Any conclusion or information obtained or derived from such data will be at the Contractor's sole risk and the Contractor waives any claims against Engineer or Owner arising from use of data in Electronic Documents covered by the Request.

   c. Contractor shall indemnify and hold harmless Owner and Engineer and their subconsultants from all claims, damages, losses, and expenses, including attorneys' fees and defense costs arising out of or resulting from Contractor's use, adaptation, or distribution of any Electronic Documents provided under the Request.

   d. Contractor agrees not to sell, copy, transfer, forward, give away or otherwise distribute this information (in source or modified file format) to any third party without the direct written authorization of Engineer, unless such distribution is specifically identified in the Request and is limited to Contractor's subcontractors. Contractor warrants that subsequent use by Contractor's subcontractors complies with all terms of the Contract Documents and Owner's response to Request.

3. In the event that Owner elects to provide or directs the Engineer to provide to Contractor any Contractor-requested Electronic Document versions of Project information that is not explicitly identified in the Contract Documents as being available to Contractor, the Owner shall be reimbursed by Contractor on an hourly basis (at $**[number]** per hour) for any engineering costs necessary to create or otherwise prepare the data in a manner deemed appropriate by Engineer.

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ARTICLE 3—CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 *Intent*

SC-3.01 Delete Paragraph 3.01.C in its entirety.

ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK

4.05 *Delays in Contractor's Progress*

SC-4.05 Amend Paragraph 4.05.C by adding the following subparagraphs:

5. *Weather-Related Delays*

a. If "abnormal weather conditions" as set forth in Paragraph 4.05.C.2 of the General Conditions are the basis for a request for an equitable adjustment in the Contract Times, such request must be documented by data substantiating each of the following: 1) that weather conditions were abnormal for the period of time in which the delay occurred, 2) that such weather conditions could not have been reasonably anticipated, and 3) that such weather conditions had an adverse effect on the Work as scheduled.

b. The existence of abnormal weather conditions will be determined on a month-by-month basis in accordance with the following:

1) Every workday on which one or more of the following conditions exist will be considered a "bad weather day":

i) Total precipitation (as rain equivalent) occurring between 7:00 p.m. on the preceding day (regardless of whether such preceding day is a workday) through 7:00 p.m. on the workday in question equals or exceeds **[threshold precipitation quantity]** of precipitation (as rain equivalent, based on the snow/rain conversion indicated in the table entitled Foreseeable Bad Weather Days; such table is hereby incorporated in this SC-4.05.C by reference.

ii) Ambient outdoor air temperature at 11:00 a.m. is equal to or less than the following low temperature threshold: **[temperature]** degrees Fahrenheit; or, at 3:00 p.m. the ambient outdoor temperature is equal to or greater than the following high temperature threshold: **[temperature]** degrees Fahrenheit.

2) Determination of actual bad weather days during performance of the Work will be based on the weather records measured and recorded by **[name of the entity operating the weather station]** weather monitoring station at **[location of the weather monitoring station]**.

3) Contractor shall anticipate the number of foreseeable bad weather days per month indicated in the table in Exhibit **[exhibit number]**—Foreseeable Bad Weather Days.

4) In each month, every bad weather day exceeding the number of foreseeable bad weather days established in the table in Exhibit **[exhibit number]**—Foreseeable Bad Weather Days will be considered as "abnormal weather

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~~conditions." The existence of abnormal weather conditions will not relieve Contractor of the obligation to demonstrate and document that delays caused by abnormal weather are specific to the planned work activities or that such activities thus delayed were on Contractor's then-current Progress Schedule's critical path for the Project.~~

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

~~5.03 *Subsurface and Physical Conditions*~~

SC-5.03 Add the following new paragraphs immediately after Paragraph 5.03.D:

E. The following table lists the reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data, and specifically identifies the Technical Data in the report upon which Contractor may rely: **[If there are no such reports, so indicate in the table.]**

Report Title	Date of Report	Technical Data
		[Identify Technical Data]

F. The following table lists the drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data, and specifically identifies the Technical Data upon which Contractor may rely: **[If there are no such drawings, so indicate in the table.]**

Drawings Title	Date of Drawings	Technical Data
		[Identify Technical Data]

G. Contractor may examine copies of reports and drawings identified in SC-5.03.E and SC-5.03.F that were not included with the Bidding Documents at **[location]** during regular business hours, or may request copies from Engineer.

5.06 *Hazardous Environmental Conditions*

SC-5.06 Add the following new paragraphs immediately after Paragraph 5.06.A.3:

4. The following table lists the reports known to Owner relating to Hazardous Environmental Conditions at or adjacent to the Site, and the Technical Data (if any) upon which Contractor may rely: **[If there are no such reports, so indicate in the table]**

Report Title	Date of Report	Technical Data
		[Identify Technical Data]

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5. The following table lists the drawings known to Owner relating to Hazardous Environmental Conditions at or adjacent to the Site, and Technical Data (if any) contained in such Drawings upon which Contractor may rely: **[If there are no such drawings, so indicate in the table]**

Drawings Title	Date of Drawings	Technical Data
		[Identify Technical Data]

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ARTICLE 6—BONDS AND INSURANCE

~~6.01 *Performance, Payment, and Other Bonds*~~

~~SC-6.01 Add the following paragraphs immediately after Paragraph 6.01.A:~~

~~1. *Required Performance Bond Form:* The performance bond that Contractor furnishes will be in the form of EJCDC® C-610, Performance Bond (2010, 2013, or 2018 edition).~~

~~2. *Required Payment Bond Form:* The payment bond that Contractor furnishes will be in the form of EJCDC® C-615, Payment Bond (2010, 2013, or 2018 edition).~~

~~SC-6.01 Add the following paragraphs immediately after Paragraph 6.01.B:~~

~~1. The correction period specified as one year after the date of Substantial Completion in Paragraph 15.08.A of the General Conditions is hereby revised to be **[number—either 2, 3, or other]** years after Substantial Completion.~~

~~2. After Substantial Completion, Contractor shall furnish a warranty bond issued in the form of EJCDC® C-612, Warranty Bond (2018). The warranty bond must be in a bond amount of **[number—either 10, 15, or other]** percent of the final Contract Price. The warranty bond period will extend to a date **[number—either 2, 3, or other]** years after Substantial Completion of the Work. Contractor shall deliver the fully executed warranty bond to Owner prior to or with the final application for payment, and in any event no later than 11 months after Substantial Completion.~~

~~3. The warranty bond must be issued by the same surety that issues the performance bond required under Paragraph 6.01.A of the General Conditions.~~

~~6.02 *Insurance—General Provisions*~~

~~SC-6.02 Add the following paragraph immediately after Paragraph 6.02.B:~~

~~1. Contractor may obtain worker's compensation insurance from an insurance company that has not been rated by A.M. Best, provided that such company (a) is domiciled in the state in which the Project is located, (b) is certified or authorized as a worker's compensation insurance provider by the appropriate state agency, and (c) has been accepted to provide worker's compensation insurance for similar projects by the state within the last 12 months.~~

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~~SC-6.02 Add the following paragraph immediately after Paragraph 6.02.H.2 of the General Conditions:~~

~~3. For the following Subcontractors, Suppliers, or categories of Subcontractor or Supplier, Contractor shall require the following specified insurance, with policy limits as stated: **[Identify Subcontractors, Suppliers, or categories of same, and insert specific insurance requirements and policy limits]**~~

6.03 *Contractor's Insurance*

SC-6.03 Supplement Paragraph 6.03 with the following provisions after Paragraph 6.03.C:

D. *Other Additional Insureds:* As a supplement to the provisions of Paragraph 6.03.C of the General Conditions, the commercial general liability, automobile liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies must include as additional insureds (in addition to Owner and Engineer) the following: **[Here list by legal name (not category, role, or classification) other persons or entities to be included as additional insureds. See GC-6.03.C.]**

E. *Workers' Compensation and Employer's Liability:* Contractor shall purchase and maintain workers' compensation and employer's liability insurance, including, as applicable, United States Longshoreman and Harbor Workers' Compensation Act, Jones Act, stop-gap employer's liability coverage for monopolistic states, and foreign voluntary workers' compensation (from available sources, notwithstanding the jurisdictional requirement of Paragraph 6.02.B of the General Conditions).

Workers' Compensation and Related Policies	Policy limits of not less than:
Workers' Compensation	
State	Statutory
Applicable Federal (e.g., Longshoreman's)	Statutory
Foreign voluntary workers' compensation (employer's responsibility coverage), if applicable	Statutory
Jones Act (if applicable)	
Bodily injury by accident—each accident	$
Bodily injury by disease—aggregate	$
Employer's Liability	
Each accident	$
Each employee	$
Policy limit	$
Stop-gap Liability Coverage	
For work performed in monopolistic states, stop-gap liability coverage must be endorsed to either the worker's compensation or commercial general liability policy with a minimum limit of:	$

F. *Commercial General Liability—Claims Covered:* Contractor shall purchase and maintain commercial general liability insurance, covering all operations by or on behalf of Contractor, on an occurrence basis, against claims for:

1. damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees,

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2. damages insured by reasonably available personal injury liability coverage, and

3. damages because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom.

G. *Commercial General Liability—Form and Content:* Contractor's commercial liability policy must be written on a 1996 (or later) Insurance Services Organization, Inc. (ISO) commercial general liability form (occurrence form) and include the following coverages and endorsements:

1. Products and completed operations coverage.

a. Such insurance must be maintained for three years after final payment.

b. Contractor shall furnish Owner and each other additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract) evidence of continuation of such insurance at final payment and three years thereafter.

2. Blanket contractual liability coverage, including but not limited to coverage of Contractor's contractual indemnity obligations in Paragraph 7.18.

3. Severability of interests and no insured-versus-insured or cross-liability exclusions.

4. Underground, explosion, and collapse coverage.

5. Personal injury coverage.

6. Additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together). If Contractor demonstrates to Owner that the specified ISO endorsements are not commercially available, then Contractor may satisfy this requirement by providing equivalent endorsements.

7. For design professional additional insureds, ISO Endorsement CG 20 32 07 04 "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent.

H. *Commercial General Liability—Excluded Content:* The commercial general liability insurance policy, including its coverages, endorsements, and incorporated provisions, must not include any of the following:

1. Any modification of the standard definition of "insured contract" (except to delete the railroad protective liability exclusion if Contractor is required to indemnify a railroad or others with respect to Work within 50 feet of railroad property).

2. Any exclusion for water intrusion or water damage.

3. Any provisions resulting in the erosion of insurance limits by defense costs other than those already incorporated in ISO form CG 00 01.

4. Any exclusion of coverage relating to earth subsidence or movement.

5. Any exclusion for the insured's vicarious liability, strict liability, or statutory liability (other than worker's compensation).

6. Any limitation or exclusion based on the nature of Contractor's work.

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7. Any professional liability exclusion broader in effect than the most recent edition of ISO form CG 22 79.

I. *Commercial General Liability—Minimum Policy Limits*

Commercial General Liability	Policy limits of not less than:
General Aggregate	$
Products—Completed Operations Aggregate	$
Personal and Advertising Injury	$
Bodily Injury and Property Damage—Each Occurrence	$

J. *Automobile Liability:* Contractor shall purchase and maintain automobile liability insurance for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy must be written on an occurrence basis.

Automobile Liability	Policy limits of not less than:
Bodily Injury	
Each Person	$
Each Accident	$
Property Damage	
Each Accident	$
[or]	
Combined Single Limit	
Combined Single Limit (Bodily Injury and Property Damage)	$

K. *Umbrella or Excess Liability:* Contractor shall purchase and maintain umbrella or excess liability insurance written over the underlying employer's liability, commercial general liability, and automobile liability insurance described in the Paragraphs above. The coverage afforded must be at least as broad as that of each and every one of the underlying policies.

Excess or Umbrella Liability	Policy limits of not less than:
Each Occurrence	$
General Aggregate	$

L. *Using Umbrella or Excess Liability Insurance to Meet CGL and Other Policy Limit Requirements:* Contractor may meet the policy limits specified for employer's liability, commercial general liability, and automobile liability through the primary policies alone, or through combinations of the primary insurance policy's policy limits and partial attribution of the policy limits of an umbrella or excess liability policy that is at least as broad in coverage as that of the underlying policy, as specified herein. If such umbrella or excess liability policy was required under this Contract, at a specified minimum policy limit, such umbrella or excess policy must retain a minimum limit of $**[specify amount]** after accounting for partial attribution of its limits to underlying policies, as allowed above.

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M. *Contractor's Pollution Liability Insurance:* Contractor shall purchase and maintain a policy covering third-party injury and property damage, including cleanup costs, as a result of pollution conditions arising from Contractor's operations and completed operations. This insurance must be maintained for no less than three years after final completion.

Contractor's Pollution Liability	**Policy limits of not less than:**
Each Occurrence/Claim	$
General Aggregate	$

N. *Contractor's Professional Liability Insurance:* If Contractor will provide or furnish professional services under this *Contract*, through a delegation of professional design services or otherwise, then Contractor shall be responsible for purchasing and maintaining applicable professional liability insurance. This insurance must cover negligent acts, errors, or omissions in the performance of professional design or related services by the insured or others for whom the insured is legally liable. The insurance must be maintained throughout the duration of the Contract and for a minimum of two years after Substantial Completion. The retroactive date on the policy must pre-date the commencement of furnishing services on the Project.

Contractor's Professional Liability	**Policy limits of not less than:**
Each Claim	$
Annual Aggregate	$

O. *Railroad Protective Liability Insurance:* Prior to commencing any Work within 50 feet of railroad-owned and controlled property, Contractor shall (1) endorse its commercial general liability policy with ISO CG 24 17, removing the contractual liability exclusion for work within 50 feet of a railroad, (2) purchase and maintain railroad protective liability insurance meeting the following requirements, (3) furnish a copy of the endorsement to Owner, and (4) submit a copy of the railroad protective policy and other railroad-required documentation to the railroad, and notify Owner of such submittal.

[Insert additional specific requirements, commonly set by the railroad, here.]

Railroad Protective Liability Insurance	**Policy limits of not less than:**
Each Claim	$
Aggregate	$

P. *Unmanned Aerial Vehicle Liability Insurance:* If Contractor uses unmanned aerial vehicles (UAV—commonly *referred* to as drones) at the Site or in support of any aspect of the Work, Contractor shall obtain UAV liability insurance in the amounts stated; name Owner, Engineer, and all individuals and entities identified in the Supplementary Conditions as additional insureds; and provide a certificate to Owner confirming Contractor's compliance with this requirement. Such insurance will provide coverage for property damage, bodily injury or death, and invasion of privacy.

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Unmanned Aerial Vehicle Liability Insurance	Policy limits of not less than:
Each Claim	$
General Aggregate	$

Q. *Other Required Insurance:* **[Here list additional types and amounts of insurance that Contractor is required to carry.]**

6.04 *Builder's Risk and Other Property Insurance*

~~SC-6.04 Delete Paragraph 6.04.A and insert the following in its place:~~

~~A. Owner shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the Work's full insurable replacement cost (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). The specific requirements applicable to the builder's risk insurance are set forth in the Supplementary Conditions.~~

SC-6.04 Supplement Paragraph 6.04 of the General Conditions with the following provisions:

F. *Builder's Risk Requirements:* The builder's risk insurance must:

1. be written on a builder's risk "all risk" policy form that at a minimum includes insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment stored and in transit, and must not exclude the coverage of the following risks: fire; windstorm; hail; flood; earthquake, volcanic activity, and other earth movement; lightning; riot; civil commotion; terrorism; vehicle impact; aircraft; smoke; theft; vandalism and malicious mischief; mechanical breakdown, boiler explosion, and artificially generated electric current; collapse; explosion; debris removal; demolition occasioned by enforcement of Laws and Regulations; and water damage (other than that caused by flood).

    a. Such policy will include an exception that results in coverage for ensuing losses from physical damage or loss with respect to any defective workmanship, methods, design, or materials exclusions.

    b. If insurance against mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake, volcanic activity, and other earth movement; or flood, are not commercially available under builder's risk policies, by endorsement or otherwise, such insurance will be provided through other insurance policies acceptable to Owner and Contractor.

2. cover, as insured property, at least the following: (a) the Work and all materials, supplies, machinery, apparatus, equipment, fixtures, and other property of a similar nature that are to be incorporated into or used in the preparation, fabrication, construction, erection, or completion of the Work, including Owner-furnished or assigned property; (b) spare parts inventory required within the scope of the Contract; and (c) temporary works which are not intended to form part of the permanent constructed Work but which are intended to provide working access to the Site, or to the Work under construction, or which are intended to provide temporary support for the Work under construction, including scaffolding, form work, fences, shoring, falsework, and temporary structures.

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3. cover expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of contractors, engineers, and architects).
4. extend to cover damage or loss to insured property while in temporary storage at the Site or in a storage location outside the Site (but not including property stored at the premises of a manufacturer or Supplier). If this coverage is subject to a sublimit, such sublimit will be a minimum of $**[amount]**.
5. extend to cover damage or loss to insured property while in transit. If this coverage is subject to a sublimit, such sublimit will be a minimum of $**[amount]**.
6. allow for the waiver of the insurer's subrogation rights, as set forth in this Contract.
7. allow for partial occupancy or use by Owner by endorsement, and without cancellation or lapse of coverage.
8. include performance/hot testing and start-up, if applicable.
9. be maintained in effect until the Work is complete, as set forth in Paragraph 15.06.D of the General Conditions, or until written confirmation of Owner's procurement of property insurance following Substantial Completion, whichever occurs first.
10. include as named insureds the Owner, Contractor, Subcontractors (of every tier), and any other individuals or entities required by this Contract to be insured under such builder's risk policy. For purposes of Paragraphs 6.04, 6.05, and 6.06 of the General Conditions, and this and all other corresponding Supplementary Conditions, the parties required to be insured will be referred to collectively as "insureds." In addition to Owner, Contractor, and Subcontractors of every tier, include as insureds the following:
    a. **[Here list by legal name (not category, role, or classification) other persons or entities to be included on the builder's risk policy as named insureds. It is generally recommended to list the insured's full legal/contractual name, address, contact person, telephone, and e-mail address. Include only persons or entities that have property at the Site that is to be insured by the builder's risk insurance. If applicable, separately identify any mortgagee or lender required to be named as a loss payee.]**
11. include, in addition to the Contract Price amount, the value of the following equipment and materials to be installed by the Contractor but furnished by the Owner or third parties:
    a. **[Here list or provide cross-reference to specific items of Owner-furnished (or third-party furnished) equipment, and purchase value; do not list items whose value is already included in the Contract Price.]**
12. If debris removal in connection with repair or replacement of insured property is subject to a coverage sublimit, such sublimit will be a minimum of $**[amount]**.
13. In addition to the coverage sublimits stated above, the following coverages are also subject to sublimits, as follows:
    a. **[Here list a specific coverage, or cause of loss, that has been determined to be likely to be subject to a sublimit. If not applicable, then delete**

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Paragraph SC-6.04.F.13 in its entirety.] If this coverage is subject to a sublimit, such sublimit will be a minimum of $**[amount]**.

SC-6.04 Supplement Paragraph 6.04 of the General Conditions with the following provision:

G. *Coverage for Completion Delays:* The builder's risk policy will include, for the benefit of Owner, loss of revenue and soft cost coverage for losses arising from delays in completion that result from covered physical losses or damage. Such coverage will include, without limitation, fixed expenses and debt service for a minimum of 12 months with a maximum deductible of 30 days, compensation for loss of net revenues, rental costs, and attorneys' fees and engineering or other consultants' fees, if not otherwise covered.

SC-6.04 Supplement Paragraph 6.04 of the General Conditions with the following provisions:

H. *Builder's Risk and Other Property Insurance Deductibles:* The purchaser of any required builder's risk, installation floater, or other property insurance will be responsible for costs not covered because of the application of a policy deductible.

1. The builder's risk policy (or if applicable the installation floater) will be subject to a deductible amount of no more than $**[number]** for direct physical loss in any one occurrence.

~~SC-6.04 Delete Paragraph 6.04.A of the General Conditions and substitute the following in its place:~~

~~A. *Installation Floater*~~

~~1. Contractor shall provide and maintain installation floater insurance on a broad form or "all-risk" policy providing coverage for materials, supplies, machinery, fixtures, and equipment that will be incorporated into the Work ("Covered Property"). Coverage under the Contractor's installation floater will include loss from covered "all-risk" causes (perils) to Covered Property:~~

~~a. of the Contractor, and Covered Property of others that is in Contractor's care, custody, and control;~~

~~b. while in transit to the Site, including while at temporary storage sites;~~

~~c. while at the Site awaiting and during installation, erection, and testing;~~

~~d. continuing at least until the installation or erection of the Covered Property is completed, and the Work into which it is incorporated is accepted by Owner.~~

~~2. The installation floater coverage cannot be contingent on an external cause or risk, or limited to property for which the Contractor is legally liable.~~

~~3. The installation floater coverage will be in an amount sufficient to protect Contractor's interest in the Covered Property. The Contractor will be solely responsible for any deductible carried under this coverage.~~

~~4. This policy will include a waiver of subrogation applicable to Owner, Contractor, Engineer, all Subcontractors, and the officers, directors, partners, employees, agents and other consultants and subcontractors of any of them.~~

ARTICLE 7—CONTRACTOR'S RESPONSIBILITIES

7.03 *Labor; Working Hours*

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SC-7.03 Add the following new subparagraphs immediately after Paragraph 7.03.C:

1. Regular working hours will be **[Here insert schedule of regular working hours]**.

2. Owner's legal holidays are **[Here insert list of legal holidays]**.

SC-7.03 Amend the first and second sentences of Paragraph 7.03.C to state "…all Work at the Site must be performed during regular working hours, **[day of the week]** through **[day of the week]**. Contractor will not perform Work on a **[day of the week]**, **[day of the week]**, or any legal holiday."

~~SC-7.03 Delete Paragraph 7.03.C in its entirety, and insert the following:~~

~~C. In the absence of any Laws or Regulations to the contrary, Contractor may perform the Work on holidays, during any or all hours of the day, and on any or all days of the week, at Contractor's sole discretion.~~

~~SC-7.03 Add the following new paragraph immediately after Paragraph 7.03.C:~~

~~D. **[Contractor] [Owner] [choose one and delete the other]** shall be responsible for the cost of any overtime pay or other expense incurred by the Owner for Engineer's services (including those of the Resident Project Representative, if any), Owner's representative, and construction observation services, occasioned by the performance of Work on Saturday, Sunday, any legal holiday, or as overtime on any regular work day. If Contractor is responsible but does not pay, or if the parties are unable to agree as to the amount owed, then Owner may impose a reasonable set-off against payments due under Article 15.~~

~~SC-7.03 Add the following new subparagraph immediately after Paragraph SC-7.03.D:~~

~~1. For purposes of administering the foregoing requirement, additional overtime costs are defined as **[Here insert parameters for compensated overtime hours]**.~~

~~7.10 *Taxes*~~

~~SC-7.10 Add a new paragraph immediately after Paragraph 7.10.A:~~

~~B. Owner is exempt from payment of sales and compensating use taxes of the State of **[name of state where Project is located]** and of cities and counties thereof on all materials to be incorporated into the Work.~~

~~1. Owner will furnish the required certificates of tax exemption to Contractor for use in the purchase of supplies and materials to be incorporated into the Work.~~

~~2. Owner's exemption does not apply to construction tools, machinery, equipment, or other property purchased by or leased by Contractor, or to supplies or materials not incorporated into the Work.~~

~~7.13 *Safety and Protection*~~

~~SC-7.13 Insert the following after the second sentence of Paragraph 7.13.G:~~

~~The following Owner safety programs are applicable to the Work: **[Here expressly identify by title and/or date, any such Owner safety programs. If Owner's safety programs are included in or addressed in the Specifications, SC-7.13 may be used to provide a cross-reference to the Specification section]**.~~

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ARTICLE 8—OTHER WORK AT THE SITE

~~8.02 *Coordination*~~

~~SC-8.02 Add the following new Paragraph 8.02.C immediately after Paragraph 8.02.B:~~

~~C. Owner intends to contract with others for the performance of other work at or adjacent to the Site.~~

~~1. **[Here identify individual or entirety]** shall have authority and responsibility for coordination of the various contractors and work forces at the Site;~~

~~2. The following specific matters are to be covered by such authority and responsibility: **[Here itemize such matters]**;~~

~~3. The extent of such authority and responsibilities is: **[Here provide the extent]**.~~

ARTICLE 9—OWNER'S RESPONSIBILITIES

~~9.13 *Owner's Site Representative*~~

~~SC-9.13 Add the following new paragraph immediately after Paragraph 9.12 of the General Conditions:~~

~~9.13 *Owner's Site Representative*~~

~~A. Owner will furnish an "Owner's Site Representative" to represent Owner at the Site and assist Owner in observing the progress and quality of the Work. The Owner's Site Representative is not Engineer's consultant, agent, or employee. Owner's Site Representative will be **[here identify individual or entity]**. The authority and responsibilities of Owner's Site Representative follow: **[Here describe the duties and activities of the Owner's Site Representative.]**~~

ARTICLE 10—ENGINEER'S STATUS DURING CONSTRUCTION

10.03 *Resident Project Representative*

~~SC-10.03 Add the following new subparagraph immediately after Paragraph 10.03.A:~~

~~1. On this Project, by agreement with the Owner, the Engineer will not furnish a Resident Project Representative to represent Engineer at the Site or assist Engineer in observing the progress and quality of the Work.~~

SC-10.03 Add the following new paragraphs immediately after Paragraph 10.03.B:

C. The Resident Project Representative (RPR) will be Engineer's representative at the Site. RPR's dealings in matters pertaining to the Work in general will be with Engineer and Contractor. RPR's dealings with Subcontractors will only be through or with the full knowledge or approval of Contractor. The RPR will:

1. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings (but not including Contractor's safety meetings), and as appropriate prepare and circulate copies of minutes thereof.

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2. *Safety Compliance:* Comply with Site safety programs, as they apply to RPR, and if required to do so by such safety programs, receive safety training specifically related to RPR's own personal safety while at the Site.

3. *Liaison*

    a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the provisions and intent of the Contract Documents.

    b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.

    c. Assist in obtaining from Owner additional details or information, when required for Contractor's proper execution of the Work.

4. *Review of Work; Defective Work*

    a. Conduct on-Site observations of the Work to assist Engineer in determining, to the extent set forth in Paragraph 10.02, if the Work is in general proceeding in accordance with the Contract Documents.

    b. Observe whether any Work in place appears to be defective.

    c. Observe whether any Work in place should be uncovered for observation, or requires special testing, inspection or approval.

5. *Inspections and Tests*

    a. Observe Contractor-arranged inspections required by Laws and Regulations, including but not limited to those performed by public or other agencies having jurisdiction over the Work.

    b. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Work.

6. *Payment Requests:* Review Applications for Payment with Contractor.

7. *Completion*

    a. Participate in Engineer's visits regarding Substantial Completion.

    b. Assist in the preparation of a punch list of items to be completed or corrected.

    c. Participate in Engineer's visit to the Site in the company of Owner and Contractor regarding completion of the Work, and prepare a final punch list of items to be completed or corrected by Contractor.

    d. Observe whether items on the final punch list have been completed or corrected.

D. The RPR will not:

1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).

2. Exceed limitations of Engineer's authority as set forth in the Contract Documents.

3. Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers.

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4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction.

5 Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.

6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.

7. Authorize Owner to occupy the Project in whole or in part.

ARTICLE 11—CHANGES TO THE CONTRACT

No suggested Supplementary Conditions in this Article.

ARTICLE 12—CLAIMS

No suggested Supplementary Conditions in this Article.

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

13.01 *Cost of the Work*

~~SC-13.01 Supplement Paragraph 13.01.B.5.c.(2) by adding the following sentence:~~

~~The equipment rental rate book that governs the included costs for the rental of machinery and equipment owned by Contractor (or a related entity) under the Cost of the Work provisions of this Contract is the most current edition of **[name of equipment rental rate book]**.~~

SC-13.01 Supplement Paragraph 13.01.C.2 by adding the following definition of small tools and hand tools:

a. For purposes of this paragraph, "small tools and hand tools" means any tool or equipment whose current price if it were purchased new at retail would be less than $500. **[or insert other threshold price.]**

~~13.03 *Unit Price Work*~~

~~SC-13.03 Delete Paragraph 13.03.E in its entirety and insert the following in its place:~~

~~E. *Adjustments in Unit Price*~~

~~1. Contractor or Owner shall be entitled to an adjustment in the unit price with respect to an item of Unit Price Work if:~~

~~a. the extended price of a particular item of Unit Price Work amounts to **[number]** percent or more of the Contract Price (based on estimated quantities at the time of Contract formation) and the variation in the quantity of that particular item of Unit Price Work actually furnished or performed by Contractor differs by more than **[number]** percent from the estimated quantity of such item indicated in the Agreement; and~~

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~~b. Contractor's unit costs to perform the item of Unit Price Work have changed materially and significantly as a result of the quantity change.~~

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

~~3. Adjusted unit prices will apply to all units of that item.~~

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

No suggested Supplementary Conditions in this Article.

ARTICLE 15—PAYMENTS TO CONTRACTOR, SET OFFS; COMPLETIONS; CORRECTION PERIOD

~~15.01 *Progress Payments*~~

~~SC-15.01 Add the following new Paragraph 15.01.F:~~

~~F. For contracts in which the Contract Price is based on the Cost of Work, if Owner determines that progress payments made to date substantially exceed the actual progress of the Work (as measured by reference to the Schedule of Values), or present a potential conflict with the Guaranteed Maximum Price, then Owner may require that Contractor prepare and submit a plan for the remaining anticipated Applications for Payment that will bring payments and progress into closer alignment and take into account the Guaranteed Maximum Price (if any), through reductions in billings, increases in retainage, or other equitable measures. Owner will review the plan, discuss any necessary modifications, and implement the plan as modified for all remaining Applications for Payment.~~

15.03 *Substantial Completion*

SC-15.03 Add the following new subparagraph to Paragraph 15.03.B:

1. If some or all of the Work has been determined not to be at a point of Substantial Completion and will require re-inspection or re-testing by Engineer, the cost of such re-inspection or re-testing, including the cost of time, travel and living expenses, will be paid by Contractor to Owner. If Contractor does not pay, or the parties are unable to agree as to the amount owed, then Owner may impose a reasonable set-off against payments due under this Article 15.

15.08 *Correction Period*

SC-15.08 Add the following new Paragraph 15.08.G:

G. The correction period specified as one year after the date of Substantial Completion in Paragraph 15.08.A of the General Conditions is hereby revised to be the number of years set forth in SC-6.01.B.1; or if no such revision has been made in SC-6.01.B, then the correction period is hereby specified to be **[number]** years after Substantial Completion.

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ARTICLE 16—SUSPENSION OF WORK AND TERMINATION

No suggested Supplementary Conditions in this Article.

ARTICLE 17—FINAL RESOLUTIONS OF DISPUTES

~~17.02 *Arbitration*~~

~~SC-17.02 Add the following new paragraph immediately after Paragraph 17.01.~~

~~17.02 *Arbitration*~~

~~A. All matters subject to final resolution under this Article will be settled by arbitration administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules (subject to the conditions and limitations of this Paragraph SC-17.02). Any controversy or claim in the amount of $100,000 or less will be settled in accordance with the American Arbitration Association's supplemental rules for Fixed Time and Cost Construction Arbitration. This agreement to arbitrate will be specifically enforceable under the prevailing law of any court having jurisdiction.~~

~~B. The demand for arbitration will be filed in writing with the other party to the Contract and with the selected arbitration administrator, and a copy will be sent to Engineer for information. The demand for arbitration will be made within the specific time required in Article 17, or if no specified time is applicable within a reasonable time after the matter in question has arisen, and in no event will any such demand be made after the date when institution of legal or equitable proceedings based on such matter in question would be barred by the applicable statute of limitations.~~

~~C. The arbitrator(s) must be licensed engineers, contractors, attorneys, or construction managers. Hearings will take place pursuant to the standard procedures of the Construction Arbitration Rules that contemplate in-person hearings. The arbitrators will have no authority to award punitive or other damages not measured by the prevailing party's actual damages, except as may be required by statute or the Contract. Any award in an arbitration initiated under this clause will be limited to monetary damages and include no injunction or direction to any party other than the direction to pay a monetary amount.~~

~~D. The Arbitrators will have the authority to allocate the costs of the arbitration process among the parties, but will only have the authority to allocate attorneys' fees if a specific Law or Regulation or this Contract permits them to do so.~~

~~E. The award of the arbitrators must be accompanied by a reasoned written opinion and a concise breakdown of the award. The written opinion will cite the Contract provisions deemed applicable and relied on in making the award.~~

~~F. The parties agree that failure or refusal of a party to pay its required share of the deposits for arbitrator compensation or administrative charges will constitute a waiver by that party to present evidence or cross-examine witness. In such event, the other party shall be required to present evidence and legal argument as the arbitrator(s) may require for the making of an award. Such waiver will not allow for a default judgment against the non-paying party in the absence of evidence presented as provided for above.~~

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G. No arbitration arising out of or relating to the Contract will include by consolidation, joinder, or in any other manner any other individual or entity (including Engineer, and Engineer's consultants and the officers, directors, partners, agents, employees or consultants of any of them) who is not a party to this Contract unless:

1. the inclusion of such other individual or entity will allow complete relief to be afforded among those who are already parties to the arbitration;

2. such other individual or entity is substantially involved in a question of law or fact which is common to those who are already parties to the arbitration, and which will arise in such proceedings;

3. such other individual or entity is subject to arbitration under a contract with either Owner or Contractor, or consents to being joined in the arbitration; and

4. the consolidation or joinder is in compliance with the arbitration administrator's procedural rules.

H. The award will be final. Judgment may be entered upon it in any court having jurisdiction thereof, and it will not be subject to modification or appeal, subject to provisions of the Laws and Regulations relating to vacating or modifying an arbitral award.

I. Except as may be required by Laws or Regulations, neither party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties, with the exception of any disclosure required by Laws and Regulations or the Contract. To the extent any disclosure is allowed pursuant to the exception, the disclosure must be strictly and narrowly limited to maintain confidentiality to the extent possible.

17.03 *Attorneys' Fees*

SC-17.03 Add the following new paragraph immediately after Paragraph 17.02. [Note: If there is no Paragraph 17.02, because neither arbitration nor any other dispute resolution process has been specified here in the Supplementary Conditions, then revise this to state "Add the following new Paragraph immediately after Paragraph 17.01" and revise the numbering accordingly].

17.03 *Attorneys' Fees*

A. For any matter subject to final resolution under this Article, the prevailing party shall be entitled to an award of its attorneys' fees incurred in the final resolution proceedings, in an equitable amount to be determined in the discretion of the court, arbitrator, arbitration panel, or other arbiter of the matter subject to final resolution, taking into account the parties' initial demand or defense positions in comparison with the final result.

ARTICLE 18—MISCELLANEOUS

18.08 *Assignment of Contract*

SC-18.08 Add the following new paragraph immediately after Paragraph 18.08.A:

B. The contract dated **[date]** between Owner as "buyer" and **[identify seller]** as "seller" for procurement of goods and special services ("procurement contract") **[is hereby] [will be]**

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assigned to Contractor by Owner, and Contractor **[accepts] [will accept]** such assignment. A form documenting the assignment is attached as an exhibit to this Contract.

1. This assignment will occur on the **[Effective Date of the Contract]**, and will relieve the Owner as "buyer" from all further obligations and liabilities under the procurement contract.
2. Upon assignment, the "seller" will be a Subcontractor or Supplier of the Contractor, and Contractor will be responsible for seller's performance, acts, and omissions, as set forth in Paragraph 7.07 of the General Conditions just as Contractor is responsible for all other Subcontractors and Suppliers.
3. Notwithstanding this assignment, all performance guarantees and warranties required by the procurement contract will continue to run for the benefit of the Owner and, in addition, for the benefit of the Contractor.
4. Except as noted in the procurement contract, all rights, duties and obligations of Engineer to "buyer" and "seller" under the procurement contract will cease **[upon the assignment to Contractor]**.

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EXHIBIT A—SOFTWARE REQUIREMENTS FOR ELECTRONIC DOCUMENT EXCHANGE

Item	Electronic Documents	Transmittal Means	Data Format	Note (1)
a.1	General communications, transmittal covers, meeting notices and responses to general information requests for which there is no specific prescribed form.	Email	Email	
a.2	Meeting agendas, meeting minutes, RFI's and responses to RFI's, and Contract forms.	Email w/ Attachment	PDF	(2)
a.3	Contactors Submittals (Shop Drawings, "or equal" requests, substitution requests, documentation accompanying Sample submittals and other submittals) to Owner and Engineer, and Owner's and Engineer's responses to Contractor's Submittals, Shop Drawings, correspondence, and Applications for Payment.	Email w/ Attachment	PDF	
a.4	Correspondence; milestone and final version Submittals of reports, layouts, Drawings, maps, calculations and spreadsheets, Specifications, Drawings and other Submittals from Contractor to Owner or Engineer and for responses from Engineer and Owner to Contractor regarding Submittals.	Email w/ Attachment or LFE	PDF	
a.5	Layouts and drawings to be submitted to Owner for future use and modification.	Email w/ Attachment or LFE	DWG	
a.6	Correspondence, reports and Specifications to be submitted to Owner for future word processing use and modification.	Email w/ Attachment or LFE	DOC	
a.7	Spreadsheets and data to be submitted to Owner for future data processing use and modification.	Email w/ Attachment or LFE	EXC	
a.8	Database files and data to be submitted to Owner for future data processing use and modification.	Email w/ Attachment or LFE	DB	

Notes	
(1)	All exchanges and uses of transmitted data are subject to the appropriate provisions of Contract Documents.
(2)	Transmittal of written notices is governed by Paragraph 18.01 of the General Conditions.

Key	
Email	Standard Email formats (.htm, .rtf, or .txt). Do not use stationery formatting or other features that impair legibility of content on screen or in printed copies
LFE	Agreed upon Large File Exchange method (FTP, CD, DVD, hard drive)
PDF	Portable Document Format readable by Adobe® Acrobat Reader Version **[number]** or later
DWG	Autodesk® AutoCAD .dwg format Version **[number]**
DOC	Microsoft® Word .docx format Version **[number]**
EXC	Microsoft® Excel .xls or .xml format Version **[number]**
DB	Microsoft® Access .mdb format Version **[number]**

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EXHIBIT B—FORESEEABLE BAD WEATHER DAYS

Month	Number of Foreseeable Bad Weather Days in Month Based on Precipitation as Rain Equivalent (inches) (1)	Ambient Outdoor Air Temperature (degrees F)	
		Number of Foreseeable Bad Weather Days in Month Based on Low Temperature (at 11:00 a.m.)	Number of Foreseeable Bad Weather Days in Month Based on High Temperature (at 3:00 p.m.)
January			
February			
March			
April			
May			
June			
July			
August			
September			
October			
November			
December			

Notes:
1. Two inches of sleet equal one inch of rain. Five inches of wet, heavy snow equal one inch of rain. Fifteen inches of "dry" powder snow equals one inch of rain.

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EXHIBIT C—GEOTECHNICAL BASELINE REPORT SUPPLEMENT TO THE SUPPLEMENTARY CONDITIONS

1.01 *Definitions*

SC-1.01 Add to the list of definitions in Paragraph 1.01.A by inserting the following as numbered items in their proper alphabetical positions:

1. *Geotechnical Baseline Report (GBR)*—The interpretive report prepared by or for Owner regarding subsurface conditions at the Site, and containing specific baseline geotechnical conditions that may be anticipated or relied upon for bidding and contract administration purposes, subject to the controlling provisions of the Contract, including the GBR's own terms. The GBR is a Contract Document.

2. *Geotechnical Data Report (GDR)*—The factual report that collects and presents data regarding actual subsurface conditions at or adjacent to the Site, including Technical Data and other geotechnical data, prepared by or for Owner in support of the Geotechnical Baseline Report. The GDR's content may include logs of borings, trenches, and other site investigations, recorded measurements of subsurface water levels, the results of field and laboratory testing, and descriptions of the investigative and testing programs. The GDR does not include an interpretation of the data. If opinions, or interpretive or speculative non-factual comments or statements appear in a document that is labeled a GDR, such opinions, comments, or statements are not operative parts of the GDR and do not have contractual standing. Subject to that exception, the GDR is a Contract Document.

5.03 *Subsurface and Physical Conditions*

SC-5.03 Delete Paragraph 5.03 in its entirety and replace with the following:

5.03 *Subsurface and Physical Conditions*

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

1. those reports of explorations and tests of subsurface conditions at or adjacent to the Site (other than any Geotechnical Data Report or Geotechnical Baseline Report) that contain Technical Data. Such reports are as follows:

a. *Report Title:* **[Exact title of the document]**

b. *Date of Report:* **[Date report was issued]**

c. *Technical Data in report upon which Contractor may rely*: **[Identify Technical Data (for example, "Boring Log, Test Site 3") and specify page number or other reference where Technical Data is located within the report. List multiple Technical Data line items per entry when appropriate.]**

2. those drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data. Such drawings are as follows:

a. *Drawings Title:* **[Exact title of the drawings]**

b. *Date of Drawings:* **[Date drawings were issued]**

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c. *Technical Data in drawings upon which Contractor may rely:* **[Identify Technical Data (for example, "Plan View of Rock Outcroppings") in drawings, or state "All information in drawing" if entire content is Technical Data entitled to reliance; and specify drawing number, page number, or other reference where the Technical Data is located. List multiple Technical Data line items per entry when appropriate.]**

3. Contractor may examine copies of reports and drawings identified immediately above that were not included with the Bidding Documents at **[location]** during regular business hours, or may request copies from Engineer, at the cost of reproduction.

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

C. *Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely upon the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b.

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

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or

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

3. the contents of other Site-related documents made available to Contractor, such as record drawings from other projects at or adjacent to the Site, or Owner's archival documents concerning the Site; or

4. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

E. *Geotechnical Baseline Report*

1. This Contract contains a Geotechnical Baseline Report ("GBR"), identified as follows: **[Example: Geotechnical Baseline Report for Northwest Interceptor, dated February 12, 2013, prepared by ABC Geotechnical Engineers, Inc., Sacramento, California]**. This Contract also contains a Geotechnical Data Report (GDR), identified as follows: **[Example: Geotechnical Data Report for Northwest Interceptor, dated June 15, 2012, prepared by ABC Geotechnical Engineers, Inc., Sacramento, California]**.

2. The GBR and GDR are incorporated as Contract Documents. The GBR and GDR are to be used in conjunction with other Contract Documents, including the Drawings and

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Specifications. If there is a conflict between the terms of the GBR and the GDR, the GBR's terms prevail.

3. The GBR describes certain select subsurface conditions that are anticipated to be encountered by Contractor during construction in specified locations (referred to here in the Supplementary Conditions as "Baseline Conditions"). These may include ground, geological, groundwater, and other subsurface geotechnical conditions, and baselines of anticipated Underground Facilities or subsurface structures.

4. The Baseline Conditions will be used to assist in the administration of the Contract's differing site conditions clause at locations where subsurface conditions have been baselined. If a condition is baselined in the GBR, then only the pertinent Baseline Conditions will be used to determine whether there is a differing site condition; and no other indication of that condition in the Contract Documents or Technical Data, or of a condition that describes, quantifies, or measures a similar characteristic of the subsurface, will be used for the differing site condition determination.

5. The Baseline Conditions will not be used to make differing site conditions determinations at locations that have not been baselined in the GBR, or at any location with respect to subsurface conditions that the Baseline Conditions do not address. If Underground Facilities or Hazardous Environmental Conditions are expressly addressed in the Baseline Conditions, then comparison to such Baseline Conditions will be the primary means of determining (a) whether an Underground Facility was shown or indicated with reasonable accuracy, as provided in Paragraph 5.05 of the General Conditions, or (b) whether a Hazardous Environmental Condition was shown or indicated in the Contract Documents as indicated in Paragraph 5.06.H of the General Conditions. As indicated in Paragraph SC-5.04 below, the GDR will be the primary resource for differing site conditions determinations in cases in which the GBR is inapplicable.

6. The descriptions of subsurface conditions provided in the GBR are based on geotechnical investigations, laboratory tests, interpretation, interpolation, extrapolation, and analyses. Neither Owner, Engineer, nor any geotechnical or other consultant warrants or guarantees that actual subsurface conditions will be as described in the GBR, nor is the GBR intended to warrant or guarantee the use of specific means or methods of construction.

7. The behavior of the ground during construction depends substantially upon the Contractor's selected means, methods, techniques, sequences, and procedures of construction. If ground behavior conditions are baselined in the GBR, they are based on stated assumptions regarding construction means and methods.

8. The GBR will not reduce or relieve Contractor of its responsibility for the planning, selection, and implementation of safety precautions and programs incident to Contractor's means, methods, techniques, sequences, and procedures of construction, or to the Work.

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5.04 *Differing Subsurface or Physical Conditions*

SC-5.04 Delete Paragraph 5.04 in its entirety and replace with the following:

5.04 *Differing Subsurface or Physical Conditions*

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

1. differs materially from conditions shown or indicated in the GBR; or

2. differs materially from conditions shown or indicated in the GDR, to the extent the GBR is inapplicable; or

3. differs materially from conditions shown or indicated in Contract Documents other than the GBR or GDR, to the extent the GBR and GDR are inapplicable; or

4. to the extent the GBR and GDR are inapplicable, is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate; or

5. to the extent the GBR and GDR are inapplicable, is of such a nature as to require a change in the Drawings or Specifications; or

6. to the extent the GBR and GDR are inapplicable, is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

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

B. *Engineer's Review:* After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine the necessity of Owner's obtaining additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph SC-5.04.A above; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption or continuation of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.

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

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D. *Early Resumption of Work:* If at any time Engineer determines that Work in connection with the subsurface or physical condition in question may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the condition in question has been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.

E. *Possible Price and Times Adjustments*

1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

    a. such condition must fall within any one or more of the categories described in Paragraph SC-5.04.A;

    b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03 of the General Conditions; and

    c. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E.

2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:

    a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise; or

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

    c. Contractor failed to give the written notice as required by Paragraph SC-5.04.A.

3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment must be set forth in a Change Order.

4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.

F. *Underground Facilities; Hazardous Environmental Conditions:* Paragraph 5.05 of the General Conditions governs rights and responsibilities regarding the presence or location of Underground Facilities. Paragraph 5.06 of the General Conditions governs rights and responsibilities regarding Hazardous Environmental Conditions. The provisions of

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Paragraphs SC-5.03 and SC-5.04 are not applicable to the presence or location of Underground Facilities, or to Hazardous Environmental Conditions.

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

SUPPLEMENTARY CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared By

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ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

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SUPPLEMENTARY CONDITIONS OF THE CONSTRUCTION CONTRACT

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SUPPLEMENTARY CONDITIONS OF THE CONSTRUCTION CONTRACT

ARTICLE 1—DEFINITIONS AND TERMINOLOGY

No suggested Supplementary Conditions in this Article.

ARTICLE 2—PRELIMINARY MATTERS

2.01 *Delivery of Bonds and Evidence of Insurance*

2.02 *Copies of Documents*

SC-2.02

SC-2.02 Delete Paragraph 2.02.A in its entirety and insert the following new paragraph in its place:

A. Owner shall furnish to Contractor **[number]** printed copies of conformed Contract Documents incorporating and integrating all Addenda and any amendments negotiated prior to the Effective Date of the Contract (including one fully signed counterpart of the Agreement), and one copy in electronic portable document format (PDF). Additional printed copies of the conformed Contract Documents will be furnished upon request at the cost of reproduction.

ARTICLE 3—CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE

ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK

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

SC-5.03 Add the following new paragraphs immediately after Paragraph 5.03.D:

E. The following table lists the reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data, and specifically identifies the Technical Data in the report upon which Contractor may rely: **[If there are no such reports, so indicate in the table.]**

Report Title	Date of Report	Technical Data
		[Identify Technical Data]

F. The following table lists the drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data, and specifically

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identifies the Technical Data upon which Contractor may rely: **[If there are no such drawings, so indicate in the table.]**

Drawings Title	Date of Drawings	Technical Data
		[Identify Technical Data]

G. Contractor may examine copies of reports and drawings identified in SC-5.03.E and SC-5.03.F that were not included with the Bidding Documents at **[location]** during regular business hours, or may request copies from Engineer.

5.06 *Hazardous Environmental Conditions*

SC-5.06 Add the following new paragraphs immediately after Paragraph 5.06.A.3:

4. The following table lists the reports known to Owner relating to Hazardous Environmental Conditions at or adjacent to the Site, and the Technical Data (if any) upon which Contractor may rely: **[If there are no such reports, so indicate in the table]**

Report Title	Date of Report	Technical Data
		[Identify Technical Data]

5. The following table lists the drawings known to Owner relating to Hazardous Environmental Conditions at or adjacent to the Site, and Technical Data (if any) contained in such Drawings upon which Contractor may rely: **[If there are no such drawings, so indicate in the table]**

Drawings Title	Date of Drawings	Technical Data
		[Identify Technical Data]

ARTICLE 6—BONDS AND INSURANCE

6.03 *Contractor's Insurance*

SC-6.03 Supplement Paragraph 6.03 with the following provisions after Paragraph 6.03.C:

D. *Other Additional Insureds:* As a supplement to the provisions of Paragraph 6.03.C of the General Conditions, the commercial general liability, automobile liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies must include as additional insureds (in addition to Owner and Engineer) the following: **[Here list by legal name (not category, role, or classification) other persons or entities to be included as additional insureds. See GC-6.03.C.]**

E. *Workers' Compensation and Employer's Liability:* Contractor shall purchase and maintain workers' compensation and employer's liability insurance, including, as applicable, United States Longshoreman and Harbor Workers' Compensation Act, Jones Act, stop-gap employer's liability coverage for monopolistic states, and foreign voluntary workers'

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compensation (from available sources, notwithstanding the jurisdictional requirement of Paragraph 6.02.B of the General Conditions).

Workers' Compensation and Related Policies	Policy limits of not less than:
Workers' Compensation	
State	Statutory
Applicable Federal (e.g., Longshoreman's)	Statutory
Foreign voluntary workers' compensation (employer's responsibility coverage), if applicable	Statutory
Jones Act (if applicable)	
Bodily injury by accident—each accident	$
Bodily injury by disease—aggregate	$
Employer's Liability	
Each accident	$
Each employee	$
Policy limit	$
Stop-gap Liability Coverage	
For work performed in monopolistic states, stop-gap liability coverage must be endorsed to either the worker's compensation or commercial general liability policy with a minimum limit of:	$

F. *Commercial General Liability—Claims Covered:* Contractor shall purchase and maintain commercial general liability insurance, covering all operations by or on behalf of Contractor, on an occurrence basis, against claims for:

1. damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees,
2. damages insured by reasonably available personal injury liability coverage, and
3. damages because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom.

G. *Commercial General Liability—Form and Content:* Contractor's commercial liability policy must be written on a 1996 (or later) Insurance Services Organization, Inc. (ISO) commercial general liability form (occurrence form) and include the following coverages and endorsements:

1. Products and completed operations coverage.
    a. Such insurance must be maintained for three years after final payment.
    b. Contractor shall furnish Owner and each other additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract) evidence of continuation of such insurance at final payment and three years thereafter.
2. Blanket contractual liability coverage, including but not limited to coverage of Contractor's contractual indemnity obligations in Paragraph 7.18.
3. Severability of interests and no insured-versus-insured or cross-liability exclusions.
4. Underground, explosion, and collapse coverage.

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5. Personal injury coverage.

6. Additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together). If Contractor demonstrates to Owner that the specified ISO endorsements are not commercially available, then Contractor may satisfy this requirement by providing equivalent endorsements.

7. For design professional additional insureds, ISO Endorsement CG 20 32 07 04 "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent.

H. *Commercial General Liability—Excluded Content:* The commercial general liability insurance policy, including its coverages, endorsements, and incorporated provisions, must not include any of the following:

1. Any modification of the standard definition of "insured contract" (except to delete the railroad protective liability exclusion if Contractor is required to indemnify a railroad or others with respect to Work within 50 feet of railroad property).

2. Any exclusion for water intrusion or water damage.

3. Any provisions resulting in the erosion of insurance limits by defense costs other than those already incorporated in ISO form CG 00 01.

4. Any exclusion of coverage relating to earth subsidence or movement.

5. Any exclusion for the insured's vicarious liability, strict liability, or statutory liability (other than worker's compensation).

6. Any limitation or exclusion based on the nature of Contractor's work.

7. Any professional liability exclusion broader in effect than the most recent edition of ISO form CG 22 79.

I. *Commercial General Liability—Minimum Policy Limits*

Commercial General Liability	**Policy limits of not less than:**
General Aggregate	$
Products—Completed Operations Aggregate	$
Personal and Advertising Injury	$
Bodily Injury and Property Damage—Each Occurrence	$

J. *Automobile Liability:* Contractor shall purchase and maintain automobile liability insurance for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy must be written on an occurrence basis.

Automobile Liability	**Policy limits of not less than:**
Bodily Injury	
Each Person	$
Each Accident	$

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Automobile Liability	Policy limits of not less than:
Property Damage	
Each Accident	$
[or]	
Combined Single Limit	
Combined Single Limit (Bodily Injury and Property Damage)	$

K. *Umbrella or Excess Liability:* Contractor shall purchase and maintain umbrella or excess liability insurance written over the underlying employer's liability, commercial general liability, and automobile liability insurance described in the Paragraphs above. The coverage afforded must be at least as broad as that of each and every one of the underlying policies.

Excess or Umbrella Liability	Policy limits of not less than:
Each Occurrence	$
General Aggregate	$

L. *Using Umbrella or Excess Liability Insurance to Meet CGL and Other Policy Limit Requirements:* Contractor may meet the policy limits specified for employer's liability, commercial general liability, and automobile liability through the primary policies alone, or through combinations of the primary insurance policy's policy limits and partial attribution of the policy limits of an umbrella or excess liability policy that is at least as broad in coverage as that of the underlying policy, as specified herein. If such umbrella or excess liability policy was required under this Contract, at a specified minimum policy limit, such umbrella or excess policy must retain a minimum limit of $**[specify amount]** after accounting for partial attribution of its limits to underlying policies, as allowed above.

M. *Contractor's Pollution Liability Insurance:* Contractor shall purchase and maintain a policy covering third-party injury and property damage, including cleanup costs, as a result of pollution conditions arising from Contractor's operations and completed operations. This insurance must be maintained for no less than three years after final completion.

Contractor's Pollution Liability	Policy limits of not less than:
Each Occurrence/Claim	$
General Aggregate	$

N. *Contractor's Professional Liability Insurance:* If Contractor will provide or furnish professional services under this *Contract*, through a delegation of professional design services or otherwise, then Contractor shall be responsible for purchasing and maintaining applicable professional liability insurance. This insurance must cover negligent acts, errors, or omissions in the performance of professional design or related services by the insured or others for whom the insured is legally liable. The insurance must be maintained throughout the duration of the Contract and for a minimum of two years after Substantial Completion. The retroactive date on the policy must pre-date the commencement of furnishing services on the Project.

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Contractor's Professional Liability	Policy limits of not less than:
Each Claim	$
Annual Aggregate	$

O. *Railroad Protective Liability Insurance:* Prior to commencing any Work within 50 feet of railroad-owned and controlled property, Contractor shall (1) endorse its commercial general liability policy with ISO CG 24 17, removing the contractual liability exclusion for work within 50 feet of a railroad, (2) purchase and maintain railroad protective liability insurance meeting the following requirements, (3) furnish a copy of the endorsement to Owner, and (4) submit a copy of the railroad protective policy and other railroad-required documentation to the railroad, and notify Owner of such submittal.

[Insert additional specific requirements, commonly set by the railroad, here.]

Railroad Protective Liability Insurance	Policy limits of not less than:
Each Claim	$
Aggregate	$

P. *Unmanned Aerial Vehicle Liability Insurance:* If Contractor uses unmanned aerial vehicles (UAV—commonly *referred* to as drones) at the Site or in support of any aspect of the Work, Contractor shall obtain UAV liability insurance in the amounts stated; name Owner, Engineer, and all individuals and entities identified in the Supplementary Conditions as additional insureds; and provide a certificate to Owner confirming Contractor's compliance with this requirement. Such insurance will provide coverage for property damage, bodily injury or death, and invasion of privacy.

Unmanned Aerial Vehicle Liability Insurance	Policy limits of not less than:
Each Claim	$
General Aggregate	$

Q. *Other Required Insurance:* **[Here list additional types and amounts of insurance that Contractor is required to carry.]**

6.04 *Builder's Risk and Other Property Insurance*

SC-6.04 Supplement Paragraph 6.04 of the General Conditions with the following provisions:

F. *Builder's Risk Requirements:* The builder's risk insurance must:

1. be written on a builder's risk "all risk" policy form that at a minimum includes insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment stored and in transit, and must not exclude the coverage of the following risks: fire; windstorm; hail; flood; earthquake, volcanic activity, and other earth movement; lightning; riot; civil commotion; terrorism; vehicle impact; aircraft; smoke; theft; vandalism and malicious mischief; mechanical breakdown, boiler explosion, and artificially generated electric current; collapse; explosion; debris removal; demolition

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occasioned by enforcement of Laws and Regulations; and water damage (other than that caused by flood).

a. Such policy will include an exception that results in coverage for ensuing losses from physical damage or loss with respect to any defective workmanship, methods, design, or materials exclusions.

b. If insurance against mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake, volcanic activity, and other earth movement; or flood, are not commercially available under builder's risk policies, by endorsement or otherwise, such insurance will be provided through other insurance policies acceptable to Owner and Contractor.

2. cover, as insured property, at least the following: (a) the Work and all materials, supplies, machinery, apparatus, equipment, fixtures, and other property of a similar nature that are to be incorporated into or used in the preparation, fabrication, construction, erection, or completion of the Work, including Owner-furnished or assigned property; (b) spare parts inventory required within the scope of the Contract; and (c) temporary works which are not intended to form part of the permanent constructed Work but which are intended to provide working access to the Site, or to the Work under construction, or which are intended to provide temporary support for the Work under construction, including scaffolding, form work, fences, shoring, falsework, and temporary structures.

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

4. extend to cover damage or loss to insured property while in temporary storage at the Site or in a storage location outside the Site (but not including property stored at the premises of a manufacturer or Supplier). If this coverage is subject to a sublimit, such sublimit will be a minimum of $**[amount]**.

5. extend to cover damage or loss to insured property while in transit. If this coverage is subject to a sublimit, such sublimit will be a minimum of $**[amount]**.

6. allow for the waiver of the insurer's subrogation rights, as set forth in this Contract.

7. allow for partial occupancy or use by Owner by endorsement, and without cancellation or lapse of coverage.

8. include performance/hot testing and start-up, if applicable.

9. be maintained in effect until the Work is complete, as set forth in Paragraph 15.06.D of the General Conditions, or until written confirmation of Owner's procurement of property insurance following Substantial Completion, whichever occurs first.

10 include as named insureds the Owner, Contractor, Subcontractors (of every tier), and any other individuals or entities required by this Contract to be insured under such builder's risk policy. For purposes of Paragraphs 6.04, 6.05, and 6.06 of the General Conditions, and this and all other corresponding Supplementary Conditions, the parties required to be insured will be referred to collectively as "insureds." In addition to Owner, Contractor, and Subcontractors of every tier, include as insureds the following:

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a. **[Here list by legal name (not category, role, or classification) other persons or entities to be included on the builder's risk policy as named insureds. It is generally recommended to list the insured's full legal/contractual name, address, contact person, telephone, and e-mail address. Include only persons or entities that have property at the Site that is to be insured by the builder's risk insurance. If applicable, separately identify any mortgagee or lender required to be named as a loss payee.]**

11. include, in addition to the Contract Price amount, the value of the following equipment and materials to be installed by the Contractor but furnished by the Owner or third parties:

    a. **[Here list or provide cross-reference to specific items of Owner-furnished (or third-party furnished) equipment, and purchase value; do not list items whose value is already included in the Contract Price.]**

12. If debris removal in connection with repair or replacement of insured property is subject to a coverage sublimit, such sublimit will be a minimum of $**[amount]**.

13. In addition to the coverage sublimits stated above, the following coverages are also subject to sublimits, as follows:

    a. **[Here list a specific coverage, or cause of loss, that has been determined to be likely to be subject to a sublimit. If not applicable, then delete Paragraph SC-6.04.F.13 in its entirety.]** If this coverage is subject to a sublimit, such sublimit will be a minimum of $**[amount]**.

SC-6.04 Supplement Paragraph 6.04 of the General Conditions with the following provision:

G. *Coverage for Completion Delays:* The builder's risk policy will include, for the benefit of Owner, loss of revenue and soft cost coverage for losses arising from delays in completion that result from covered physical losses or damage. Such coverage will include, without limitation, fixed expenses and debt service for a minimum of 12 months with a maximum deductible of 30 days, compensation for loss of net revenues, rental costs, and attorneys' fees and engineering or other consultants' fees, if not otherwise covered.

SC-6.04 Supplement Paragraph 6.04 of the General Conditions with the following provisions:

H. *Builder's Risk and Other Property Insurance Deductibles:* The purchaser of any required builder's risk, installation floater, or other property insurance will be responsible for costs not covered because of the application of a policy deductible.

1. The builder's risk policy (or if applicable the installation floater) will be subject to a deductible amount of no more than $**[number]** for direct physical loss in any one occurrence.

ARTICLE 7—CONTRACTOR'S RESPONSIBILITIES

7.03 *Labor; Working Hours*

SC-7.03 Add the following new subparagraphs immediately after Paragraph 7.03.C:

1. Regular working hours will be **[Here insert schedule of regular working hours]**.

2. Owner's legal holidays are **[Here insert list of legal holidays]**.

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SC-7.03 Amend the first and second sentences of Paragraph 7.03.C to state "…all Work at the Site must be performed during regular working hours, **[day of the week]** through **[day of the week]**. Contractor will not perform Work on a **[day of the week]**, **[day of the week]**, or any legal holiday."

ARTICLE 8—OTHER WORK AT THE SITE

ARTICLE 9—OWNER'S RESPONSIBILITIES

ARTICLE 10—ENGINEER'S STATUS DURING CONSTRUCTION

10.03 *Resident Project Representative*

SC-10.03 Add the following new paragraphs immediately after Paragraph 10.03.B:

C. The Resident Project Representative (RPR) will be Engineer's representative at the Site. RPR's dealings in matters pertaining to the Work in general will be with Engineer and Contractor. RPR's dealings with Subcontractors will only be through or with the full knowledge or approval of Contractor. The RPR will:

1. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings (but not including Contractor's safety meetings), and as appropriate prepare and circulate copies of minutes thereof.

2. *Safety Compliance:* Comply with Site safety programs, as they apply to RPR, and if required to do so by such safety programs, receive safety training specifically related to RPR's own personal safety while at the Site.

3. *Liaison*

   a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the provisions and intent of the Contract Documents.

   b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.

   c. Assist in obtaining from Owner additional details or information, when required for Contractor's proper execution of the Work.

4. *Review of Work; Defective Work*

   a. Conduct on-Site observations of the Work to assist Engineer in determining, to the extent set forth in Paragraph 10.02, if the Work is in general proceeding in accordance with the Contract Documents.

   b. Observe whether any Work in place appears to be defective.

   c. Observe whether any Work in place should be uncovered for observation, or requires special testing, inspection or approval.

5. *Inspections and Tests*

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a. Observe Contractor-arranged inspections required by Laws and Regulations, including but not limited to those performed by public or other agencies having jurisdiction over the Work.

b. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Work.

6. *Payment Requests:* Review Applications for Payment with Contractor.

7. *Completion*

a. Participate in Engineer's visits regarding Substantial Completion.

b. Assist in the preparation of a punch list of items to be completed or corrected.

c. Participate in Engineer's visit to the Site in the company of Owner and Contractor regarding completion of the Work, and prepare a final punch list of items to be completed or corrected by Contractor.

d. Observe whether items on the final punch list have been completed or corrected.

D. The RPR will not:

1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).

2. Exceed limitations of Engineer's authority as set forth in the Contract Documents.

3. Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers.

4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction.

5 Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.

6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.

7. Authorize Owner to occupy the Project in whole or in part.

ARTICLE 11—CHANGES TO THE CONTRACT

No suggested Supplementary Conditions in this Article.

ARTICLE 12—CLAIMS

No suggested Supplementary Conditions in this Article.

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

13.01 *Cost of the Work*

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SC-13.01 Supplement Paragraph 13.01.C.2 by adding the following definition of small tools and hand tools:

a. For purposes of this paragraph, "small tools and hand tools" means any tool or equipment whose current price if it were purchased new at retail would be less than $500. **[or insert other threshold price.]**

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

No suggested Supplementary Conditions in this Article.

ARTICLE 15—PAYMENTS TO CONTRACTOR, SET OFFS; COMPLETIONS; CORRECTION PERIOD

15.03 *Substantial Completion*

SC-15.03 Add the following new subparagraph to Paragraph 15.03.B:

1. If some or all of the Work has been determined not to be at a point of Substantial Completion and will require re-inspection or re-testing by Engineer, the cost of such re-inspection or re-testing, including the cost of time, travel and living expenses, will be paid by Contractor to Owner. If Contractor does not pay, or the parties are unable to agree as to the amount owed, then Owner may impose a reasonable set-off against payments due under this Article 15.

15.08 *Correction Period*

SC-15.08 Add the following new Paragraph 15.08.G:

G. The correction period specified as one year after the date of Substantial Completion in Paragraph 15.08.A of the General Conditions is hereby revised to be the number of years set forth in SC-6.01.B.1; or if no such revision has been made in SC-6.01.B, then the correction period is hereby specified to be **[number]** years after Substantial Completion.

ARTICLE 16—SUSPENSION OF WORK AND TERMINATION

No suggested Supplementary Conditions in this Article.

ARTICLE 17—FINAL RESOLUTIONS OF DISPUTES

ARTICLE 18—MISCELLANEOUS

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EXHIBIT A—SOFTWARE REQUIREMENTS FOR ELECTRONIC DOCUMENT EXCHANGE

Item	Electronic Documents	Transmittal Means	Data Format	Note (1)
a.1	General communications, transmittal covers, meeting notices and responses to general information requests for which there is no specific prescribed form.	Email	Email	
a.2	Meeting agendas, meeting minutes, RFI's and responses to RFI's, and Contract forms.	Email w/ Attachment	PDF	(2)
a.3	Contactors Submittals (Shop Drawings, "or equal" requests, substitution requests, documentation accompanying Sample submittals and other submittals) to Owner and Engineer, and Owner's and Engineer's responses to Contractor's Submittals, Shop Drawings, correspondence, and Applications for Payment.	Email w/ Attachment	PDF	
a.4	Correspondence; milestone and final version Submittals of reports, layouts, Drawings, maps, calculations and spreadsheets, Specifications, Drawings and other Submittals from Contractor to Owner or Engineer and for responses from Engineer and Owner to Contractor regarding Submittals.	Email w/ Attachment or LFE	PDF	
a.5	Layouts and drawings to be submitted to Owner for future use and modification.	Email w/ Attachment or LFE	DWG	
a.6	Correspondence, reports and Specifications to be submitted to Owner for future word processing use and modification.	Email w/ Attachment or LFE	DOC	
a.7	Spreadsheets and data to be submitted to Owner for future data processing use and modification.	Email w/ Attachment or LFE	EXC	
a.8	Database files and data to be submitted to Owner for future data processing use and modification.	Email w/ Attachment or LFE	DB	

Notes	
(1)	All exchanges and uses of transmitted data are subject to the appropriate provisions of Contract Documents.
(2)	Transmittal of written notices is governed by Paragraph 18.01 of the General Conditions.

Key	
Email	Standard Email formats (.htm, .rtf, or .txt). Do not use stationery formatting or other features that impair legibility of content on screen or in printed copies
LFE	Agreed upon Large File Exchange method (FTP, CD, DVD, hard drive)
PDF	Portable Document Format readable by Adobe® Acrobat Reader Version **[number]** or later
DWG	Autodesk® AutoCAD .dwg format Version **[number]**
DOC	Microsoft® Word .docx format Version **[number]**
EXC	Microsoft® Excel .xls or .xml format Version **[number]**
DB	Microsoft® Access .mdb format Version **[number]**

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EXHIBIT B—FORESEEABLE BAD WEATHER DAYS

Month	Number of Foreseeable Bad Weather Days in Month Based on Precipitation as Rain Equivalent (inches) (1)	Ambient Outdoor Air Temperature (degrees F)	
		Number of Foreseeable Bad Weather Days in Month Based on Low Temperature (at 11:00 a.m.)	Number of Foreseeable Bad Weather Days in Month Based on High Temperature (at 3:00 p.m.)
January			
February			
March			
April			
May			
June			
July			
August			
September			
October			
November			
December			

Notes:

1. Two inches of sleet equal one inch of rain. Five inches of wet, heavy snow equal one inch of rain. Fifteen inches of "dry" powder snow equals one inch of rain.

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EXHIBIT C—GEOTECHNICAL BASELINE REPORT SUPPLEMENT TO THE SUPPLEMENTARY CONDITIONS

1.01 *Definitions*

SC-1.01 Add to the list of definitions in Paragraph 1.01.A by inserting the following as numbered items in their proper alphabetical positions:

1. *Geotechnical Baseline Report (GBR)*—The interpretive report prepared by or for Owner regarding subsurface conditions at the Site, and containing specific baseline geotechnical conditions that may be anticipated or relied upon for bidding and contract administration purposes, subject to the controlling provisions of the Contract, including the GBR's own terms. The GBR is a Contract Document.

2. *Geotechnical Data Report (GDR)*—The factual report that collects and presents data regarding actual subsurface conditions at or adjacent to the Site, including Technical Data and other geotechnical data, prepared by or for Owner in support of the Geotechnical Baseline Report. The GDR's content may include logs of borings, trenches, and other site investigations, recorded measurements of subsurface water levels, the results of field and laboratory testing, and descriptions of the investigative and testing programs. The GDR does not include an interpretation of the data. If opinions, or interpretive or speculative non-factual comments or statements appear in a document that is labeled a GDR, such opinions, comments, or statements are not operative parts of the GDR and do not have contractual standing. Subject to that exception, the GDR is a Contract Document.

5.03 *Subsurface and Physical Conditions*

SC-5.03 Delete Paragraph 5.03 in its entirety and replace with the following:

5.03 *Subsurface and Physical Conditions*

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

1. those reports of explorations and tests of subsurface conditions at or adjacent to the Site (other than any Geotechnical Data Report or Geotechnical Baseline Report) that contain Technical Data. Such reports are as follows:

   a. *Report Title:* **[Exact title of the document]**

   b. *Date of Report:* **[Date report was issued]**

   c. *Technical Data in report upon which Contractor may rely*: **[Identify Technical Data (for example, "Boring Log, Test Site 3") and specify page number or other reference where Technical Data is located within the report. List multiple Technical Data line items per entry when appropriate.]**

2. those drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data. Such drawings are as follows:

   a. *Drawings Title:* **[Exact title of the drawings]**

   b. *Date of Drawings:* **[Date drawings were issued]**

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c. *Technical Data in drawings upon which Contractor may rely:* **[Identify Technical Data (for example, "Plan View of Rock Outcroppings") in drawings, or state "All information in drawing" if entire content is Technical Data entitled to reliance; and specify drawing number, page number, or other reference where the Technical Data is located. List multiple Technical Data line items per entry when appropriate.]**

3. Contractor may examine copies of reports and drawings identified immediately above that were not included with the Bidding Documents at **[location]** during regular business hours, or may request copies from Engineer, at the cost of reproduction.

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

C. *Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely upon the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b.

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

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or

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

3. the contents of other Site-related documents made available to Contractor, such as record drawings from other projects at or adjacent to the Site, or Owner's archival documents concerning the Site; or

4. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

E. *Geotechnical Baseline Report*

1. This Contract contains a Geotechnical Baseline Report ("GBR"), identified as follows: **[Example: Geotechnical Baseline Report for Northwest Interceptor, dated February 12, 2013, prepared by ABC Geotechnical Engineers, Inc., Sacramento, California]**. This Contract also contains a Geotechnical Data Report (GDR), identified as follows: **[Example: Geotechnical Data Report for Northwest Interceptor, dated June 15, 2012, prepared by ABC Geotechnical Engineers, Inc., Sacramento, California]**.

2. The GBR and GDR are incorporated as Contract Documents. The GBR and GDR are to be used in conjunction with other Contract Documents, including the Drawings and

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Specifications. If there is a conflict between the terms of the GBR and the GDR, the GBR's terms prevail.

3. The GBR describes certain select subsurface conditions that are anticipated to be encountered by Contractor during construction in specified locations (referred to here in the Supplementary Conditions as "Baseline Conditions"). These may include ground, geological, groundwater, and other subsurface geotechnical conditions, and baselines of anticipated Underground Facilities or subsurface structures.

4. The Baseline Conditions will be used to assist in the administration of the Contract's differing site conditions clause at locations where subsurface conditions have been baselined. If a condition is baselined in the GBR, then only the pertinent Baseline Conditions will be used to determine whether there is a differing site condition; and no other indication of that condition in the Contract Documents or Technical Data, or of a condition that describes, quantifies, or measures a similar characteristic of the subsurface, will be used for the differing site condition determination.

5. The Baseline Conditions will not be used to make differing site conditions determinations at locations that have not been baselined in the GBR, or at any location with respect to subsurface conditions that the Baseline Conditions do not address. If Underground Facilities or Hazardous Environmental Conditions are expressly addressed in the Baseline Conditions, then comparison to such Baseline Conditions will be the primary means of determining (a) whether an Underground Facility was shown or indicated with reasonable accuracy, as provided in Paragraph 5.05 of the General Conditions, or (b) whether a Hazardous Environmental Condition was shown or indicated in the Contract Documents as indicated in Paragraph 5.06.H of the General Conditions. As indicated in Paragraph SC-5.04 below, the GDR will be the primary resource for differing site conditions determinations in cases in which the GBR is inapplicable.

6. The descriptions of subsurface conditions provided in the GBR are based on geotechnical investigations, laboratory tests, interpretation, interpolation, extrapolation, and analyses. Neither Owner, Engineer, nor any geotechnical or other consultant warrants or guarantees that actual subsurface conditions will be as described in the GBR, nor is the GBR intended to warrant or guarantee the use of specific means or methods of construction.

7. The behavior of the ground during construction depends substantially upon the Contractor's selected means, methods, techniques, sequences, and procedures of construction. If ground behavior conditions are baselined in the GBR, they are based on stated assumptions regarding construction means and methods.

8. The GBR will not reduce or relieve Contractor of its responsibility for the planning, selection, and implementation of safety precautions and programs incident to Contractor's means, methods, techniques, sequences, and procedures of construction, or to the Work.

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5.04 *Differing Subsurface or Physical Conditions*

SC-5.04 Delete Paragraph 5.04 in its entirety and replace with the following:

5.04 *Differing Subsurface or Physical Conditions*

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

1. differs materially from conditions shown or indicated in the GBR; or

2. differs materially from conditions shown or indicated in the GDR, to the extent the GBR is inapplicable; or

3. differs materially from conditions shown or indicated in Contract Documents other than the GBR or GDR, to the extent the GBR and GDR are inapplicable; or

4. to the extent the GBR and GDR are inapplicable, is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate; or

5. to the extent the GBR and GDR are inapplicable, is of such a nature as to require a change in the Drawings or Specifications; or

6. to the extent the GBR and GDR are inapplicable, is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

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

B. *Engineer's Review:* After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine the necessity of Owner's obtaining additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph SC-5.04.A above; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption or continuation of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.

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

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D. *Early Resumption of Work:* If at any time Engineer determines that Work in connection with the subsurface or physical condition in question may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the condition in question has been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.

E. *Possible Price and Times Adjustments*

1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

    a. such condition must fall within any one or more of the categories described in Paragraph SC-5.04.A;

    b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03 of the General Conditions; and

    c. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E.

2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:

    a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise; or

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

    c. Contractor failed to give the written notice as required by Paragraph SC-5.04.A.

3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment must be set forth in a Change Order.

4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.

F. *Underground Facilities; Hazardous Environmental Conditions:* Paragraph 5.05 of the General Conditions governs rights and responsibilities regarding the presence or location of Underground Facilities. Paragraph 5.06 of the General Conditions governs rights and responsibilities regarding Hazardous Environmental Conditions. The provisions of

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Paragraphs SC-5.03 and SC-5.04 are not applicable to the presence or location of Underground Facilities, or to Hazardous Environmental Conditions.

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

SUPPLEMENTARY CONDITIONS
OF THE CONSTRUCTION CONTRACT

Prepared By

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ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

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SUPPLEMENTARY CONDITIONS OF THE CONSTRUCTION CONTRACT

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SUPPLEMENTARY CONDITIONS OF THE CONSTRUCTION CONTRACT

ARTICLE 1—DEFINITIONS AND TERMINOLOGY

No suggested Supplementary Conditions in this Article.

ARTICLE 2—PRELIMINARY MATTERS

2.01 *Delivery of Bonds and Evidence of Insurance*

~~**Guidance Notes—Furnishing Copies of Insurance Policies—** Paragraph 2.01.B of the General Conditions requires that Contractor furnish certificates of insurance and copies of endorsements. Paragraph 6.02.D states that upon request by Owner or other additional insureds, Contractor must provide evidence of insurance such as copies of required policies, and documentation of applicable self-insured retentions and deductibles, such as a copy of the portion of the insurance policy establishing the retention or deductible amount. Parallel provisions (GC 2.01.C; GC 6.02.E) apply to Owner and the insurance that Owner is required to provide. Rather than relying on this two-step process (delivery of certificates of insurance and endorsements at the outset; subsequent requests for additional evidence of insurance), some contract drafters may elect to require from the outset that copies of the insurance policies, rather than certificates of insurance, be delivered to the other party. If exchange of copies of insurance policies is required, the following should be used:~~

~~SC-2.01 Delete Paragraphs 2.01.B. and C. in their entirety and insert the following in their place:~~

~~B. *Evidence of Contractor's Insurance:* When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner copies of the policies (including all endorsements, and identification of applicable self-insured retentions and deductibles) of insurance required to be provided by Contractor in this Contract. Contractor may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.~~

~~C. *Evidence of Owner's Insurance:* After receipt from Contractor of the signed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Contractor copies of the policies of insurance to be provided by Owner in this Contract (if any). Owner may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.~~

2.02 *Copies of Documents*

SC-2.02 ~~Amend the first sentence of Paragraph 2.02.A. to read as follows:~~

~~Owner shall furnish to Contractor **[number]** printed copies of the Contract Documents (including one fully signed counterpart of the Agreement), and **[one copy] [none]** in electronic portable document format (PDF).~~

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SC-2.02 Delete Paragraph 2.02.A in its entirety and insert the following new paragraph in its place:

A. Owner shall furnish to Contractor **[number]** printed copies of conformed Contract Documents incorporating and integrating all Addenda and any amendments negotiated prior to the Effective Date of the Contract (including one fully signed counterpart of the

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Agreement), and one copy in electronic portable document format (PDF). Additional printed copies of the conformed Contract Documents will be furnished upon request at the cost of reproduction.

~~2.06 *Electronic Transmittals*~~

~~SC-2.06 Delete Paragraphs 2.06.B and 2.06.C in their entirety and insert the following in their place:~~

~~B. *Electronic Documents Protocol:* The parties shall conform to the following provisions in Paragraphs 2.06.B and 2.06.C, together referred to as the Electronic Documents Protocol ("EDP" or "Protocol") for exchange of electronic transmittals.~~

~~1. *Basic Requirements*~~

~~a. To the fullest extent practical, the parties agree to and will transmit and accept Electronic Documents in an electronic or digital format using the procedures described in this Protocol. Use of the Electronic Documents and any information contained therein is subject to the requirements of this Protocol and other provisions of the Contract.~~

~~b. The contents of the information in any Electronic Document will be the responsibility of the transmitting party.~~

~~c. Electronic Documents as exchanged by this Protocol may be used in the same manner as the printed versions of the same documents that are exchanged using non-electronic format and methods, subject to the same governing requirements, limitations, and restrictions, set forth in the Contract Documents.~~

~~d. Except as otherwise explicitly stated herein, the terms of this Protocol will be incorporated into any other agreement or subcontract between a party and any third party for any portion of the Work on the Project, or any Project related services, where that third party is, either directly or indirectly, required to exchange Electronic Documents with a party or with Engineer. Nothing herein will modify the requirements of the Contract regarding communications between and among the parties and their subcontractors and consultants.~~

~~e. When transmitting Electronic Documents, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the receiving party's use of software application packages, operating systems, or computer hardware differing from those established in this Protocol.~~

~~f. Nothing herein negates any obligation 1) in the Contract to create, provide, or maintain an original printed record version of Drawings and Specifications, signed and sealed according to applicable Laws and Regulations; 2) to comply with any applicable Law or Regulation governing the signing and sealing of design documents or the signing and electronic transmission of any other documents; or 3) to comply with the notice requirements of Paragraph 18.01 of the General Conditions.~~

~~2. *System Infrastructure for Electronic Document Exchange*~~

~~a. Each party will provide hardware, operating system(s) software, internet, e-mail, and large file transfer functions ("System Infrastructure") at its own cost and sufficient for complying with the EDP requirements. With the exception of~~

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minimum standards set forth in this EDP, and any explicit system requirements specified by attachment to this EDP, it is the obligation of each party to determine, for itself, its own System Infrastructure.

1) The maximum size of an email attachment for exchange of Electronic Documents under this EDP is **[number]** MB. Attachments larger than that may be exchanged using large file transfer functions or physical media.

2) Each Party assumes full and complete responsibility for any and all of its own costs, delays, deficiencies, and errors associated with converting, translating, updating, verifying, licensing, or otherwise enabling its System Infrastructure, including operating systems and software, for use with respect to this EDP.

b. Each party is responsible for its own system operations, security, back-up, archiving, audits, printing resources, and other Information Technology ("IT") for maintaining operations of its System Infrastructure during the Project, including coordination with the party's individual(s) or entity responsible for managing its System Infrastructure and capable of addressing routine communications and other IT issues affecting the exchange of Electronic Documents.

c. Each party will operate and maintain industry-standard, industry-accepted, ISO-standard, commercial-grade security software and systems that are intended to protect the other party from: software viruses and other malicious software like worms, trojans, adware; data breaches; loss of confidentiality; and other threats in the transmission to or storage of information from the other parties, including transmission of Electronic Documents by physical media such as CD/DVD/flash drive/hard drive. To the extent that a party maintains and operates such security software and systems, it shall not be liable to the other party for any breach of system security.

d. In the case of disputes, conflicts, or modifications to the EDP required to address issues affecting System Infrastructure, the parties shall cooperatively resolve the issues; but, failing resolution, the Owner is authorized to make and require reasonable and necessary changes to the EDP to effectuate its original intent. If the changes cause additional cost or time to Contractor, not reasonably anticipated under the original EDP, Contractor may seek an adjustment in price or time under the appropriate process in the Contract.

e. Each party is responsible for its own back-up and archive of documents sent and received during the term of the contract under this EDP, unless this EDP establishes a Project document archive, either as part of a mandatory Project website or other communications protocol, upon which the parties may rely for document archiving during the specified term of operation of such Project document archive. Further, each party remains solely responsible for its own post-Project back-up and archive of Project documents after the term of the Contract, or after termination of the Project document archive, if one is established, for as long as required by the Contract and as each party deems necessary for its own purposes.

f. If a receiving party receives an obviously corrupted, damaged, or unreadable Electronic Document, the receiving party will advise the sending party of the incomplete transmission.

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g. The parties will bring any non-conforming Electronic Documents into compliance with the EDP. The parties will attempt to complete a successful transmission of the Electronic Document or use an alternative delivery method to complete the communication.

h. The Owner will operate a Project information management system (also referred to in this EDP as "Project Website") for use of Owner, Engineer and Contractor during the Project for exchange and storage of Project related communications and information. Except as otherwise provided in this EDP or the General Conditions, use of the Project Website by the parties as described in this Paragraph will be mandatory for exchange of Project documents, communications, submittals, and other Project related information. The following conditions and standards will govern use of the Project Website:

1) **[Describe the period of time during which the Project Website will be operated and be available for reliance by the parties]**;

2) **[Provide any minimum system infrastructure, software licensing and security standards for access to and use of the Project Website]**;

3) **[Describe the types and extent of services to be provided at the Project Website (such as large file transfer, email, communication and document archives, etc.)]**; and

4) **[Include any other Project Website attributes that may be pertinent to Contractor's use of the facility and pricing of such use]**.

C. Software Requirements for Electronic Document Exchange; Limitations

1. Each party will acquire the software and software licenses necessary to create and transmit Electronic Documents and to read and to use any Electronic Documents received from the other party (and if relevant from third parties), using the software formats required in this section of the EDP.

a. Prior to using any updated version of the software required in this section for sending Electronic Documents to the other party, the originating party will first notify and receive concurrence from the other party for use of the updated version or adjust its transmission to comply with this EDP.

2. The parties agree not to intentionally edit, reverse engineer, decrypt, remove security or encryption features, or convert to another format for modification purposes any Electronic Document or information contained therein that was transmitted in a software data format, including Portable Document Format (PDF), intended by sender not to be modified, unless the receiving party obtains the permission of the sending party or is citing or quoting excerpts of the Electronic Document for Project purposes.

3. Software and data formats for exchange of Electronic Documents will conform to the requirements set forth in Exhibit A to this EDP, including software versions, if listed.

SC-2.06 Supplement Paragraph 2.06 of the General Conditions by adding the following paragraph:

D. Requests by Contractor for Electronic Documents in Other Formats

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1. Release of any Electronic Document versions of the Project documents in formats other than those identified in the Electronic Documents Protocol (if any) or elsewhere in the Contract will be at the sole discretion of the Owner.

2. To extent determined by Owner, in its sole discretion, to be prudent and necessary, release of Electronic Documents versions of Project documents and other Project information requested by Contractor ("Request") in formats other than those identified in the Electronic Documents Protocol (if any) or elsewhere in the Contract will be subject to the provisions of the Owner's response to the Request, and to the following conditions to which Contractor agrees:

   a. The content included in the Electronic Documents created by Engineer and covered by the Request was prepared by Engineer as an internal working document for Engineer's purposes solely, and is being provided to Contractor on an "AS IS" basis without any warranties of any kind, including, but not limited to any implied warranties of fitness for any purpose. As such, Contractor is advised and acknowledges that the content may not be suitable for Contractor's application, or may require substantial modification and independent verification by Contractor. The content may include limited resolution of models, not to scale schematic representations and symbols, use of notes to convey design concepts in lieu of accurate graphics, approximations, graphical simplifications, undocumented intermediate revisions, and other devices that may affect subsequent reuse.

   b. Electronic Documents containing text, graphics, metadata, or other types of data that are provided by Engineer to Contractor under the request are only for convenience of Contractor. Any conclusion or information obtained or derived from such data will be at the Contractor's sole risk and the Contractor waives any claims against Engineer or Owner arising from use of data in Electronic Documents covered by the Request.

   c. Contractor shall indemnify and hold harmless Owner and Engineer and their subconsultants from all claims, damages, losses, and expenses, including attorneys' fees and defense costs arising out of or resulting from Contractor's use, adaptation, or distribution of any Electronic Documents provided under the Request.

   d. Contractor agrees not to sell, copy, transfer, forward, give away or otherwise distribute this information (in source or modified file format) to any third party without the direct written authorization of Engineer, unless such distribution is specifically identified in the Request and is limited to Contractor's subcontractors. Contractor warrants that subsequent use by Contractor's subcontractors complies with all terms of the Contract Documents and Owner's response to Request.

3. In the event that Owner elects to provide or directs the Engineer to provide to Contractor any Contractor-requested Electronic Document versions of Project information that is not explicitly identified in the Contract Documents as being available to Contractor, the Owner shall be reimbursed by Contractor on an hourly basis (at $**[number]** per hour) for any engineering costs necessary to create or otherwise prepare the data in a manner deemed appropriate by Engineer.

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ARTICLE 3—CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 *Intent*

SC-3.01 Delete Paragraph 3.01.C in its entirety.

ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK

4.05 *Delays in Contractor's Progress*

SC-4.05 Amend Paragraph 4.05.C by adding the following subparagraphs:

5. *Weather-Related Delays*

a. If "abnormal weather conditions" as set forth in Paragraph 4.05.C.2 of the General Conditions are the basis for a request for an equitable adjustment in the Contract Times, such request must be documented by data substantiating each of the following: 1) that weather conditions were abnormal for the period of time in which the delay occurred, 2) that such weather conditions could not have been reasonably anticipated, and 3) that such weather conditions had an adverse effect on the Work as scheduled.

b. The existence of abnormal weather conditions will be determined on a month-by-month basis in accordance with the following:

1) Every workday on which one or more of the following conditions exist will be considered a "bad weather day":

i) Total precipitation (as rain equivalent) occurring between 7:00 p.m. on the preceding day (regardless of whether such preceding day is a workday) through 7:00 p.m. on the workday in question equals or exceeds **[threshold precipitation quantity]** of precipitation (as rain equivalent, based on the snow/rain conversion indicated in the table entitled Foreseeable Bad Weather Days; such table is hereby incorporated in this SC-4.05.C by reference.

ii) Ambient outdoor air temperature at 11:00 a.m. is equal to or less than the following low temperature threshold: **[temperature]** degrees Fahrenheit; or, at 3:00 p.m. the ambient outdoor temperature is equal to or greater than the following high temperature threshold: **[temperature]** degrees Fahrenheit.

2) Determination of actual bad weather days during performance of the Work will be based on the weather records measured and recorded by **[name of the entity operating the weather station]** weather monitoring station at **[location of the weather monitoring station]**.

3) Contractor shall anticipate the number of foreseeable bad weather days per month indicated in the table in Exhibit **[exhibit number]**—Foreseeable Bad Weather Days.

4) In each month, every bad weather day exceeding the number of foreseeable bad weather days established in the table in Exhibit **[exhibit number]**—Foreseeable Bad Weather Days will be considered as "abnormal weather

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~~conditions." The existence of abnormal weather conditions will not relieve Contractor of the obligation to demonstrate and document that delays caused by abnormal weather are specific to the planned work activities or that such activities thus delayed were on Contractor's then-current Progress Schedule's critical path for the Project.~~

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

~~5.03 *Subsurface and Physical Conditions*~~

SC-5.03 Add the following new paragraphs immediately after Paragraph 5.03.D:

E. The following table lists the reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data, and specifically identifies the Technical Data in the report upon which Contractor may rely: **[If there are no such reports, so indicate in the table.]**

Report Title	Date of Report	Technical Data
		[Identify Technical Data]

F. The following table lists the drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data, and specifically identifies the Technical Data upon which Contractor may rely: **[If there are no such drawings, so indicate in the table.]**

Drawings Title	Date of Drawings	Technical Data
		[Identify Technical Data]

G. Contractor may examine copies of reports and drawings identified in SC-5.03.E and SC-5.03.F that were not included with the Bidding Documents at **[location]** during regular business hours, or may request copies from Engineer.

5.06 *Hazardous Environmental Conditions*

SC-5.06 Add the following new paragraphs immediately after Paragraph 5.06.A.3:

4. The following table lists the reports known to Owner relating to Hazardous Environmental Conditions at or adjacent to the Site, and the Technical Data (if any) upon which Contractor may rely: **[If there are no such reports, so indicate in the table]**

Report Title	Date of Report	Technical Data
		[Identify Technical Data]

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5. The following table lists the drawings known to Owner relating to Hazardous Environmental Conditions at or adjacent to the Site, and Technical Data (if any) contained in such Drawings upon which Contractor may rely: **[If there are no such drawings, so indicate in the table]**

Drawings Title	Date of Drawings	Technical Data
		[Identify Technical Data]

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ARTICLE 6—BONDS AND INSURANCE

~~6.01 *Performance, Payment, and Other Bonds*~~

~~SC-6.01 Add the following paragraphs immediately after Paragraph 6.01.A:~~

~~1. *Required Performance Bond Form:* The performance bond that Contractor furnishes will be in the form of EJCDC® C-610, Performance Bond (2010, 2013, or 2018 edition).~~

~~2. *Required Payment Bond Form:* The payment bond that Contractor furnishes will be in the form of EJCDC® C-615, Payment Bond (2010, 2013, or 2018 edition).~~

~~SC-6.01 Add the following paragraphs immediately after Paragraph 6.01.B:~~

~~1. The correction period specified as one year after the date of Substantial Completion in Paragraph 15.08.A of the General Conditions is hereby revised to be **[number—either 2, 3, or other]** years after Substantial Completion.~~

~~2. After Substantial Completion, Contractor shall furnish a warranty bond issued in the form of EJCDC® C-612, Warranty Bond (2018). The warranty bond must be in a bond amount of **[number—either 10, 15, or other]** percent of the final Contract Price. The warranty bond period will extend to a date **[number—either 2, 3, or other]** years after Substantial Completion of the Work. Contractor shall deliver the fully executed warranty bond to Owner prior to or with the final application for payment, and in any event no later than 11 months after Substantial Completion.~~

~~3. The warranty bond must be issued by the same surety that issues the performance bond required under Paragraph 6.01.A of the General Conditions.~~

~~6.02 *Insurance—General Provisions*~~

~~SC-6.02 Add the following paragraph immediately after Paragraph 6.02.B:~~

~~1. Contractor may obtain worker's compensation insurance from an insurance company that has not been rated by A.M. Best, provided that such company (a) is domiciled in the state in which the Project is located, (b) is certified or authorized as a worker's compensation insurance provider by the appropriate state agency, and (c) has been accepted to provide worker's compensation insurance for similar projects by the state within the last 12 months.~~

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~~SC-6.02 Add the following paragraph immediately after Paragraph 6.02.H.2 of the General Conditions:~~

~~3. For the following Subcontractors, Suppliers, or categories of Subcontractor or Supplier, Contractor shall require the following specified insurance, with policy limits as stated: **[Identify Subcontractors, Suppliers, or categories of same, and insert specific insurance requirements and policy limits]**~~

6.03 *Contractor's Insurance*

SC-6.03 Supplement Paragraph 6.03 with the following provisions after Paragraph 6.03.C:

D. *Other Additional Insureds:* As a supplement to the provisions of Paragraph 6.03.C of the General Conditions, the commercial general liability, automobile liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies must include as additional insureds (in addition to Owner and Engineer) the following: **[Here list by legal name (not category, role, or classification) other persons or entities to be included as additional insureds. See GC-6.03.C.]**

E. *Workers' Compensation and Employer's Liability:* Contractor shall purchase and maintain workers' compensation and employer's liability insurance, including, as applicable, United States Longshoreman and Harbor Workers' Compensation Act, Jones Act, stop-gap employer's liability coverage for monopolistic states, and foreign voluntary workers' compensation (from available sources, notwithstanding the jurisdictional requirement of Paragraph 6.02.B of the General Conditions).

Workers' Compensation and Related Policies	Policy limits of not less than:
Workers' Compensation	
State	Statutory
Applicable Federal (e.g., Longshoreman's)	Statutory
Foreign voluntary workers' compensation (employer's responsibility coverage), if applicable	Statutory
Jones Act (if applicable)	
Bodily injury by accident—each accident	$
Bodily injury by disease—aggregate	$
Employer's Liability	
Each accident	$
Each employee	$
Policy limit	$
Stop-gap Liability Coverage	
For work performed in monopolistic states, stop-gap liability coverage must be endorsed to either the worker's compensation or commercial general liability policy with a minimum limit of:	$

F. *Commercial General Liability—Claims Covered:* Contractor shall purchase and maintain commercial general liability insurance, covering all operations by or on behalf of Contractor, on an occurrence basis, against claims for:

1. damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees,

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2. damages insured by reasonably available personal injury liability coverage, and

3. damages because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom.

G. *Commercial General Liability—Form and Content:* Contractor's commercial liability policy must be written on a 1996 (or later) Insurance Services Organization, Inc. (ISO) commercial general liability form (occurrence form) and include the following coverages and endorsements:

1. Products and completed operations coverage.

a. Such insurance must be maintained for three years after final payment.

b. Contractor shall furnish Owner and each other additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract) evidence of continuation of such insurance at final payment and three years thereafter.

2. Blanket contractual liability coverage, including but not limited to coverage of Contractor's contractual indemnity obligations in Paragraph 7.18.

3. Severability of interests and no insured-versus-insured or cross-liability exclusions.

4. Underground, explosion, and collapse coverage.

5. Personal injury coverage.

6. Additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together). If Contractor demonstrates to Owner that the specified ISO endorsements are not commercially available, then Contractor may satisfy this requirement by providing equivalent endorsements.

7. For design professional additional insureds, ISO Endorsement CG 20 32 07 04 "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent.

H. *Commercial General Liability—Excluded Content:* The commercial general liability insurance policy, including its coverages, endorsements, and incorporated provisions, must not include any of the following:

1. Any modification of the standard definition of "insured contract" (except to delete the railroad protective liability exclusion if Contractor is required to indemnify a railroad or others with respect to Work within 50 feet of railroad property).

2. Any exclusion for water intrusion or water damage.

3. Any provisions resulting in the erosion of insurance limits by defense costs other than those already incorporated in ISO form CG 00 01.

4. Any exclusion of coverage relating to earth subsidence or movement.

5. Any exclusion for the insured's vicarious liability, strict liability, or statutory liability (other than worker's compensation).

6. Any limitation or exclusion based on the nature of Contractor's work.

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7. Any professional liability exclusion broader in effect than the most recent edition of ISO form CG 22 79.

I. *Commercial General Liability—Minimum Policy Limits*

Commercial General Liability	Policy limits of not less than:
General Aggregate	$
Products—Completed Operations Aggregate	$
Personal and Advertising Injury	$
Bodily Injury and Property Damage—Each Occurrence	$

J. *Automobile Liability:* Contractor shall purchase and maintain automobile liability insurance for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy must be written on an occurrence basis.

Automobile Liability	Policy limits of not less than:
Bodily Injury	
Each Person	$
Each Accident	$
Property Damage	
Each Accident	$
[or]	
Combined Single Limit	
Combined Single Limit (Bodily Injury and Property Damage)	$

K. *Umbrella or Excess Liability:* Contractor shall purchase and maintain umbrella or excess liability insurance written over the underlying employer's liability, commercial general liability, and automobile liability insurance described in the Paragraphs above. The coverage afforded must be at least as broad as that of each and every one of the underlying policies.

Excess or Umbrella Liability	Policy limits of not less than:
Each Occurrence	$
General Aggregate	$

L. *Using Umbrella or Excess Liability Insurance to Meet CGL and Other Policy Limit Requirements:* Contractor may meet the policy limits specified for employer's liability, commercial general liability, and automobile liability through the primary policies alone, or through combinations of the primary insurance policy's policy limits and partial attribution of the policy limits of an umbrella or excess liability policy that is at least as broad in coverage as that of the underlying policy, as specified herein. If such umbrella or excess liability policy was required under this Contract, at a specified minimum policy limit, such umbrella or excess policy must retain a minimum limit of $**[specify amount]** after accounting for partial attribution of its limits to underlying policies, as allowed above.

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M. *Contractor's Pollution Liability Insurance:* Contractor shall purchase and maintain a policy covering third-party injury and property damage, including cleanup costs, as a result of pollution conditions arising from Contractor's operations and completed operations. This insurance must be maintained for no less than three years after final completion.

Contractor's Pollution Liability	**Policy limits of not less than:**
Each Occurrence/Claim	$
General Aggregate	$

N. *Contractor's Professional Liability Insurance:* If Contractor will provide or furnish professional services under this *Contract*, through a delegation of professional design services or otherwise, then Contractor shall be responsible for purchasing and maintaining applicable professional liability insurance. This insurance must cover negligent acts, errors, or omissions in the performance of professional design or related services by the insured or others for whom the insured is legally liable. The insurance must be maintained throughout the duration of the Contract and for a minimum of two years after Substantial Completion. The retroactive date on the policy must pre-date the commencement of furnishing services on the Project.

Contractor's Professional Liability	**Policy limits of not less than:**
Each Claim	$
Annual Aggregate	$

O. *Railroad Protective Liability Insurance:* Prior to commencing any Work within 50 feet of railroad-owned and controlled property, Contractor shall (1) endorse its commercial general liability policy with ISO CG 24 17, removing the contractual liability exclusion for work within 50 feet of a railroad, (2) purchase and maintain railroad protective liability insurance meeting the following requirements, (3) furnish a copy of the endorsement to Owner, and (4) submit a copy of the railroad protective policy and other railroad-required documentation to the railroad, and notify Owner of such submittal.

[Insert additional specific requirements, commonly set by the railroad, here.]

Railroad Protective Liability Insurance	**Policy limits of not less than:**
Each Claim	$
Aggregate	$

P. *Unmanned Aerial Vehicle Liability Insurance:* If Contractor uses unmanned aerial vehicles (UAV—commonly *referred* to as drones) at the Site or in support of any aspect of the Work, Contractor shall obtain UAV liability insurance in the amounts stated; name Owner, Engineer, and all individuals and entities identified in the Supplementary Conditions as additional insureds; and provide a certificate to Owner confirming Contractor's compliance with this requirement. Such insurance will provide coverage for property damage, bodily injury or death, and invasion of privacy.

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Unmanned Aerial Vehicle Liability Insurance	Policy limits of not less than:
Each Claim	$
General Aggregate	$

Q. *Other Required Insurance:* **[Here list additional types and amounts of insurance that Contractor is required to carry.]**

6.04 *Builder's Risk and Other Property Insurance*

~~SC-6.04 Delete Paragraph 6.04.A and insert the following in its place:~~

~~A. Owner shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the Work's full insurable replacement cost (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). The specific requirements applicable to the builder's risk insurance are set forth in the Supplementary Conditions.~~

SC-6.04 Supplement Paragraph 6.04 of the General Conditions with the following provisions:

F. *Builder's Risk Requirements:* The builder's risk insurance must:

1. be written on a builder's risk "all risk" policy form that at a minimum includes insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment stored and in transit, and must not exclude the coverage of the following risks: fire; windstorm; hail; flood; earthquake, volcanic activity, and other earth movement; lightning; riot; civil commotion; terrorism; vehicle impact; aircraft; smoke; theft; vandalism and malicious mischief; mechanical breakdown, boiler explosion, and artificially generated electric current; collapse; explosion; debris removal; demolition occasioned by enforcement of Laws and Regulations; and water damage (other than that caused by flood).

    a. Such policy will include an exception that results in coverage for ensuing losses from physical damage or loss with respect to any defective workmanship, methods, design, or materials exclusions.

    b. If insurance against mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake, volcanic activity, and other earth movement; or flood, are not commercially available under builder's risk policies, by endorsement or otherwise, such insurance will be provided through other insurance policies acceptable to Owner and Contractor.

2. cover, as insured property, at least the following: (a) the Work and all materials, supplies, machinery, apparatus, equipment, fixtures, and other property of a similar nature that are to be incorporated into or used in the preparation, fabrication, construction, erection, or completion of the Work, including Owner-furnished or assigned property; (b) spare parts inventory required within the scope of the Contract; and (c) temporary works which are not intended to form part of the permanent constructed Work but which are intended to provide working access to the Site, or to the Work under construction, or which are intended to provide temporary support for the Work under construction, including scaffolding, form work, fences, shoring, falsework, and temporary structures.

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3. cover expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of contractors, engineers, and architects).
4. extend to cover damage or loss to insured property while in temporary storage at the Site or in a storage location outside the Site (but not including property stored at the premises of a manufacturer or Supplier). If this coverage is subject to a sublimit, such sublimit will be a minimum of $**[amount]**.
5. extend to cover damage or loss to insured property while in transit. If this coverage is subject to a sublimit, such sublimit will be a minimum of $**[amount]**.
6. allow for the waiver of the insurer's subrogation rights, as set forth in this Contract.
7. allow for partial occupancy or use by Owner by endorsement, and without cancellation or lapse of coverage.
8. include performance/hot testing and start-up, if applicable.
9. be maintained in effect until the Work is complete, as set forth in Paragraph 15.06.D of the General Conditions, or until written confirmation of Owner's procurement of property insurance following Substantial Completion, whichever occurs first.
10. include as named insureds the Owner, Contractor, Subcontractors (of every tier), and any other individuals or entities required by this Contract to be insured under such builder's risk policy. For purposes of Paragraphs 6.04, 6.05, and 6.06 of the General Conditions, and this and all other corresponding Supplementary Conditions, the parties required to be insured will be referred to collectively as "insureds." In addition to Owner, Contractor, and Subcontractors of every tier, include as insureds the following:
    a. **[Here list by legal name (not category, role, or classification) other persons or entities to be included on the builder's risk policy as named insureds. It is generally recommended to list the insured's full legal/contractual name, address, contact person, telephone, and e-mail address. Include only persons or entities that have property at the Site that is to be insured by the builder's risk insurance. If applicable, separately identify any mortgagee or lender required to be named as a loss payee.]**
11. include, in addition to the Contract Price amount, the value of the following equipment and materials to be installed by the Contractor but furnished by the Owner or third parties:
    a. **[Here list or provide cross-reference to specific items of Owner-furnished (or third-party furnished) equipment, and purchase value; do not list items whose value is already included in the Contract Price.]**
12. If debris removal in connection with repair or replacement of insured property is subject to a coverage sublimit, such sublimit will be a minimum of $**[amount]**.
13. In addition to the coverage sublimits stated above, the following coverages are also subject to sublimits, as follows:
    a. **[Here list a specific coverage, or cause of loss, that has been determined to be likely to be subject to a sublimit. If not applicable, then delete**

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Paragraph SC-6.04.F.13 in its entirety.] If this coverage is subject to a sublimit, such sublimit will be a minimum of $**[amount]**.

SC-6.04 Supplement Paragraph 6.04 of the General Conditions with the following provision:

G. *Coverage for Completion Delays:* The builder's risk policy will include, for the benefit of Owner, loss of revenue and soft cost coverage for losses arising from delays in completion that result from covered physical losses or damage. Such coverage will include, without limitation, fixed expenses and debt service for a minimum of 12 months with a maximum deductible of 30 days, compensation for loss of net revenues, rental costs, and attorneys' fees and engineering or other consultants' fees, if not otherwise covered.

SC-6.04 Supplement Paragraph 6.04 of the General Conditions with the following provisions:

H. *Builder's Risk and Other Property Insurance Deductibles:* The purchaser of any required builder's risk, installation floater, or other property insurance will be responsible for costs not covered because of the application of a policy deductible.

1. The builder's risk policy (or if applicable the installation floater) will be subject to a deductible amount of no more than $**[number]** for direct physical loss in any one occurrence.

~~SC-6.04 Delete Paragraph 6.04.A of the General Conditions and substitute the following in its place:~~

~~A. *Installation Floater*~~

~~1. Contractor shall provide and maintain installation floater insurance on a broad form or "all-risk" policy providing coverage for materials, supplies, machinery, fixtures, and equipment that will be incorporated into the Work ("Covered Property"). Coverage under the Contractor's installation floater will include loss from covered "all-risk" causes (perils) to Covered Property:~~

~~a. of the Contractor, and Covered Property of others that is in Contractor's care, custody, and control;~~

~~b. while in transit to the Site, including while at temporary storage sites;~~

~~c. while at the Site awaiting and during installation, erection, and testing;~~

~~d. continuing at least until the installation or erection of the Covered Property is completed, and the Work into which it is incorporated is accepted by Owner.~~

~~2. The installation floater coverage cannot be contingent on an external cause or risk, or limited to property for which the Contractor is legally liable.~~

~~3. The installation floater coverage will be in an amount sufficient to protect Contractor's interest in the Covered Property. The Contractor will be solely responsible for any deductible carried under this coverage.~~

~~4. This policy will include a waiver of subrogation applicable to Owner, Contractor, Engineer, all Subcontractors, and the officers, directors, partners, employees, agents and other consultants and subcontractors of any of them.~~

ARTICLE 7—CONTRACTOR'S RESPONSIBILITIES

7.03 *Labor; Working Hours*

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SC-7.03 Add the following new subparagraphs immediately after Paragraph 7.03.C:

1. Regular working hours will be **[Here insert schedule of regular working hours]**.

2. Owner's legal holidays are **[Here insert list of legal holidays]**.

SC-7.03 Amend the first and second sentences of Paragraph 7.03.C to state "…all Work at the Site must be performed during regular working hours, **[day of the week]** through **[day of the week]**. Contractor will not perform Work on a **[day of the week]**, **[day of the week]**, or any legal holiday."

~~SC-7.03 Delete Paragraph 7.03.C in its entirety, and insert the following:~~

~~C. In the absence of any Laws or Regulations to the contrary, Contractor may perform the Work on holidays, during any or all hours of the day, and on any or all days of the week, at Contractor's sole discretion.~~

~~SC-7.03 Add the following new paragraph immediately after Paragraph 7.03.C:~~

~~D. **[Contractor] [Owner] [choose one and delete the other]** shall be responsible for the cost of any overtime pay or other expense incurred by the Owner for Engineer's services (including those of the Resident Project Representative, if any), Owner's representative, and construction observation services, occasioned by the performance of Work on Saturday, Sunday, any legal holiday, or as overtime on any regular work day. If Contractor is responsible but does not pay, or if the parties are unable to agree as to the amount owed, then Owner may impose a reasonable set-off against payments due under Article 15.~~

~~SC-7.03 Add the following new subparagraph immediately after Paragraph SC-7.03.D:~~

~~1. For purposes of administering the foregoing requirement, additional overtime costs are defined as **[Here insert parameters for compensated overtime hours]**.~~

~~7.10 *Taxes*~~

~~SC-7.10 Add a new paragraph immediately after Paragraph 7.10.A:~~

~~B. Owner is exempt from payment of sales and compensating use taxes of the State of **[name of state where Project is located]** and of cities and counties thereof on all materials to be incorporated into the Work.~~

~~1. Owner will furnish the required certificates of tax exemption to Contractor for use in the purchase of supplies and materials to be incorporated into the Work.~~

~~2. Owner's exemption does not apply to construction tools, machinery, equipment, or other property purchased by or leased by Contractor, or to supplies or materials not incorporated into the Work.~~

~~7.13 *Safety and Protection*~~

~~SC-7.13 Insert the following after the second sentence of Paragraph 7.13.G:~~

~~The following Owner safety programs are applicable to the Work: **[Here expressly identify by title and/or date, any such Owner safety programs. If Owner's safety programs are included in or addressed in the Specifications, SC-7.13 may be used to provide a cross-reference to the Specification section]**.~~

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ARTICLE 8—OTHER WORK AT THE SITE

~~8.02 *Coordination*~~

~~SC-8.02 Add the following new Paragraph 8.02.C immediately after Paragraph 8.02.B:~~

~~C. Owner intends to contract with others for the performance of other work at or adjacent to the Site.~~

~~1. **[Here identify individual or entirety]** shall have authority and responsibility for coordination of the various contractors and work forces at the Site;~~

~~2. The following specific matters are to be covered by such authority and responsibility: **[Here itemize such matters]**;~~

~~3. The extent of such authority and responsibilities is: **[Here provide the extent]**.~~

ARTICLE 9—OWNER'S RESPONSIBILITIES

~~9.13 *Owner's Site Representative*~~

~~SC-9.13 Add the following new paragraph immediately after Paragraph 9.12 of the General Conditions:~~

~~9.13 *Owner's Site Representative*~~

~~A. Owner will furnish an "Owner's Site Representative" to represent Owner at the Site and assist Owner in observing the progress and quality of the Work. The Owner's Site Representative is not Engineer's consultant, agent, or employee. Owner's Site Representative will be **[here identify individual or entity]**. The authority and responsibilities of Owner's Site Representative follow: **[Here describe the duties and activities of the Owner's Site Representative.]**~~

ARTICLE 10—ENGINEER'S STATUS DURING CONSTRUCTION

10.03 *Resident Project Representative*

~~SC-10.03 Add the following new subparagraph immediately after Paragraph 10.03.A:~~

~~1. On this Project, by agreement with the Owner, the Engineer will not furnish a Resident Project Representative to represent Engineer at the Site or assist Engineer in observing the progress and quality of the Work.~~

SC-10.03 Add the following new paragraphs immediately after Paragraph 10.03.B:

C. The Resident Project Representative (RPR) will be Engineer's representative at the Site. RPR's dealings in matters pertaining to the Work in general will be with Engineer and Contractor. RPR's dealings with Subcontractors will only be through or with the full knowledge or approval of Contractor. The RPR will:

1. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings (but not including Contractor's safety meetings), and as appropriate prepare and circulate copies of minutes thereof.

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2. *Safety Compliance:* Comply with Site safety programs, as they apply to RPR, and if required to do so by such safety programs, receive safety training specifically related to RPR's own personal safety while at the Site.

3. *Liaison*

    a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the provisions and intent of the Contract Documents.

    b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.

    c. Assist in obtaining from Owner additional details or information, when required for Contractor's proper execution of the Work.

4. *Review of Work; Defective Work*

    a. Conduct on-Site observations of the Work to assist Engineer in determining, to the extent set forth in Paragraph 10.02, if the Work is in general proceeding in accordance with the Contract Documents.

    b. Observe whether any Work in place appears to be defective.

    c. Observe whether any Work in place should be uncovered for observation, or requires special testing, inspection or approval.

5. *Inspections and Tests*

    a. Observe Contractor-arranged inspections required by Laws and Regulations, including but not limited to those performed by public or other agencies having jurisdiction over the Work.

    b. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Work.

6. *Payment Requests:* Review Applications for Payment with Contractor.

7. *Completion*

    a. Participate in Engineer's visits regarding Substantial Completion.

    b. Assist in the preparation of a punch list of items to be completed or corrected.

    c. Participate in Engineer's visit to the Site in the company of Owner and Contractor regarding completion of the Work, and prepare a final punch list of items to be completed or corrected by Contractor.

    d. Observe whether items on the final punch list have been completed or corrected.

D. The RPR will not:

1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).

2. Exceed limitations of Engineer's authority as set forth in the Contract Documents.

3. Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers.

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4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction.

5 Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.

6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.

7. Authorize Owner to occupy the Project in whole or in part.

ARTICLE 11—CHANGES TO THE CONTRACT

No suggested Supplementary Conditions in this Article.

ARTICLE 12—CLAIMS

No suggested Supplementary Conditions in this Article.

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

13.01 *Cost of the Work*

~~SC-13.01 Supplement Paragraph 13.01.B.5.c.(2) by adding the following sentence:~~

~~The equipment rental rate book that governs the included costs for the rental of machinery and equipment owned by Contractor (or a related entity) under the Cost of the Work provisions of this Contract is the most current edition of **[name of equipment rental rate book]**.~~

SC-13.01 Supplement Paragraph 13.01.C.2 by adding the following definition of small tools and hand tools:

a. For purposes of this paragraph, "small tools and hand tools" means any tool or equipment whose current price if it were purchased new at retail would be less than $500. **[or insert other threshold price.]**

~~13.03 *Unit Price Work*~~

~~SC-13.03 Delete Paragraph 13.03.E in its entirety and insert the following in its place:~~

~~E. *Adjustments in Unit Price*~~

~~1. Contractor or Owner shall be entitled to an adjustment in the unit price with respect to an item of Unit Price Work if:~~

~~a. the extended price of a particular item of Unit Price Work amounts to **[number]** percent or more of the Contract Price (based on estimated quantities at the time of Contract formation) and the variation in the quantity of that particular item of Unit Price Work actually furnished or performed by Contractor differs by more than **[number]** percent from the estimated quantity of such item indicated in the Agreement; and~~

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~~b. Contractor's unit costs to perform the item of Unit Price Work have changed materially and significantly as a result of the quantity change.~~

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

~~3. Adjusted unit prices will apply to all units of that item.~~

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

No suggested Supplementary Conditions in this Article.

ARTICLE 15—PAYMENTS TO CONTRACTOR, SET OFFS; COMPLETIONS; CORRECTION PERIOD

~~15.01 *Progress Payments*~~

~~SC-15.01 Add the following new Paragraph 15.01.F:~~

~~F. For contracts in which the Contract Price is based on the Cost of Work, if Owner determines that progress payments made to date substantially exceed the actual progress of the Work (as measured by reference to the Schedule of Values), or present a potential conflict with the Guaranteed Maximum Price, then Owner may require that Contractor prepare and submit a plan for the remaining anticipated Applications for Payment that will bring payments and progress into closer alignment and take into account the Guaranteed Maximum Price (if any), through reductions in billings, increases in retainage, or other equitable measures. Owner will review the plan, discuss any necessary modifications, and implement the plan as modified for all remaining Applications for Payment.~~

15.03 *Substantial Completion*

SC-15.03 Add the following new subparagraph to Paragraph 15.03.B:

1. If some or all of the Work has been determined not to be at a point of Substantial Completion and will require re-inspection or re-testing by Engineer, the cost of such re-inspection or re-testing, including the cost of time, travel and living expenses, will be paid by Contractor to Owner. If Contractor does not pay, or the parties are unable to agree as to the amount owed, then Owner may impose a reasonable set-off against payments due under this Article 15.

15.08 *Correction Period*

SC-15.08 Add the following new Paragraph 15.08.G:

G. The correction period specified as one year after the date of Substantial Completion in Paragraph 15.08.A of the General Conditions is hereby revised to be the number of years set forth in SC-6.01.B.1; or if no such revision has been made in SC-6.01.B, then the correction period is hereby specified to be **[number]** years after Substantial Completion.

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ARTICLE 16—SUSPENSION OF WORK AND TERMINATION

No suggested Supplementary Conditions in this Article.

ARTICLE 17—FINAL RESOLUTIONS OF DISPUTES

~~17.02 *Arbitration*~~

~~SC-17.02 Add the following new paragraph immediately after Paragraph 17.01.~~

~~17.02 *Arbitration*~~

~~A. All matters subject to final resolution under this Article will be settled by arbitration administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules (subject to the conditions and limitations of this Paragraph SC-17.02). Any controversy or claim in the amount of $100,000 or less will be settled in accordance with the American Arbitration Association's supplemental rules for Fixed Time and Cost Construction Arbitration. This agreement to arbitrate will be specifically enforceable under the prevailing law of any court having jurisdiction.~~

~~B. The demand for arbitration will be filed in writing with the other party to the Contract and with the selected arbitration administrator, and a copy will be sent to Engineer for information. The demand for arbitration will be made within the specific time required in Article 17, or if no specified time is applicable within a reasonable time after the matter in question has arisen, and in no event will any such demand be made after the date when institution of legal or equitable proceedings based on such matter in question would be barred by the applicable statute of limitations.~~

~~C. The arbitrator(s) must be licensed engineers, contractors, attorneys, or construction managers. Hearings will take place pursuant to the standard procedures of the Construction Arbitration Rules that contemplate in-person hearings. The arbitrators will have no authority to award punitive or other damages not measured by the prevailing party's actual damages, except as may be required by statute or the Contract. Any award in an arbitration initiated under this clause will be limited to monetary damages and include no injunction or direction to any party other than the direction to pay a monetary amount.~~

~~D. The Arbitrators will have the authority to allocate the costs of the arbitration process among the parties, but will only have the authority to allocate attorneys' fees if a specific Law or Regulation or this Contract permits them to do so.~~

~~E. The award of the arbitrators must be accompanied by a reasoned written opinion and a concise breakdown of the award. The written opinion will cite the Contract provisions deemed applicable and relied on in making the award.~~

~~F. The parties agree that failure or refusal of a party to pay its required share of the deposits for arbitrator compensation or administrative charges will constitute a waiver by that party to present evidence or cross-examine witness. In such event, the other party shall be required to present evidence and legal argument as the arbitrator(s) may require for the making of an award. Such waiver will not allow for a default judgment against the non-paying party in the absence of evidence presented as provided for above.~~

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G. No arbitration arising out of or relating to the Contract will include by consolidation, joinder, or in any other manner any other individual or entity (including Engineer, and Engineer's consultants and the officers, directors, partners, agents, employees or consultants of any of them) who is not a party to this Contract unless:

1. the inclusion of such other individual or entity will allow complete relief to be afforded among those who are already parties to the arbitration;

2. such other individual or entity is substantially involved in a question of law or fact which is common to those who are already parties to the arbitration, and which will arise in such proceedings;

3. such other individual or entity is subject to arbitration under a contract with either Owner or Contractor, or consents to being joined in the arbitration; and

4. the consolidation or joinder is in compliance with the arbitration administrator's procedural rules.

H. The award will be final. Judgment may be entered upon it in any court having jurisdiction thereof, and it will not be subject to modification or appeal, subject to provisions of the Laws and Regulations relating to vacating or modifying an arbitral award.

I. Except as may be required by Laws or Regulations, neither party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties, with the exception of any disclosure required by Laws and Regulations or the Contract. To the extent any disclosure is allowed pursuant to the exception, the disclosure must be strictly and narrowly limited to maintain confidentiality to the extent possible.

17.03 *Attorneys' Fees*

SC-17.03 Add the following new paragraph immediately after Paragraph 17.02. [Note: If there is no Paragraph 17.02, because neither arbitration nor any other dispute resolution process has been specified here in the Supplementary Conditions, then revise this to state "Add the following new Paragraph immediately after Paragraph 17.01" and revise the numbering accordingly].

17.03 *Attorneys' Fees*

A. For any matter subject to final resolution under this Article, the prevailing party shall be entitled to an award of its attorneys' fees incurred in the final resolution proceedings, in an equitable amount to be determined in the discretion of the court, arbitrator, arbitration panel, or other arbiter of the matter subject to final resolution, taking into account the parties' initial demand or defense positions in comparison with the final result.

ARTICLE 18—MISCELLANEOUS

18.08 *Assignment of Contract*

SC-18.08 Add the following new paragraph immediately after Paragraph 18.08.A:

B. The contract dated **[date]** between Owner as "buyer" and **[identify seller]** as "seller" for procurement of goods and special services ("procurement contract") **[is hereby] [will be]**

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assigned to Contractor by Owner, and Contractor **[accepts] [will accept]** such assignment. A form documenting the assignment is attached as an exhibit to this Contract.

1. This assignment will occur on the **[Effective Date of the Contract]**, and will relieve the Owner as "buyer" from all further obligations and liabilities under the procurement contract.
2. Upon assignment, the "seller" will be a Subcontractor or Supplier of the Contractor, and Contractor will be responsible for seller's performance, acts, and omissions, as set forth in Paragraph 7.07 of the General Conditions just as Contractor is responsible for all other Subcontractors and Suppliers.
3. Notwithstanding this assignment, all performance guarantees and warranties required by the procurement contract will continue to run for the benefit of the Owner and, in addition, for the benefit of the Contractor.
4. Except as noted in the procurement contract, all rights, duties and obligations of Engineer to "buyer" and "seller" under the procurement contract will cease **[upon the assignment to Contractor]**.

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EXHIBIT A—SOFTWARE REQUIREMENTS FOR ELECTRONIC DOCUMENT EXCHANGE

Item	Electronic Documents	Transmittal Means	Data Format	Note (1)
a.1	General communications, transmittal covers, meeting notices and responses to general information requests for which there is no specific prescribed form.	Email	Email	
a.2	Meeting agendas, meeting minutes, RFI's and responses to RFI's, and Contract forms.	Email w/ Attachment	PDF	(2)
a.3	Contactors Submittals (Shop Drawings, "or equal" requests, substitution requests, documentation accompanying Sample submittals and other submittals) to Owner and Engineer, and Owner's and Engineer's responses to Contractor's Submittals, Shop Drawings, correspondence, and Applications for Payment.	Email w/ Attachment	PDF	
a.4	Correspondence; milestone and final version Submittals of reports, layouts, Drawings, maps, calculations and spreadsheets, Specifications, Drawings and other Submittals from Contractor to Owner or Engineer and for responses from Engineer and Owner to Contractor regarding Submittals.	Email w/ Attachment or LFE	PDF	
a.5	Layouts and drawings to be submitted to Owner for future use and modification.	Email w/ Attachment or LFE	DWG	
a.6	Correspondence, reports and Specifications to be submitted to Owner for future word processing use and modification.	Email w/ Attachment or LFE	DOC	
a.7	Spreadsheets and data to be submitted to Owner for future data processing use and modification.	Email w/ Attachment or LFE	EXC	
a.8	Database files and data to be submitted to Owner for future data processing use and modification.	Email w/ Attachment or LFE	DB	

Notes	
(1)	All exchanges and uses of transmitted data are subject to the appropriate provisions of Contract Documents.
(2)	Transmittal of written notices is governed by Paragraph 18.01 of the General Conditions.

Key	
Email	Standard Email formats (.htm, .rtf, or .txt). Do not use stationery formatting or other features that impair legibility of content on screen or in printed copies
LFE	Agreed upon Large File Exchange method (FTP, CD, DVD, hard drive)
PDF	Portable Document Format readable by Adobe® Acrobat Reader Version **[number]** or later
DWG	Autodesk® AutoCAD .dwg format Version **[number]**
DOC	Microsoft® Word .docx format Version **[number]**
EXC	Microsoft® Excel .xls or .xml format Version **[number]**
DB	Microsoft® Access .mdb format Version **[number]**

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EXHIBIT B—FORESEEABLE BAD WEATHER DAYS

Month	Number of Foreseeable Bad Weather Days in Month Based on Precipitation as Rain Equivalent (inches) (1)	Ambient Outdoor Air Temperature (degrees F)	
		Number of Foreseeable Bad Weather Days in Month Based on Low Temperature (at 11:00 a.m.)	Number of Foreseeable Bad Weather Days in Month Based on High Temperature (at 3:00 p.m.)
January			
February			
March			
April			
May			
June			
July			
August			
September			
October			
November			
December			

Notes:
1. Two inches of sleet equal one inch of rain. Five inches of wet, heavy snow equal one inch of rain. Fifteen inches of "dry" powder snow equals one inch of rain.

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EXHIBIT C—GEOTECHNICAL BASELINE REPORT SUPPLEMENT TO THE SUPPLEMENTARY CONDITIONS

1.01 *Definitions*

SC-1.01 Add to the list of definitions in Paragraph 1.01.A by inserting the following as numbered items in their proper alphabetical positions:

1. *Geotechnical Baseline Report (GBR)*—The interpretive report prepared by or for Owner regarding subsurface conditions at the Site, and containing specific baseline geotechnical conditions that may be anticipated or relied upon for bidding and contract administration purposes, subject to the controlling provisions of the Contract, including the GBR's own terms. The GBR is a Contract Document.

2. *Geotechnical Data Report (GDR)*—The factual report that collects and presents data regarding actual subsurface conditions at or adjacent to the Site, including Technical Data and other geotechnical data, prepared by or for Owner in support of the Geotechnical Baseline Report. The GDR's content may include logs of borings, trenches, and other site investigations, recorded measurements of subsurface water levels, the results of field and laboratory testing, and descriptions of the investigative and testing programs. The GDR does not include an interpretation of the data. If opinions, or interpretive or speculative non-factual comments or statements appear in a document that is labeled a GDR, such opinions, comments, or statements are not operative parts of the GDR and do not have contractual standing. Subject to that exception, the GDR is a Contract Document.

5.03 *Subsurface and Physical Conditions*

SC-5.03 Delete Paragraph 5.03 in its entirety and replace with the following:

5.03 *Subsurface and Physical Conditions*

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

1. those reports of explorations and tests of subsurface conditions at or adjacent to the Site (other than any Geotechnical Data Report or Geotechnical Baseline Report) that contain Technical Data. Such reports are as follows:

a. *Report Title:* **[Exact title of the document]**

b. *Date of Report:* **[Date report was issued]**

c. *Technical Data in report upon which Contractor may rely*: **[Identify Technical Data (for example, "Boring Log, Test Site 3") and specify page number or other reference where Technical Data is located within the report. List multiple Technical Data line items per entry when appropriate.]**

2. those drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data. Such drawings are as follows:

a. *Drawings Title:* **[Exact title of the drawings]**

b. *Date of Drawings:* **[Date drawings were issued]**

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c. *Technical Data in drawings upon which Contractor may rely:* **[Identify Technical Data (for example, "Plan View of Rock Outcroppings") in drawings, or state "All information in drawing" if entire content is Technical Data entitled to reliance; and specify drawing number, page number, or other reference where the Technical Data is located. List multiple Technical Data line items per entry when appropriate.]**

3. Contractor may examine copies of reports and drawings identified immediately above that were not included with the Bidding Documents at **[location]** during regular business hours, or may request copies from Engineer, at the cost of reproduction.

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

C. *Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely upon the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b.

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

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or

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

3. the contents of other Site-related documents made available to Contractor, such as record drawings from other projects at or adjacent to the Site, or Owner's archival documents concerning the Site; or

4. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

E. *Geotechnical Baseline Report*

1. This Contract contains a Geotechnical Baseline Report ("GBR"), identified as follows: **[Example: Geotechnical Baseline Report for Northwest Interceptor, dated February 12, 2013, prepared by ABC Geotechnical Engineers, Inc., Sacramento, California]**. This Contract also contains a Geotechnical Data Report (GDR), identified as follows: **[Example: Geotechnical Data Report for Northwest Interceptor, dated June 15, 2012, prepared by ABC Geotechnical Engineers, Inc., Sacramento, California]**.

2. The GBR and GDR are incorporated as Contract Documents. The GBR and GDR are to be used in conjunction with other Contract Documents, including the Drawings and

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Specifications. If there is a conflict between the terms of the GBR and the GDR, the GBR's terms prevail.

3. The GBR describes certain select subsurface conditions that are anticipated to be encountered by Contractor during construction in specified locations (referred to here in the Supplementary Conditions as "Baseline Conditions"). These may include ground, geological, groundwater, and other subsurface geotechnical conditions, and baselines of anticipated Underground Facilities or subsurface structures.

4. The Baseline Conditions will be used to assist in the administration of the Contract's differing site conditions clause at locations where subsurface conditions have been baselined. If a condition is baselined in the GBR, then only the pertinent Baseline Conditions will be used to determine whether there is a differing site condition; and no other indication of that condition in the Contract Documents or Technical Data, or of a condition that describes, quantifies, or measures a similar characteristic of the subsurface, will be used for the differing site condition determination.

5. The Baseline Conditions will not be used to make differing site conditions determinations at locations that have not been baselined in the GBR, or at any location with respect to subsurface conditions that the Baseline Conditions do not address. If Underground Facilities or Hazardous Environmental Conditions are expressly addressed in the Baseline Conditions, then comparison to such Baseline Conditions will be the primary means of determining (a) whether an Underground Facility was shown or indicated with reasonable accuracy, as provided in Paragraph 5.05 of the General Conditions, or (b) whether a Hazardous Environmental Condition was shown or indicated in the Contract Documents as indicated in Paragraph 5.06.H of the General Conditions. As indicated in Paragraph SC-5.04 below, the GDR will be the primary resource for differing site conditions determinations in cases in which the GBR is inapplicable.

6. The descriptions of subsurface conditions provided in the GBR are based on geotechnical investigations, laboratory tests, interpretation, interpolation, extrapolation, and analyses. Neither Owner, Engineer, nor any geotechnical or other consultant warrants or guarantees that actual subsurface conditions will be as described in the GBR, nor is the GBR intended to warrant or guarantee the use of specific means or methods of construction.

7. The behavior of the ground during construction depends substantially upon the Contractor's selected means, methods, techniques, sequences, and procedures of construction. If ground behavior conditions are baselined in the GBR, they are based on stated assumptions regarding construction means and methods.

8. The GBR will not reduce or relieve Contractor of its responsibility for the planning, selection, and implementation of safety precautions and programs incident to Contractor's means, methods, techniques, sequences, and procedures of construction, or to the Work.

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5.04 *Differing Subsurface or Physical Conditions*

SC-5.04 Delete Paragraph 5.04 in its entirety and replace with the following:

5.04 *Differing Subsurface or Physical Conditions*

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

1. differs materially from conditions shown or indicated in the GBR; or

2. differs materially from conditions shown or indicated in the GDR, to the extent the GBR is inapplicable; or

3. differs materially from conditions shown or indicated in Contract Documents other than the GBR or GDR, to the extent the GBR and GDR are inapplicable; or

4. to the extent the GBR and GDR are inapplicable, is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate; or

5. to the extent the GBR and GDR are inapplicable, is of such a nature as to require a change in the Drawings or Specifications; or

6. to the extent the GBR and GDR are inapplicable, is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

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

B. *Engineer's Review:* After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine the necessity of Owner's obtaining additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph SC-5.04.A above; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption or continuation of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.

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

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D. *Early Resumption of Work:* If at any time Engineer determines that Work in connection with the subsurface or physical condition in question may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the condition in question has been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.

E. *Possible Price and Times Adjustments*

1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

    a. such condition must fall within any one or more of the categories described in Paragraph SC-5.04.A;

    b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03 of the General Conditions; and

    c. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E.

2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:

    a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise; or

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

    c. Contractor failed to give the written notice as required by Paragraph SC-5.04.A.

3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment must be set forth in a Change Order.

4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.

F. *Underground Facilities; Hazardous Environmental Conditions:* Paragraph 5.05 of the General Conditions governs rights and responsibilities regarding the presence or location of Underground Facilities. Paragraph 5.06 of the General Conditions governs rights and responsibilities regarding Hazardous Environmental Conditions. The provisions of

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Paragraphs SC-5.03 and SC-5.04 are not applicable to the presence or location of Underground Facilities, or to Hazardous Environmental Conditions.

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Wharton-Smith, Inc.
CONSTRUCTION GROUP

February 6, 2025

Mr. Junos Reed
City Engineer
City of Port Orange
1000 City Center Circle
Port Orange, FL 32129

Subject: RFSQ #24-03
Force and Water Mains (River Crossing)
CMAR Preconstruction Services Proposal

Dear Mr. Reed:

Wharton-Smith, Inc. offers our proposal to provide CMAR preconstruction services for the Force and Water Mains (River Crossing) project. The general summary for the scope of work includes the following:

- Preconstruction Management, Coordination, and Meetings
- Preliminary Cost Estimates
- Design and Constructability Review
- Value Engineering
- Schedule Development
- Bidding, Procurement, and GMP Development

Our proposed lump sum fee for the preconstruction services: $131,534.00. Additional back-up and detail are provided in the attachments to this letter.

We appreciate the opportunity to provide our services and look forward to working with the City of Port Orange on another successful project.

If you have any questions or comments, please contact me directly.

Regards,

Josh Burns
Project Executive
Wharton-Smith, Inc.

PRECONSTRUCTION PROPOSAL

CITY OF PORT ORANGE
FORCE AND WATER MAINS RIVER CROSSING

PRECONSTRUCTION SCOPE OF SERVICES

The following narrative is to provide detail to Preconstruction Services for the Force and Water Mains River Crossing project.

The duration of the Preconstruction Services is assumed to be approximately 6 months for design and GMP development which is inclusive of 2 months for production and negotiation of the final Guaranteed Maximum Price (GMP). Please note that the 2 months allotted for the GMP does not include the time required for the City's approval and contract amendment.

Generally:

Attend general progress review and coordination meetings with Owner and the project team.

Attend periodic design meetings to provide consultation on aspects of the design and construction that will impact the budget, schedule, and quality of the completed Work.

1. CMAR will work with Owner to develop the optimum scope and quality of Work to meet Owner's budget. Such work will consist of considering options and alternates with scope and quality adjustments as determined by Owner. CMAR will assess cost and schedule impact of these options and alternates.

2. Consult with Owner regarding site use and improvements, and the selection of materials, building systems, and equipment.

3. Provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation, and construction completion; and factors related to construction cost including estimates of alternative designs or materials, preliminary budgets and possible opportunities for savings.

4. Provide recommendations on the construction schedule for opportunities for time savings.

Provide input to the Owner regarding current construction market, bidding climate, status of key Subcontractor and Supplier markets, and other local economic conditions. Develop Subcontractor and Supplier interest in the Work, consistent with Legal Requirements. Furnish Owner a list of suggested Subcontractors and Suppliers, from whom bids will be requested for each principal portion of the Work. Submission of this list is for information and discussion purposes only and not for prequalification.

In conjunction with the Owner, identify the appropriate early work packages including procurement of long-lead time items and equipment and other Work required to meet the schedule for the Owner.

In conjunction with the Owner, identify the appropriate Work packages from the Contract Documents for distribution to prospective bidders for providing all elements of Work not included in the General Conditions. Appropriate Work packages shall mean scopes of work that will maximize the competition for those Work packages. Work packages will also be identified with appropriate scopes of work should the Owner have any goals for involvement of the local and/or small contracting communities.

The following breakdown lists the anticipated tasks and expectations considered when producing the preconstruction proposal. Any work outside of this scope of work that is requested of Wharton-Smith by the Owner, shall be submitted in the form of a 'Request for Quotation' for review and approval prior to such work taking place.

Task 1 Project Coordination

1.1 Project Kickoff Meeting – Wharton-Smith staff will attend one (1) project kickoff meeting with City of Port Orange (Owner) and Kimley-Horn (Engineer).

1.2 Project Team Meetings (Virtual Monthly) – Wharton-Smith staff will facilitate monthly team meetings with City of Port Orange and Kimley-Horn as necessary to review design progress, action items, and other outstanding items.

1.3 Milestone Design Workshops – Wharton-Smith staff will attend two (2) design review workshops with City of Port Orange and Kimley-Horn. These meetings will be workshop style meetings to review drawings and specifications at the 60% and 90% design submittals.

1.4 Site Visits & Investigation – Wharton-Smith will perform site visits to investigate existing conditions, review spatial constraints, evaluate placements of bore pits and staging areas, develop ingress & egress plan during construction. Wharton-Smith will provide final reports of encountered conditions to the City.

1.5 Permitting Meetings & Coordination – In conjunction with the design engineer, Wharton-Smith staff will attend pre-application meetings, coordination meetings, site visits, and assist with the preparation and submittal of required permits.

1.6 Project Management & Administration – Wharton-Smith provides overall project management for the preconstruction phase. This includes budget control, schedule control, quality planning, safety planning, subcontractor management, and coordination with the City and the design consultant.

Task 2 Preliminary Cost Estimates

2.1 60% Cost Estimate – Wharton-Smith preconstruction staff will perform detailed takeoffs (based on drawing concepts) on all construction trades such as site work, HDD, pipe lining, utilities, mechanical, etc. A full cost estimate book will be provided showing all material, labor, and equipment take-offs and any subcontractor cost estimates.

Task 3 Design Review and Value Engineering

3.1 60% Submittal Constructability Review & Value Engineering (VE) – Wharton-Smith will perform detailed design and constructability review to identify changes, conflicts, constructability concerns, spatial concerns, general questions, and overall consistency of the design disciplines (structural, civil, process,

etc.). Value engineering options are provided during this phase and throughout the life cycle of the project.

3.2 90% Submittal Constructability Review & VE – These costs are for the same items outlined in Task 3.1 but for the 90% design documents including specifications and detailed review of all documents to ensure that they are "bid ready".

3.3 100% Submittal / Conformed Documents Review – These costs are for the same items outlined in Task 3.1 but include final review of all documents to ensure that they are conformed and ready for construction.

CMAR shall review in-progress design documents, including at a minimum the documents generally described above in 3.1 through 3.3 and provide input and advice to Owner on constructability, materials and equipment selections, and availability. Provide timely suggestions for modifications to improve:

- Constructability, including sequencing or coordination issues, to enable Work to be completed with a minimum of RFI's and change orders.
- Recommend potential vendors and manufacturers for incorporation into the design.
- Adequacy of details for construction.
- Potential conflicts during construction.
- Ability to coordinate among Subcontractors and Suppliers.
- Coordination between Contract Documents.
- Operability.
- Ability to minimize disruptions to existing operations.
- Ability to complete construction connections to existing facilities or utilities.
- Modifications to facilitative commissioning and start-up and/or performance testing.
- Ability of Owner to operate/maintain the Work in a safe, time and cost-efficient manner when completed.

Task 4 CPM Master Schedule

4.1 Schedule Development and Phasing – At the 60% design phase, Wharton-Smith will develop a baseline Critical Path Method (CPM) schedule using Primavera P6 software based on available information (and providing reasonable allowances for Owner review time and time for permits and approvals from governmental agencies). The schedule will be broken down by phase (design/permitting, procurement, construction, and closeout) and by structure. A detailed schedule sequence will be provided for each structure. All portions of the project will be interrelated by schedule logic so that a true "critical path" is easily identifiable. This schedule will be updated as the project progresses.

4.2 Review and Update During Design – The schedule developed in Task 4.1 is modified based on the 90% design documents and construction sequencing is determined.

4.3 Final Schedule Update at GMP – The schedule developed in Task 4.2 is modified based on the GMP design documents and final construction sequencing is determined. This schedule shall serve as the basis for General Condition's costs in the GMP as well as the contract time required for the duration of construction.

Task 5 Bidding, Procurement, and GMP

5.1 GMP Development – Wharton-Smith will identify and assemble appropriate work packages from GMP design documents to solicit prospective subcontractor and supplier proposals for providing all elements

of Work not included in the General Conditions. Work packages will be assembled with appropriate scopes of work should the Owner have any goals for involvement of the local and/or small contracting community. A selected bidders list will be developed and evaluated with the City prior to the bidding phase. Wharton-Smith preconstruction staff will perform detailed takeoffs (based on the GMP design documents) for all self-perform work and facilitate all bidding efforts. A full cost estimate book will be provided showing all material, labor, and equipment take-offs and any subcontractor/supplier cost proposals. This estimate will be submitted as the GMP Proposal for the work.

5.2 Pre-Bid Site Visits – Wharton-Smith will host, coordinate, and manage a pre-bid site visit for all potential bidders for the subcontract and purchase order work packages. Wharton-Smith will take notes and answer questions. Clarifications/addenda will be issued to bidding parties as needed based on the formal bid questions that are received.

5.3 Receive Bids – Wharton-Smith will receive bids throughout the course of an entire day. The bid times may be staggered to ensure our ability to answer questions or provide direction up to the last minute.

5.4 Review Bids and Recommend Award – All of the subcontractor and purchase order work package bids are reviewed for completeness, responsiveness, exceptions, clarifications, and deviations from the contract documents. Value engineering ideas and schedule commitments will also be evaluated. Wharton-Smith will provide a bid tabulation worksheet and make a recommendation for package award based on the best interest of the City. Final decision is made by Owner.

5.5 Risk Management Plans – Wharton-Smith staff will analyze design and construction risks to assess risk impact and develop risk management strategies in efforts to minimize associated costs and schedule impacts. Wharton-Smith will provide recommendations for appropriate budget allocation of these design and construction risks at each design milestone.

5.6 Final GMP Assembly – All documents that comprise the GMP are assembled into a single tabbed and searchable binder/pdf document. This includes all schedules, bid documents, subcontractor and supplier bids, Wharton-Smith self-perform cost estimates, other backup quotes, general conditions breakdowns, value engineering logs, contingencies and allowances, and other GMP relevant documents that were considered in creation of the GMP.

Task 6 Allowances

6.1 HDD Design Review & Cost Estimates – A $10,000 allowance has been included in our scope for HDD design reviews and cost estimates. Subcontractor selection for these is TBD. Any unused allowance will go back to the City.

Fee Summary: See attached fee summary.

OWNER: **CITY OF PORT ORANGE**
PROJECT: **FORCE AND WATER MAINS RIVER CROSSING**
ENGINEER **KIMLEY-HORN**
CURRENT DESIGN STATUS: **60%**

				OFFICE & FIELD MANAGEMENT STAFF												ESTIMATING & SUPPORT STAFF								WHARTON-SMITH PERSONNEL				SUBCONTRACTOR		
				Principal In Charge		Preconstruction Director		Preconstruction Manager		Senior Project Manager		Senior Superintendent		Administrative Assistant		Director of Estimating		Speciality Estimators		Document Specialist		Project Accountant								
					$170.00		$170.00		$165.00		$165.00	Rate	$165.00	Rate	$93.00	Rate	$179.00	Rate	$154.00	Rate	$85.00	Rate	$122.00							
ITEM	TASK	QTY	UNIT	HR	$	HR	$	HR	$	HR	$	HR	$	HR	$	HR	$	HR	$	HR	$	HR	0	HR's	LABOR COSTS	MISC. COSTS (PRO-RATED)	SUBTOTAL	SUB	COST	$ TOTALS
TASK 1	**PROJECT COORDINATION**																													
1.1	PROJECT KICKOFF MEETING	1	EA		0	2	340	4	660	2	330		0	2	186		0		0		0		0	10	1,516	25	1,541			1,541
1.2	PROJECT TEAM MEETINGS (VIRTUAL MONTHLY)	6	EA		0	3	510	6	990	6	990		0		0		0		0		0		0	15	2,490	37	2,527		-	2,527
1.3	MILESTONE DESIGN WORKSHOPS	2	EA		0	4	680	8	1320	4	660	4	660		0		0		0		0		0	20	3,320	49	3,369		-	3,369
1.4	SITE VISITS & INVESTIGATION	1	EA		0		0	24	3960	24	3960	24	3960		0		0		0		0		0	72	11,880	177	12,057		-	12,057
1.5	PERMITTING MEETINGS & COORDINATION	1	LS		0		0	4	660		0		0	4	372		0		0		0		0	8	1,032	20	1,052		-	1,052
1.6	PRECON PROJECT MANAGEMENT & ADMINISTRATION	1	LS	8	1360	8	1360	40	6600	20	3300		0	8	744		0		0	8	680	8	976	100	15,020	246	15,266		-	15,266
	SUBTOTALS			**8**	**1360**	**17**	**2890**	**86**	**14190**	**56**	**9240**	**28**	**4620**	**14**	**1302**	**0**	**0**	**0**	**0**	**8**	**680**	**8**	**976**	**225**	**35,258**	**554**	**35,812**		**-**	**35,812**
TASK 2	**PRELIMINARY COST ESTIMATES**																													
2.1	60% COST ESTIMATE	1	EA	2	340	2	330	8	1320	4	660		0	8	744	16	2864	60	9240	2	170		0	100	15,668	246	15,914		-	15,914
	SUBTOTALS			**2**	**340**	**2**	**330**	**8**	**1320**	**4**	**660**	**0**	**0**	**8**	**744**	**16**	**2864**	**60**	**9240**	**2**	**170**	**0**	**0**	**100**	**15,668**	**246**	**15,914**		**-**	**15,914**
TASK 3	**DESIGN AND CONSTRUCTABILITY REVIEWS**																													
3.1	60% SUBMITTAL CONSTRUCTABILITY REVIEW & VE	1	EA		0	4	680	20	3300	10	1650	4	660	1	93	2	358		0	1	85		0	42	6,826	103	6,929		-	6,929
3.2	90% SUBMITTAL CONSTRUCTABILITY REVIEW & VE	1	EA		0	2	340	16	2640	8	1320	4	660	1	93	2	358		0	1	85		0	34	5,496	84	5,580		-	5,580
3.3	100% SUBMITTAL / CONFORMED DOCUMENTS REVIEW	1	EA		0	2	340	4	660	4	660	2	330	1	93	2	358		0	1	85		0	16	2,526	39	2,565		-	2,565
	SUBTOTALS			**0**	**0**	**8**	**1360**	**40**	**6600**	**22**	**3630**	**10**	**1650**	**3**	**279**	**6**	**1074**	**0**	**0**	**3**	**255**	**0**	**0**	**92**	**14848**	**226**	**15074**		**-**	**15,074**
TASK 4	**CPM MASTER SCHEDULE**																													
4.1	SCHEDULE DEVELOPMENT AND PHASING (@ 60% DESIGN)	1	EA	1	170		0	8	1320	8	1320	2	330		0		0		0	1	85		0	20	3,225	49	3,274		-	3,274
4.2	SCHEDULE UPDATE AT 90% SUBMITTAL	1	EA	1	170		0	6	990	6	990	2	330		0		0		0	1	85		0	16	2,565	39	2,604		-	2,604
4.3	FINAL SCHEDULE UPDATE AT GMP (DETERMINES GC'S)	1	EA	1	170		0	2	330	2	330	2	330		0		0		0	1	85		0	8	1,245	20	1,265		-	1,265
	SUBTOTALS			**3**	**510**	**0**	**0**	**16**	**2640**	**16**	**2640**	**6**	**990**	**0**	**0**	**0**	**0**	**0**	**0**	**3**	**255**	**0**	**0**	**44**	**7,035**	**108**	**7,143**		**-**	**7,143**
TASK 5	**BIDDING, PROCUREMENT, AND GMP**																													
5.1	GMP DEVELOPMENT	1	LS	1	170	4	680	40	6600	24	3960		0	8	744	20	3580	20	3080	4	340		0	121	19,154	298	19,452		-	19,452
5.2	PRE-BID SITE VISITS	1	EA		0		0	4	660	4	660		0		0		0		0		0		0	8	1,320	20	1,340		-	1,340
5.3	RECEIVE BIDS (SINGLE BID DAY)	1	LS		0		0	8	1320		0		0	8	744		0		0		0		0	16	2,064	39	2,103		-	2,103
5.4	REVIEW BIDS AND RECOMMEND AWARD	1	LS		0		0	16	2640	4	660		0	2	186	4	716		0	1	85		0	27	4,287	66	4,353		-	4,353
5.5	RISK REGISTER DEVELOPMENT	1	LS	1	170	1	170	12	1980	6	990	2	330	1	93	4	716		0	1	85		0	28	4,534	69	4,603		-	4,603
5.6	FINAL GMP ASSEMBLY	1	LS	1	170	4	680	10	1650	6	990		0	4	372		0		0	4	340		0	29	4,202	71	4,273		-	4,273
	SUBTOTALS			**3**	**510**	**9**	**1530**	**90**	**14850**	**44**	**7260**	**2**	**330**	**23**	**2139**	**28**	**5012**	**20**	**3080**	**10**	**850**	**0**	**0**	**229**	**35,561**	**563**	**36,124**		**-**	**36,124**
TASK 6	**ALLOWANCES**																													
6.1	ALLOWANCE - HDD DESIGN REVIEW & COST ESTIMATES	1	LS		0		0		0		0		0		0		0		0		0		0	0	-	-	-	TBD	10,000.00	10,000
	SUBTOTALS			**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**-**	**-**	**-**		**10,000.00**	**10,000**
	TOTAL PRECONSTRUCTION SERVICES			16		36		240		142		46		48		50		80		26		8		**690**	**108,370**	**1,697**	**110,067**		**TOTAL**	**120,067**

FEE (8.50%)	**10,206**
INSURANCE (1.05%)	**1,261**
GRAND TOTAL:	**131,534**

MISC. MATERIAL/EQUIPMENT COSTS	COST
BID PACKAGE PLANS/SPECIFICATIONS REPRODUCTION	500.00
OFFICE SUPPLIES	200.00
TRAVEL EXPENSES	500.00
COMPUTER EQUIPMENT	500.00
COST PER HOUR	2.46





CITY OF PORT ORANGE, FLORIDA

CONSTRUCTION MANAGER AT RISK FOR CONSTRUCTION OF FORCE & WATER MAINS (RIVER CROSSING)

RFSQ #24-03

COPY

Wharton-Smith, Inc.
CONSTRUCTION GROUP



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City of Port Orange City Clerk's Office
Attn: Jill Poolman, Purchasing Manager
Purchasing Division
1000 City Center Circle
Port Orange, Florida 32129

October 22, 2024

Re: RFSQ 24-03 — Construction Manager at Risk for Construction of Force & Water Mains (River Crossing)

Dear Ms. Poolman and Selection Committee Members,

Wharton-Smith (WS) has reviewed your Request for Statements of Qualifications for the Force & Water Mains (River Crossing) project, and we fully understand your goals and objectives for this project. We are committed and available to provide the required services to the City of Port Orange. Wharton-Smith works with public utilities all along Florida's east coast. The City needs this project done now; however, your budget is not unlimited. Wharton-Smith is the firm that can exceed your expectations for schedule, budget, and quality.

Wharton-Smith's history of providing Construction Manager at Risk (CMAR) services began in 1995 with the City of Kissimmee (now Toho Water Authority), and we have served as an industry leader in the Central Florida CMAR market ever since. Over the past 29 years, we have continued to refine our best practices to deliver award-winning projects to our clients. Port Orange will continue to benefit from our CMAR best practices that maximize collaboration and deliver the lowest cost, fastest schedule, and highest levels of safety and quality. This is the Wharton-Smith way.

We have planned our resources to ensure you receive the best collection of team members. The core of our proposed staff recently delivered a similar force main projects for Volusia County, City of Altamonte Springs, and the St. Johns River Water Management District. This proposal will demonstrate our deep understanding of your project, and our proven CMAR approach.

A LOCAL TEAM HAS A VESTED INTEREST— A majority of our project team members are local residents living within a 30-minute radius from the project. **Sr. Project Manager, Adam Bergdahl**, is a Volusia County resident! Our project team members will have a personal stake in this project and will offer the City of Port Orange the fastest response times. This is where our people live, work, play, and pay their taxes.

READY TO GET STARTED— Wharton-Smith's project team understands that schedule is a critical success factor for this project. Our project team has dove into the details of your project and has provided potential value-added opportunities and specific approach to this project in Tab D of this proposal. Additionally, our pre-existing cohesion with the Kimley Horn team allows for a streamlined preconstruction process. **Our existing cohesion with Kimley Horn and our ability to provide a turnkey solution to get the job done from start to finish**!

FOLLOW CMAR BEST PRACTICES— Since 1995, with more than $3 billion delivered, we have continued to refine our CMAR delivery process in order to provide the best value to our clients, maximize collaboration with all project stakeholders, and ensure projects are delivered with the highest quality and safety standards. There will be no learning curve for our team for any aspect of your project. As seen in our approach to collaboration (see page 32), our leadership team will ensure that we work as a fully integrated team and follow CMAR best practices through the life cycle of the project.

PROJECT RISKS MUST BE IDENTIFIED AND MITIGATED— The past few years have presented us all with unprecedented project risks like manpower shortages, cost escalations, and supply chain delays. Wharton-Smith navigates those challenging waters on similar projects every day, and we will use those lessons learned to lower the risk profile for all parties on this project. **See page 57 for a project-specific Risk Register for the River Crossing Force & Water Mains project**.

ADDING VALUE DURING THE PRECONSTRUCTION PHASE— Our in-house team of preconstruction services professionals, led by **Vice President Nathan Hillard and Director Erik Anderson**, has over 150 years of collective project experience in both estimating and constructing water, wastewater, and force main projects throughout Florida. Our team is a unique blend of lifelong estimators, former designers, and former construction managers that now work solely on providing value engineering, cost estimates, design and constructability reviews, and innovative ideas for our clients. The preconstruction team is excited to add value to your Force & Water Mains (River Crossing) project. **See page 56 for a project-specific value engineering opportunities for the River Crossing Force & Water Mains project**. Our team is excited to collaborate with you and Kimley Horn on these ideas.

TRUST ISN'T BUILT OVERNIGHT— Wharton-Smith and Kimley Horn & Associates have collaborated and delivered critical water and wastewater projects together for decades. That includes 34 projects valued at nearly $1,000,000,000! The cohesion between our firms will be evident from day one. Our partnership works because our firms share a common vision for providing value, delivering a quality product, and exceeding our clients' expectations.

PORT ORANGE DESERVES AN ON-TIME DELIVERY— Immediately upon our selection, in collaboration with the City and Kimley Horn, our project team will develop an aggressive yet achievable project schedule. It will be important that together we identify those key milestone dates for mobilization, substantial completion, and final closeout. Wharton-Smith has developed a standard practice of evaluating multiple schedule scenarios to meet key schedule milestones. This can include evaluating multi-phase procurement, value engineering options, various construction methods, alternative materials, and early commissioning. As we transition to the construction phase, we will maintain our momentum utilizing our Production Planning System. Production Planning serves as our foundation of execution as we control the things most important to you including schedule, quality, and safety.

QUALITY CONTROL OCCURS DURING ALL PHASES— Quality control measures are instilled in everything we do. Our dedicated and experienced **Quality Manager, Chris Gayner**, has 30+ years of experience and has served the same role on a majority of Wharton-Smith's water and wastewater projects in Florida. He understands standards for quality and will strive to exceed expectations. Quality control is also present in our approach through pre-qualified and proven subcontractor partners, effective document management, and self-performance with our craft labor forces.

Since 1984, Wharton-Smith has helped build the communities in which we serve. Our mission has continued to be "to exceed our clients' expectations by performing with the highest quality, professionalism, and fairness, and by communicating with honesty and integrity at all times." That approach has served as our foundation as we have grown to be the Central Florida leader in vertical and water plant construction. Consider this Statement of Qualifications as Wharton- Smith's offer to serve as your community partner on this critical infrastructure project.

Sincerely,

Wharton-Smith, Inc.

Patrick J. Hewitt
COO - Water

Nathan Hillard, DBIA, EIT
Client Service Manager

$4 B+
COLLABORATIVE DELIVERY WATER/ WASTEWATER PROJECTS

30
MINUTES FROM HEADQUARTERS TO PROJECT SITE

90%
LOCAL PROJECT TEAM MEMBERS

#1
CONSTRUCTION FIRM IN CENTRAL FLORIDA
***(ORLANDO BUSINESS JOURNAL*, 2023)**

34
PROJECTS COLLABORATING WITH KIMLEY HORN



TAB A:
REQUIRED DOCUMENTS

Wharton-Smith, Inc.
CONSTRUCTION GROUP

CITY OF PORT ORANGE
1867
FLORIDA

FORM 9.1 — RESPONDENTS SUBMITTAL CHECKLIST

SECTION 9 – REQUIRED FORMS

FORM 9.1 – RESPONDENTS SUBMITTAL CHECKLIST

X Form 9.2 – Respondents Acknowledgement

X Form 9.3 – Addendum and Change Order Procedure Acknowledgement

X Form 9.4 – Drug Free Preference Statement

X Form 9.5 – Public Entity Crimes Statement

X Form 9.6 – Anti-Collusion Form

X Form 9.7 – Statement of Qualifications

X Form 9.8 – Professional References for Previous Experience

X Form 9.9 – Authorized Signatures/Negotiators

X Form 9.10 – Scrutinized Companies Certification

X Form 9.11 – E-Verify Affidavit

X Form 9.12 – Debarment, Suspension and Other Responsibility Matters

X Form 9.13 – Non-Disclosure Agreement for Confidential Materiel

X Exhibit "A" – Description of Confidential Material

___ Form 9.14 – No Submittal Request Form

X Current Bonding Capacity Letter for Performance & Payment Bonds

X Appendix A, 44.C.F.R. Part 18 – CERTIFICATION REGARDING LOBBYING, Certification for Contracts, Grants, Loans, and Cooperative Agreements

X Provide a copy of license to do business in the State of Florida Sunbiz report showing your company registered as "Active".

X If applicable – copy of county business license of primary business operations

X Submission of one (1) original marked "ORIGINAL', five (5) copies and one (1) digital (USB flash drive) version in PDF format

BY: Wharton-Smith, Inc.
Name of Business

Patrick J. Hewitt, COO - Water
Authorized Signature

10/21/2024
Date

This document must be completed and returned with your Submittal

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FORM 9.2 — RESPONDENTS ACKNOWLEDGEMENT FORM

FORM 9.2 – RESPONDENTS ACKNOWLEDGEMENT FORM

I have carefully examined the Request for Statement of Qualifications (RFSQ), Instructions to Respondents, General and/or Special Conditions, Specifications and any other documents accompanying or made a part of this request.

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

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

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

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

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

NO EXCEPTIONS ALLOWED AFTER THE STATEMENT IS SUBMITTED:

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

Wharton-Smith, Inc.
Name of Business

Authorized Signature

Patrick J. Hewitt, COO - Water
Printed Name and Title

59-2392802
Federal Identification No.

750 Monroe Road
Mailing Address

Sanford, FL 32771
City, State & Zip Code

(407) 321-8410
Telephone Number

phewitt@whartonsmith.com
E-mail Address

STATE OF: Florida COUNTY OF: Seminole

The foregoing instrument was acknowledged before me by means of ☒physical presence or ☐online notarization, this 21st day of October, 2024, by Patrick J. Hewitt and who:

☒Is personally known to me; or ☐ has produced N/A as identification.

Rebecca Titus
Printed, typed or stamped name, commission and expiration: 6/15/2027

Notary Public, State of Florida

This document must be completed and returned with your submittal

REBECCA TITUS
Notary Public - State of Florida
Commission # HH 411576
My Comm. Expires Jun 15, 2027
Bonded through National Notary Assn.

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FORM 9.3 — ADDENDUM & CHANGE ORDER PROCEDURE ACKNOWLEDGEMENT

FORM 9.3 – ADDENDUM AND CHANGE ORDER PROCEDURE ACKNOWLEDGEMENT

ADDENDUM ACKNOWLEDGEMENT

I have carefully examined the Request for Statement of Qualifications (RFSQ), Instructions to Respondents, General and/or Special Conditions, Specification and any other documents accompanying or made a part of this RFSQ.

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

Addendum#_____ Date:_____ Addendum#_____ Date:_____

Addendum#_____ Date:_____ Addendum#_____ Date:_____

CHANGE ORDER PROCEDURE ACKNOWLEDGEMENT

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

I acknowledge the above statements regarding all published Addenda and Change Order procedures:

Wharton-Smith, Inc.
Name of Business

Authorized Signature

Patrick J. Hewitt, COO - Water
Printed Name and Title

STATE OF: Florida COUNTY OF: Seminole

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

21st day of October, 2024, by Patrick J. Hewitt and who:

☒Is personally known to me; or ☐ has produced N/A as identification.

Rebecca Titus
Notary Public, State of Florida

Printed, typed or stamped name, commission and expiration:

REBECCA TITUS
Notary Public - State of Florida
Commission # HH 411576
My Comm. Expires Jun 15, 2027
Bonded through National Notary Assn.

This document must be completed and returned with your Submittal

FORM 9.4 — DRUG-FREE PREFERENCE STATEMENT

FORM 9.4 – DRUG-FREE PREFERENCE STATEMENT

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

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

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

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

Wharton-Smith, Inc.
Name of Business

Authorized Signature

Patrick J. Hewitt, COO - Water
Printed Name and Title

STATE OF: Florida COUNTY OF: Seminole

The foregoing instrument was acknowledged before me by means of ☒physical presence or ☐online notarization, this 21st day of October, 2024, by Patrick J. Hewitt and who:

☒Is personally known to me; or ☐ has produced N/A as identification.

Rebecca Titus
Printed, typed or stamped name, commission and expiration:

Notary Public, State of Florida
6/15/2027

This document must be completed and returned with your Submittal

REBECCA TITUS
Notary Public - State of Florida
Commission # HH 411576
My Comm. Expires Jun 15, 2027
Bonded through National Notary Assn.

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FORM 9.5 — SWORN STATEMENT ON PUBLIC ENTITY CRIMES

FORM 9.5 – SWORN STATEMENT ON PUBLIC ENTITY CRIMES
UNDER SECTION 287.133(3)(A), FLORIDA STATUTES
(To be signed in the presence of a notary public or other authorized to administer oaths.)

Before me, the undersigned Authority, personally appeared affiant Patrick J. Hewitt, who, being by me first duly sworn, made the following statement:

1. The business address of Wharton-Smith, Inc. (name of Respondent or business) is 750 Monroe Road, Sanford, FL 32771.
2. My relationship to Wharton-Smith, Inc. (name of Offeror or business) is COO - Water _____ (relationship such as sole proprietor, partner, president, vice president.)
3. I understand that a public entity crime as defined in Section 287.133 of the Florida Statutes includes a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity in Florida or with an agency or political subdivision of any other state or with the United States, including, but not limited to, any proposal or contract for goods or services to be provided to any public entity or such and agency or political subdivision and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy or material misrepresentation.
4. I understand that "convicted" or "conviction" is defined by the Florida Statutes to mean a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, non-jury trial, or entry of a plea of guilt or nolo contendere.
5. I understand that "affiliate" is defined by the Florida Statutes to mean (1) a predecessor or successor of a person or a corporation convicted of a public entity crime, or (2) an entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime, or (3) those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate, or (4) a person or corporation who knowingly entered into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months.
6. Neither the Offeror or contractor, nor any officer, director, executive, partner, shareholder, employee, member or agent who is active in the management of the Offeror or contractor, nor any affiliate of the Offeror or contractor has been convicted of a public entity crime subsequent to July 1, 1989. **(Draw a line through paragraph 6 if paragraph 7 below applies.)**
7. ~~There has been a conviction of a public entity crime by the Offeror or contractor, or an officer, director, executive, partner, shareholder, employee, member or agent of the Offeror or contractor who is active in the management of the Offeror or contractor or an affiliate of the Offeror or contractor. A determination has been made pursuant to Section 287.133(3) by order of the Division of Administrative Hearings that it is not in the public interest for the name of the convicted person or affiliate to appear on the convicted bidder list. The name of the convicted person or affiliate is: _____. A copy of the order of the Division Administrative Hearing is attached.~~
(Draw a line through paragraph 7 if paragraph 6 above applies)

Wharton-Smith, Inc.
Name of Business

Authorized Signature

Patrick J. Hewitt, COO - Water
Printed Name and Title

STATE OF: Florida

COUNTY OF: Seminole

The foregoing instrument was acknowledged before me by means of ☒physical presence or ☐online notarization, this 21st day of October, 2024, by Patrick J. Hewitt and who:

☒Is personally known to me; or ☐ has produced N/A as identification.

Rebecca Titus
Printed, typed or stamped name, commission and expiration:

Notary Public, State of Florida
6/15/2027

REBECCA TITUS
Notary Public - State of Florida
Commission # HH 411576
My Comm. Expires Jun 15, 2027
Bonded through National Notary Assn.

This document must be completed and returned with your Submittal

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FORM 9.6 — ANTI-COLLUSION FORM

FORM 9.6 – ANTI-COLLUSION FORM

ANTI-COLLUSION STATEMENT FORM:

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

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

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

NAME OF FIRM: Wharton-Smith, Inc.

SIGNED BY: Patrick J. Hewitt
(MUST BE SIGNED BY A COMPANY OFFICER OR AUTHORIZED AGENT)

PRINTED SIGNATURE: Patrick J. Hewitt

TITLE: COO - Water

ADDRESS: 750 Monroe Road

CITY, STATE AND ZIP CODE: Sanford, FL 32771

TELEPHONE: (407) 321-8410

F.E.I.N.: 59-2392802

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

This document must be completed and returned with your Submittal

FORM 9.7 — STATEMENT OF RESPONDENTS QUALIFICATIONS

FORM 9.7 - STATEMENT OF RESPONDENT'S QUALIFICATIONS

The undersigned warrants that he or she is duly authorized to complete this document, and hereby affirms that the information contained in Form 9.7 is complete, true and correct to the best of his or her knowledge and belief. If necessary, questions may be answered on separate paper and attached with any additional information that may be pertinent.

A. Name of Respondent: Wharton-Smith, Inc.

B. Permanent main office address: 750 Monroe Road, Sanford, FL 32771

C. Date organized: 4/2/1984

D. If a corporation, where incorporated: Florida

E. How many years have you been engaged in the business under your present firm or trade name? 40 years

F. Contracts on hand: (List these, showing amount of each contract and the appropriate anticipated dates of completion.) **USE SEPARATE SHEET & ATTACH TO SUBMITTAL**

G. General character of work performed by your company: Construction Manager at Risk

H. Have you ever failed to complete any work awarded to you? If so, where and why? No

I. Have you ever defaulted on a contract? If so, where and why? No

J. List your major equipment currently owned or leased: **USE SEPARATE SHET & ATTACH TO SUBMITTAL**

K. Experience in work similar to this type of project: Water/wastewater construction

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

M. Credit currently available: $11,500,000.00

N. Give bank name, contact name and phone number: Regions Bank: John D. Bachman, Vice President | (407) 246-8917

Will you, upon request, fill out a detailed financial statement and furnish any other information that may be required by the Owner? ☒Yes ☐No

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

Wharton-Smith, Inc.
Name of Business

Authorized Signature

Patrick J. Hewitt, COO - Water
Printed Name and Title

STATE OF: Florida

COUNTY OF: Seminole

The foregoing instrument was acknowledged before me by means of ☒physical presence or ☐online notarization, this 21st day of October, 2024, by Patrick J. Hewitt and who:

☒Is personally known to me; or ☐ has produced N/A as identification.

Rebecca Titus
Printed, typed or stamped name, commission and expiration:

Notary Public, State of Florida
6/15/2027

This document must be completed and returned with your Submittal

REBECCA TITUS
Notary Public - State of Florida
Commission # HH 411576
My Comm. Expires Jun 15, 2027
Bonded through National Notary Assn.

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FORM 9.7 — STATEMENT OF RESPONDENTS QUALIFICATIONS (CONT)

WHARTON-SMITH CONTRACTS ON HAND WITH CITY OF PORT ORANGE			
PROJECT NAME	OWNER	CONTRACT AMOUNT	ANTICIPATED COMPLETION
Public Utilities Field Operations Facility	City of Port Orange	$21,200,000	4/2026

WHARTON-SMITH CENTRAL FLORIDA WATER/WASTEWATER CONTRACTS ON HAND			
PROJECT NAME	OWNER	CONTRACT AMOUNT	ANTICIPATED COMPLETION
North WRF	Bay Laurel Center Community Development District	$125,000,000	12/2024
Jerry Sellers WRF Rehab	City of Cocoa	$9,000,000	12/2024
Silver Springs Shores Phase II	Marion County	$18,000,000	2/2025
Stanton Energy Wastewater Alternatives	Orlando Utilities Commission	$18,830,750	2/2025
The Centers Utility Expansion	Marion County	$5,000,000	4/2025
Turnpike WWTF Phase II Improvements	City of Leesburg	$30,000,000	8/2025
Wiley M. Nash WRF Expansion	City of DeLand	$61,741,000	2/2026
South Bermuda WRF 16 MGD Upgrades	Toho Water Authority	$35,000,000	5/2026
Eastern WRF Phase 6A Improvements	Orange County	$69,557,838	7/2026
Southwest Regional WRF Improvements	Volusia County	$60,000,000	11/2026
Cypress Lake WTP & Wellfield	Water Cooperative of Central Florida (WCCF)	$300,000,000	11/2027
Water Conserv I WRF Rehab & Expansion	City of Orlando	$30,000,000	12/2027
Reservoir Surface WTF	Toho Water Authority	$90,000,000	12/2027
Northeast Regional WTF Expansion	Polk County	$120,000,000	6/2028
Crest Avenue WWTF Expansion	City of Winter Garden	$80,000,000	9/2028
Lake Highland WTP	Orlando Utilities Commission	$75,500,000	9/2028
Southeast RO WTP	Orlando Utilities Commission	$160,000,000	2/2030

FORM 9.7 — STATEMENT OF RESPONDENTS QUALIFICATIONS (CONT)

Wharton-Smith, Inc.
Owned Equipment
Oct-24

Description	Description2
2021 United Alloy CAT XQ60 Serial- CF901169 VIN- 7KUBB1315MJ090947	2023 Can-AM 8ZPB Utility Vehicle 3JBUBAJ47PK000330
2014 CAT 316EL Excavator DZW01653	2023 Can-AM 8ZPB Utility Vehicle 3JBUBAJ49PK000359
2014 CAT 320EL Excavator WBK03046	2023 Can-AM 8ZPB Utility Vehicle 3JBUBAJ45PK000648
2020 Kubota SVL95-2SHF Compact track loader 50423	2023 Can-AM 8ZPB Utility Vehicle 3JBUBAJ46PK000304
2020 Kubota SVL95-2SHF Compact track loader 50446	2023 Can-AM 8ZPB Utility Vehicle 3JBUBAJ43PK000857
2017 CAT 420 FIT Backhoe Ext HWD01894	2023 Can-AM 8ZPB Utility Vehicle 3JBUBAJ47PK000988
2021 CAT 420 Backhoe H8T00371	2023 Can-AM 8ZPB Utility Vehicle 3JBUBAJ4XPK000810
2023 Sullair 185 CFM Air Compressor US0123050213	2023 Can-AM 8ZPB Utility Vehicle 3JBUBAJ48PK001020
2020 CAT 336 Excavator YBN10143 W/ teledipper	2023 Can-AM 8ZPB Utility Vehicle 3JBUBAJ47PK000943
2017 CAT 336F Excavator RKB10312	2023 Can-AM 8ZPB Utility Vehicle 3JBUBAJ4XPK001021
2017 CAT 320FL Excavator YBM10298	2023 Can-AM 8ZPB Utility Vehicle 3JBUBAJ41PK001070
2020 CAT 323 Excavator RAZ20092	2023 Can-AM 8ZPB Utility Vehicle 3JBUBAJ48PK000661
2021 CAT 304E2 Mini Excavator ME408104	2023 Can-AM 8ZPB Utility Vehicle 3JBUBAJ47PK001087
2021 CAT 336 Excavator YBN20306	2023 Can-AM 8ZPB Utility Vehicle 3JBUBAJ44PK001094
2022 CAT 304 Mini Ex AN400717	2023 Can-AM 8RPD Utility Vehicle 3JBUBAP42PK001182
2023 CAT 304 Mini Excavator AN401599	2023 Can-AM 8ZPB Utility Vehicle 3JBUBAJ48PK000952
2023 CAT 308 Excavator GG808008	2023 Can-AM 8ZPB Utility Vehicle 3JBUBAJ40PK000749
2023 CAT 336 Excavator RDL10046	2023 Can-AM 8ZPB Utility Vehicle 3JBUBAJ44PK000642
2023 CAT 336 Excavator RDL10163	2023 Can-AM 8ZPB Utility Vehicle 3JBUBAJ43PK000809
2023 CAT 308 Excavator GG808170	2023 Can-AM 8ZPB Utility Vehicle 3JBUBAJ49PK000846
2023 CAT 308 Excavator GG808200	2023 Can-AM 8ZPB Utility Vehicle 3JBUBAJ42PK000736
2023 CAT 320 Excavator MYK21484	2021 CAT 926M Wheel Loader W5L01507
2023 CAT 325 07D HEX Excavator TEL30530	2023 CAT 938M Wheel Loader J3R10582
CAT 325	2017 CAT 926M Wheel Loader LTE03587
2021 CAT C5000 Forklift AT904885	2017 CAT 926M Wheel Loader LTE04000
2021 Club Car 1700G UTV 224365	2020 CAT 938 Wheel Loader J3R08777
2021 Kawasaki Mule KAF622 UTV Serial JK1AFHA1XMB500454	2021 CAT 938 Wheel Loader P5K01466
2021 Kawasaki Mule KAF622 UTV Serial JK1AFHA11MB500469	2021 CAT 938 Wheel Loader P5K02101
2021 Club Car 1700G UTV 224292	2018 CAT TL642D Mat. Handler ML800954
2021 Club Car 1700G UTV 227050	2021 CAT TL642D Mat. Handler ML801706
2021 Club Car 1700G UTV 285225	2021 CAT TL642D Mat Handler ML801728
2021 Club Car 1700G UTV 285240	2021 CAT TL642D Mat Handler ML801781
2021 Club Car 1700G UTV 285247	2021 CAT TL642D Mat Handler ML801751
2021 Club Car 1700G UTV 285248	2021 CAT TL642D Mat Handler ML801792
2021 Club Car 1700G UTV 285249	2022 CAT TL642 Mat Handler T6900263
2021 Club Car 1700G UTV 285259	2022 CAT TL642 Mat Handler T6900267
2022 Can-Am 8ZNA Defender 3JBUBAJ40NK000053	2023 CAT TL642 Mat. Handler T6900938
2022 Can-Am 8ZNA Defender 3JBUBAJ42NK000085	2023 CAT TL1255 Mat. Handler T8201712
2022 Can-Am 8ZNA Defender 3JBUBAJ44NK000038	2021 CAT 289D3 Skid Steer JX906229
2022 Kawasaki Mule JK1ATCB12NB501139	2021 Kubota SVL97-2HF Skid Steer KBCZ964CVM1C62308
2022 Club Car Carryall 1700G UTV A5CUAA4FCNA326159	2021 Kubota SVL97-2HF Skid Steer KBCZ064CEM1E63289
2022 Club Car Carryall 1700G UTV A5CUAA4FKNA326151	2021 CAT 289D Skid Steer JX906398
2022 Kawasaki Mule KAT620B JK1ATCB17NB501637	2021 Kubota SVL97-2HF Skid Steer E63118 KBCZ064CPM1E63118
2022 Can-Am 8ZNA Utility Vehicle 3JBUBAJ45NK00517	2022 Kubota SVL97-2HF KBCZ064CJN1F70237
2022 Can-Am 8ZNA Utility Vehicle 3JBUBAJ47NK00504	2024 CAT 259D3 Skid Steer CW929052
2022 Can-Am 8ZNA Utility Vehicle 3JBUBAJ46NK000459	2020 CAT 289D3 L2+ Compact Track Loader JX903668
2022 Can-Am 8ZNA Utility Vehicle 3JBUBAJ49NK00505	2020 CAT 289D3 L2+ Compact Track Loader JX903815
2022 Can-Am 8ZNA Utility Vehicle 3JBUBAJ47NK00518	2021 CAT 289D3 Skid Steer JX905224
2022 Can-Am 8ZNA Utility Vehicle 3JBUBAJ42NK00555	2021 Laymor SM300 Sweeper 40358
2023 Can-AM 8ZPB Utility Vehicle 3JBUBAJ45PK000312	2021 Laymor SM300 Sweeper 40359
2023 Can-AM 8ZPB Utility Vehicle 3JBUBAJ48PK000367	2021 Laymor SM300 Sweeper 40388
2023 Can-AM 8ZPB Utility Vehicle 3JBUBAJ40PK000329	2023 Laymor SM300 Sweeper 42889
2023 Can-AM 8ZPB Utility Vehicle 3JBUBAJ43PK000373	

FORM 9.7 — STATEMENT OF RESPONDENTS QUALIFICATIONS (CONT)



TIMOTHY S. SMITH | PRESIDENT & CEO

In 1984, at age 16, Tim Smith joined Wharton-Smith, starting as an intern and working his way up the ladder through college, earning full-time employment in 1991. During nearly 40 years of incredible growth and change, Tim has served the company in many roles — Cleaning Crew, Field Engineer, Estimator, Project Engineer, Project Manager, Project Executive, Quality Control Director, Vice President, and currently President and CEO. In each of these roles, he has advanced the company's goal of being the *Construction Group of Choice*. As President and CEO, Tim oversees the overall performance of each division and aids the company's growth through his servant leadership abilities, robust technical engineering and operations background, and dedication to Wharton-Smith's core values of trust, honesty, integrity, passion, and continuous improvement.

Tim is involved with projects from estimating to operations, assuring in-depth knowledge of all functions within the organization. He is responsible for the financial aspects of the business, including banking, bonding, and insurance. Tim leads the execution of strategic business plans and infrastructure management by leveraging technology to yield efficient and effective growth management methods. Tim holds a bachelor's degree in Finance from Auburn University and a bachelor's degree in Civil Engineering from the University of Central Florida. He is a Professional Engineer and a licensed General Contractor in the State of Florida.

Tim is committed to the Central Florida community. He actively supports and serves in leadership roles for organizations such as Kids House, Leadership Seminole, Habitat for Humanity, Seminole State College, the University of Central Florida, and the Central Florida Zoo. Additionally, Tim has been recognized with a Civil, Environmental, and Construction Engineering Achievement Award from the University of Central Florida.



DARIN A. CRAFTON | CHIEF OPERATING OFFICER - COMMERCIAL

Darin Crafton joined Wharton-Smith in 2015 and brought with him more than 20 years of experience in the construction industry and a proven record of successful completion of many high-profile, multi-million-dollar projects. In his current role of Chief Operating Officer - Commercial (COO - Commercial), Darin supports the company's vision and strategic goals and plays an essential part in shaping the company's future.

Under Darin's leadership, the expansion of Wharton-Smith's Commercial Division has thrived, and the company has increased its revenue by more than 300 percent. This growth has led to increased commercial market share in education, municipal and civic, public safety, and parks and recreation in Central Florida and throughout the Southeast United States. Darin holds a bachelor's degree in Construction from Bradley University in Peoria, Illinois. Community service is a passion for Darin, and he actively supports Associated Builders and Contractors, Inc., Kids House, Habitat for Humanity, and the Foundation for Seminole County Schools.



PATRICK J. HEWITT | CHIEF OPERATING OFFICER - WATER

Pat Hewitt joined Wharton-Smith in 1998, and currently serves as Chief Operating Officer - Water (COO - Water) working out of our headquarters in Sanford, Florida. With over 30 years of experience in the water and wastewater construction industry, Pat's expertise has proven integral to Wharton-Smith's growth over the past 25 years.

During his tenure at Wharton-Smith, Pat's leadership and focus have developed a thriving business line and a new generation of employees dedicated to client relationships and quality construction standards in lieu of maximizing the bottom line. In his current role, Pat provides oversight and is responsible for the strategic growth of Wharton-Smith's Water operations throughout Florida, as well as our regional locations in the Carolinas, Houston, and the Gulf Coast of Mississippi and Louisiana.

Pat has a bachelor's degree in Civil Engineering from the University of Florida. He is a licensed General Contractor and a licensed Mechanical Contractor in the State of Florida. Pat also serves on the Board at the Coalition for the Homeless in Orlando.

FORM 9.7 — STATEMENT OF RESPONDENTS QUALIFICATIONS (CONT)



STEPHANIE L. POMPEO | CHIEF FINANCIAL OFFICER / SECRETARY

Stephanie Pompeo was named Chief Financial Officer (CFO) and Secrety of Wharton-Smith in 2023 after serving as Vice President of Finance since 2020, and was the company's first female stockholder. She joined the company in 2006 and has more than 17 years of experience in accounting, finance, construction, and technology. Stephanie holds a corporate leadership role in which she provides oversight of the company's financial reporting as well as compliance with internal financial procedures and corporate policies. She is an experienced professional with a demonstrated history of working in the construction industry leading dynamic Accounting, Finance, Workflow, Training, and IT teams that work on high-profile, multi-million-dollar projects.

Stephanie has experience in tax, financial budgeting, planning, cost control, software development, payroll, workflow mapping and improvements, and financial analysis with strong decision-making skills. She works closely with executive leadership to support business growth in strategic planning areas. This involves collaboration with operations and all administrative departments to facilitate communication of financial information needed for analysis and forecasting. She is also responsible for the enterprise technology of the company.

Stephanie graduated from University of Central Florida with a bachelor's degree in Accounting. She also holds an Associates of Arts degree from Edison State College and is a former Phi Theta Kappa member. In 2022, Stephanie was a honoree in the *Orlando Business Journal*'s Women Who Mean Business and a Rising Star Honoree from the Construction Financial Management Association (CFMA).

Stephanie is active in the financial construction community and her community by being involved in several local organizations. She serves on the Industry Accounting Advisory Board of Seminole State College, is a member of Construction Financial Management Association, President of Central Florida CFMA, CFMA 2019-2020 Peer Group member, CFMA Emerging Leaders 2022-2023 graduate, Corporate Payments Client Advisory Board member and a Sage 300 CRE User Group member, member of FMI CFO Construction Forum.

She has provided pro-bono accounting services to Kids House of Seminole. She is a current Athena Orlando Women's Leadership, Inc alumni and on the Council for Leadership Seminole. She was a 2019 graduate of Leadership Seminole, a 2019 graduate of Athena NextGen Thought Leadership Series, Co-Founder, Board of Director and Treasurer of Wharton-Smith Foundation, Inc.

FORM 9.8 — PROFESSIONAL REFERENCES FOR PREVIOUS EXPERIENCE

FORM 9.8 – PROFESSIONAL REFERENCES FOR PREVIOUS EXPERIENCE

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

1. Company Name: Volusia County
   Contact Person: Michael Ulrich
   City, State: DeLand, FL
   Telephone Number: (386) 943-7027
   Email Address: mulrich@volusia.org
   Description of goods/services provided: CMAR services for various force main projects including Deltona North Lift Station included in Tab B of this proposal
   Contract Amount: $5,196,880
   Start/End Date of Contract: 5/4/2020 - 6/17/2021
2. Company Name: City of Leesburg
   Contact Person: Cliff Kelsey
   City, State: Leesburg, FL
   Telephone Number: (352) 435-9442
   Email Address: cliff.kelsey@leesburgflorida.gov
   Description of goods/services provided: CMAR services for multi-phase wastewater expansion project
   Contract Amount: $39,884,358 (Phase II only)
   Start/End Date of Contract: 9/1/2023 - 6/1/2024 (Phase II only)
3. Company Name: City of Altamonte Springs
   Contact Person: Karen McCullen (formerly with City; now with City of Maitland)
   City, State: Altamonte Springs, FL
   Telephone Number: (407) 875-2829
   Email Address: kmccullen@itsmymaitland.com
   Description of goods/services provided: CMAR services for several water/wastewater projects including A-FIRST project included in Tab B of this proposal
   Contract Amount: $5,921,341
   Start/End Date of Contract: 6/16/2014 - 9/15/2015 Type text here

This document must be completed and returned with your Submittal.

FORM 9.8 — PROFESSIONAL REFERENCES FOR PREVIOUS EXPERIENCE

FORM 9.8 – PROFESSIONAL REFERENCES FOR PREVIOUS EXPERIENCE

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

1. Company Name: City of Daytona Beach
   Contact Person: Eric Smith
   City, State: Daytona Beach, FL
   Telephone Number: (386) 671-8829
   Email Address: smitheric@codb.us
   Description of goods/services provided: Design-Build services for in-plant pump station and headworks project
   Contract Amount: $22,000,000
   Start/End Date of Contract: _____

This document must be completed and returned with your Submittal.

FORM 9.8 — LISTING OF PREVIOUS EXPERIENCE

(Form 9.8 – Professional References for Previous Experience Page 2)

LISTING OF PREVIOUS EXPERIENCE
COMMERCIAL CLIENT LIST

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

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

1. Contact Name: Michael Ulrich
   Phone: (386) 736-5935
   Current Client: ☒ Yes ☐ No
   Number of years of service provided: 10+
   Description of service: CMAR services for construction of lift station and 3 miles of 12" force main that connects to existing force main line
2. Contact Name: Karen McCullen (formerly with City of Altamonte Springs; now with City of Maitland)
   Phone: (407) 875-2829
   Current Client: ☐ Yes ☒ No
   Number of years of service provided: 20+
   Description of service: Design-bid-build services for 1,800+ LF of 16" force main, 600 LF of horizontal directional drilling (HDD) piping, 14 MGD pump station, and 250,000-gallon pre-stressed storage tank
3. Contact Name: Tom Foster
   Phone: (407) 314-6877
   Current Client: ☒ Yes ☐ No
   Number of years of service provided: 40
   Description of service: CMAR services for 230 LF of 36" Jack & Bore, 3,000 LF of open cut 20" ductile iron piping, 800 LF of 24" directional drill piping, pump stations, GAC filter system, electrical/I&C updates

This document must be completed and returned with your Submittal

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FORM 9.9 — AUTHORIZED SIGNATURES/NEGOTIATORS

FORM 9.9 – AUTHORIZED SIGNATURES/NEGOTIATORS

The Respondent represents that the following person(s) are authorized to sign and/or negotiate contracts and related documents to which the Respondent will be duly bound:

Name	Title	Phone #
Timothy S. Smith	President/CEO	(407) 321-8410
Ronald F. Davoli	Chairman of the Board	(407) 321-8410
Patrick J. Hewitt	COO - Water	(407) 321-8410
Darin A. Crafton	COO - Commercial	(407) 321-8410

Authorized Signature

Patrick J. Hewitt
Print Name of Authorized Signature

Name	Title	Phone #
Stephanie L. Pompeo	CFO/Secretary	(407) 321-8410
Todd H. O'Donnell	Vice President	(813) 288-0068
Kenneth E. Marcell	Vice President	(225) 754-0550
Gregory L. Williams	Director of Operations	(561) 748-5956
Andre P. Boagni	Director of Operations	(281) 343-3090

This document must be completed and returned with your Submittal

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FORM 9.10 — SCRUTINIZED COMPANIES CERTIFICATIONS

FORM 9.10 SCRUTINIZED COMPANIES CERTIFICATION

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

SCRUTINIZED COMPANIES CERTIFICATION PURSUANT TO SECTION 287.135, FLORIDA STATUTES

I, Patrick J. Hewitt, COO - Water, on behalf
(Print Name and Title)
of Wharton-Smith, Inc. ("Company"), certify that Wharton-Smith, Inc.
(Company Name) (Company Name)
does not:

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

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

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

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

Wharton-Smith, Inc.
COMPANY NAME

Patrick J. Hewitt
PRINT NAME

SIGNATURE

COO - Water
TITLE

STATE OF FLORIDA COUNTY OF: Seminole

The foregoing instrument was acknowledged before me by means of ☒physical presence or ☐online notarization, this 21st day of October, 2024, by Patrick J. Hewitt and who:

☒Is personally known to me; or ☐ has produced N/A as identification.

Rebecca Titus Notary Public, State of Florida

Printed, typed or stamped name, commission and expiration: 6/15/2027

REBECCA TITUS
Notary Public - State of Florida
Commission # HH 411576
My Comm. Expires Jun 15, 2027
Bonded through National Notary Assn.

This document to be completed and returned with your Submittal

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FORM 9.11 — E-VERIFY AFFIDAVIT

FORM 9.11 - E-VERIFY AFFIDAVIT

CITY OF PORT ORANGE

CONTRACTOR E-VERIFY AFFIDAVIT
IN ACCORDANCE WITH SECTION 448.095, FLORIDA STATUTES

Project Name: **Construction Manager at Risk for Construction of Force & Water Mains (River Crossing)**

Solicitation Number: **RFSQ #24-03**

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

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

A true and correct copy of Wharton-Smith, Inc. **(insert contractor company name) proof of registration in the E-Verify system is attached to this Affidavit.**

By affixing my signature below, I hereby affirm that I am duly authorized to bind the company reference herein and I will comply with all applicable E-Verify requirements.

Patrick J. Hewitt, COO - Water
Print or Type Name, Title

Signature of Affiant

59-2392802
Federal Employer ID Number (FEIN)

142880
E-Verify Number

STATE OF FLORIDA

COUNTY OF: Seminole

The foregoing instrument was acknowledged before me by means of ☒physical presence or ☐online notarization, this 21st day of October, 2024, by Patrick J. Hewitt and who:

☒Is personally known to me; or ☐ has produced N/A as identification.

Rebecca Titus
Printed, typed or stamped name, commission and expiration:

Notary Public, State of Florida
6/15/2027

This document to be completed and returned with your Submittal

REBECCA TITUS
Notary Public - State of Florida
Commission # HH 411576
My Comm. Expires Jun 15, 2027
Bonded through National Notary Assn.

FORM 9.11 — E-VERIFY AFFIDAVIT (CONT)

EmployerWizard

E-Verify®
Employment Eligibility Verification

Welcome Melissa Rivera | User ID MRIV0591 | Last Login 03:28 PM - 12/19/2011 | Log Out

- Home
- **My Cases**
  - New Case
  - View Cases
  - Search Cases
- **My Profile**
  - Edit Profile
  - Change Password
  - Change Security Questions
- **My Company**
  - Edit Company Profile
  - Add New User
  - View Existing Users
  - Close Company Account
- **My Reports**
  - View Reports
- **My Resources**
  - View Essential Resources
  - Take Tutorial
  - View User Manual
  - Contact Us

Company Information

Company Name: Wharton-Smith, Inc. — View / Edit

Company ID Number: 142880
Doing Business As (DBA) Name:
DUNS Number:

Physical Location:

Address 1: 750 Monroe Road
Address 2:
City: Sanford
State: FL
Zip Code: 32771
County: SEMINOLE

Mailing Address:

Address 1: P.O. Box 471028
Address 2:
City: Lake Monroe
State: FL
Zip Code: 32747

Additional Information:

Employer Identification Number: 592392802
Total Number of Employees: 500 to 999
Parent Organization:
Administrator: Wharton-Smith, Inc

Organization Designation:

Employer Category: Federal Contractor with FAR E-Verify Clause
Federal Contractor Category: None of these categories apply
Employees being verified: All new hires and all existing employees assigned to a Federal contract

NAICS Code: 237 - HEAVY AND CIVIL ENGINEERING CONSTRUCTION — View / Edit

Total Hiring Sites: 16 — View / Edit

Total Points of Contact: 3 — View / Edit

View MOU

https://e-verify.uscis.gov/emp/EmployerWizard.aspx[12/19/2011 3:39:45 PM]

FORM 9.12 — CERTIFICATION REGARDING DEBARMENT, SUSPENSION, & OTHER RESPONSIBILITY MATTERS

FORM 9.12 - CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

(To be completed by Prime Contractor)

PRIMARY COVERED TRANSACTIONS

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). The Contractor must comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into. This certification is a material representation of fact relied upon by City. If it is later determined that the Contractor did not comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, in addition to remedies available to City, the federal government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or respondent agrees to comply with the requirements of 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or respondent further agrees to include a provision requiring such compliance in its lower tier covered transactions.
2. The Contractor hereby certifies that the Contractor is complying with the requirements in Section 1 above. Further, the Contractor verifies 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).
3. The Contractor further certifies to the best of its knowledge and belief that it and its principals and affiliates:
    a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
    b) Have not within a three-year period preceding this been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statues or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
    c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of these offenses enumerated in paragraph (2)(b) of this certification; and
    d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
4. Where the Contractor is unable to certify to any of the statements in this certification, such prospective Contractor shall attach and explanation to this.
5. No subcontract will be issued for this project to any party which is debarred or suspended from eligibility to receive federally funded contracts.

Signature of Contractor's Authorized Official

10/21/2024
Date

Patrick J. Hewitt, COO - Water
Name and Title of Contractor's Authorized Official

This document must be completed and returned with your Submittal

43

FORM 9.13 — NON-DISCLOSURE OF CONFIDENTIAL MATERIALS

FROM 9.13 – NON-DISCLOSURE AGREEMENT

FOR

CONFIDENTIAL MATERIALS

REFERENCE# 24-03

RETURN THIS FORM ONLY IF CONFIDENTIAL MATERIALS ARE BEING INCLUDED WITH THE SUBMITTAL. PLEASE READ THE SECTION IN THE REQUEST TO DETERMINE IF THIS APPLIES.

Respondent: Wharton-Smith, Inc.

Address: 750 Monroe Road, Sanford, FL 32771

This Agreement is entered into as of the date of the last signature set forth below between the City of Port Orange, a political subdivision of the State of Florida (hereinafter the "City"), and the above-named Respondent (hereinafter the ("Respondent"). The City and the Respondent are collectively referred to as the "Parties" and may be referred to individually as a Party.

RECITALS

WHEREAS, the Respondent asserts that it possesses certain confidential trade secret materials that it wishes to disclose to the City for the purpose of responding to a solicitation or otherwise conducting business with the City; and
WHEREAS, the City desires to review such materials in order to evaluate the City's interest in negotiating and concluding an agreement for the purchase of certain products and services, or otherwise conducting business with the Respondent.
NOW THEREFORE, in consideration of the mutual promises and premises contained herein, the receipt and sufficiency of which are hereby acknowledged, the City and the Respondent agree as follows:

1. Confidential Materials. The Respondent warrants and represents to the City that the materials described in the attached Exhibit A (Description of "Confidential Material") constitute trade secrets as defined by Section 812.081(1)(c), Florida Statutes, or financial statements required by the City for projects as defined in 119.071(1)(c), Florida Statutes. Subject to the terms and conditions of this Agreement, the City agrees not to disclose such Confidential Materials to third parties.
2. Additional Materials. During the course of the review or the business relationship with the City, the Respondent may disclose additional confidential or trade secret information to the City in which case the restrictions and obligations on the use and disclosure of the Confidential Materials imposed by this Agreement shall also apply to such additional information to the extent permitted by Florida law. Any such additional confidential or trade secret information shall be duly marked and stamped "confidential" or "trade secret" prior to delivery to the City, and shall be subject to this Agreement and Section 812.081(2), Florida Statutes, only if written receipt is provided by the City acknowledging receipt of such materials.
3. Exclusions. For purposes of this Agreement, the term "Confidential Materials" does not include the following:
    a. Information already known or independently developed by the City;
    b. Information in the public domain through no wrongful act of the City;
    c. Information received by the City from a third party who was legally free to disclose it;
    d. Information disclosed by the Respondent to a third party without restriction on disclosure;
    e. Information disclosed by requirement of law or judicial order, including without limitation Chapter 119 Florida Statutes; or
    f. Information that is disclosed with the prior written consent of the Respondent, but only to the extent permitted by such consent.

FORM 9.13 — NON-DISCLOSURE OF CONFIDENTIAL MATERIALS (CONT)

4. Non-Disclosure by Respondent. In the event that the City discloses confidential or trade secret information to Respondent, the Respondent agrees to not disclose such information to any third party or copy such information or use it for any purpose not explicitly set forth herein without the City's prior written consent. Further, upon conclusion of discussions or business transactions between the City and the Respondent, or at any time upon request of the City, Respondent agrees to return such information (including any copies) to the City.
5. Duty of Care. Each Party agrees to treat the other Party's confidential or trade secret information with the same degree of care, but not less than reasonable care, as the receiving Party normally takes to preserve and protect its own similar confidential information and to inform its employees of the confidential nature of the disclosing Party's information and of the requirement of nondisclosure. In the event either Party has actual knowledge of a breach of the nondisclosure requirements set forth in this Agreement, the Party acquiring such knowledge shall promptly inform the other Party and assist that Party in curing the disclosure, where possible, and preventing future disclosures.
6. Limitations of Florida Law. Respondent understands and agrees that its assertion that any item is confidential or a trade secret does not, in and of itself, render such material exempt from the Florida Public Records Law, Chapter 119 of the Florida Statutes, and that the City's ability to prevent disclosure of confidential and trade secret information may be subject to determination by a Florida court that such materials qualify for trade secret protection under Florida law. In the event a third party makes a public records request for the Confidential Materials or other materials deemed by Respondent to be confidential or a trade secret, the City may submit the materials to the court for inspection in camera as set forth in Section 119.07(1)(g) Florida Statutes. Respondent further understands that the City may be required to disclose such information if directed by a court of competent jurisdiction.
7. Indemnification by Respondent. In the event of any litigation instituted by a third party to compel the City to disclose such materials, Respondent shall, at its sole cost and expense, provide assistance to the City in defending the denial of the records request, and shall hold the City harmless from any claim for statutory costs and attorney's fees arising from the City's refusal to disclose such materials.
8. No Additional Obligations. This Agreement shall not be construed in any manner to be an obligation for either Party to enter into any subsequent contract or agreement.
9. Sovereign Immunity. Nothing in this Agreement shall be deemed as a waiver of immunity or limits of liability of the City beyond any statutory limited waiver of immunity or limits of liability, which has been or which may be adopted by the Florida Legislature, regardless of the nature of any claim which may arise, including but not limited to a claim sounding in tort, equity or contract. In no event shall the City be liable for any claim or claims for breach of contract, including without limitation the wrongful disclosure of confidential or trade secret information for an amount which exceeds, individually and collectively, the then current statutory limits of liability for tort claims. Nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim against the City, which would otherwise be barred under the Doctrine of Sovereign Immunity or by operation of law.
10. Notice. Whenever either Party desires to give notice unto the other, it must be given by written notice, sent by registered United States mail, with return receipt requested, addressed to the party for whom it is intended, at the place last specified, and the place for giving of notice in compliance with the provisions of this paragraph. For the present, the Respondent designates the address set forth above as its place for receiving notice, and the City designates the following address for such notice:

    The City of Port Orange, Florida
    Purchasing Manager
    1000 City Center Circle
    Port Orange, FL 32129

11. Governing Law. This Agreement shall be governed by the laws of the State of Florida, and venue for any action arising out of or relating to the subject matter of this Agreement shall be exclusively in Volusia County, Florida, or the Federal City Court for the Middle City of Florida, Jacksonville Division.
12. Respondent and the City hereby expressly waive any rights either may have to a trial by jury of any civil litigation related to this Agreement for any litigation related to or arising from this solicitation and resulting agreement.

FORM 9.13 — NON-DISCLOSURE OF CONFIDENTIAL MATERIALS (CONT)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers the day and year as set forth below.

The City of Port Orange, FL

BY: _____

NAME: _____

TITLE: _____

DATE: _____

Respondent

BY: [signature]

NAME: Patrick J. Hewitt

TITLE: COO - Water

DATE: 10/21/2024

ATTEST:

BY: Rebeca Titus

NAME: Rebecca Titus

TITLE: Marketing Manager

DATE: 10/21/2024

BONDING CAPACITY LETTER

CNA SURETY

500 Colonial Center Parkway, Suite 400
Lake Mary, FL 32746

Elio E. Sanchez, CPA, AFSB
Telephone 407-804-5931
Cellular: 407-325-5532
Internet elio.sanchez@cnasurety.com

October 4, 2024

City of Port Orange
Attn: Jill Poolman, Purchasing Manager
Purchasing Division
1000 City Center Circle
Port Orange, FL 32129

Re: Wharton-Smith, Inc., 750 Monroe Road, Sanford, FL 32771
RFSQ #24-03 – Construction Manager at Risk for
Construction of Force & Water Mains (River Crossing)

Dear Ms. Poolman,

We are providing this information at the request of our principal.

We have been providing surety bonds for Wharton-Smith, Inc. since 1986. We have approved bonds for them covering jobs up to $350,000,000 and potential work programs of $1,750,000,000.

We understand that Wharton-Smith, Inc. has or is about to submit a proposal for RFSQ #24-03 – Construction Manager at Risk for Construction of Force & Water Mains (River Crossing) with an estimated price of $7,500,000. If a contract is awarded to Wharton-Smith, Inc. and based on present circumstances, CNA Surety will be willing to provide bid, performance and payment bonds for the applicant in connection with the contract.

Wharton-Smith, Inc. has surety credit established with Western Surety Company, a wholly-owned subsidiary of CNA Surety. An admitted surety in the State of Florida, Western Surety Company is an A.M. Best “A” (Excellent) rated company with a financial size category of XIV ($1.5 Billion to $2 Billion.) Western Surety Company is also included in the Treasury Department list of approved sureties.

Any arrangement for bonds required by the contract is a matter between Wharton-Smith, Inc. and the surety and we assume no liability to you or third parties, if for any reason we do not execute these bonds.

Sincerely,

Elio E. Sanchez

APPENDIX A — CERTIFICATION REGARDING LOBBYING

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING Certification for Contracts, Grants, Loans, and Cooperative Agreements

(Required for each bid or offer exceeding $100,000)

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

4. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

The Contractor, Wharton-Smith, Inc., certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Patrick J. Hewitt, COO - Water

Name & Title of Contractor's Authorized Official

Date: 10/21/2024

DEPARTMENT OF STATE CERTIFICATE AUTHENTICATION

State of Florida
Department of State

I certify from the records of this office that WHARTON-SMITH, INC. is a corporation organized under the laws of the State of Florida, filed on April 3, 1984, effective April 2, 1984.

The document number of this corporation is G94383.

I further certify that said corporation has paid all fees due this office through December 31, 2024, that its most recent annual report/uniform business report was filed on January 3, 2024, and that its status is active.

I further certify that said corporation has not filed Articles of Dissolution.

Given under my hand and the Great Seal of the State of Florida at Tallahassee, the Capital, this the Third day of January, 2024

GREAT SEAL OF THE STATE OF FLORIDA
IN GOD WE TRUST

Secretary of State

Tracking Number: 4058037720CC

To authenticate this certificate,visit the following site,enter this number, and then follow the instructions displayed.

https://services.sunbiz.org/Filings/CertificateOfStatus/CertificateAuthentication

FLORIDA SUNBIZ REPORT

DIVISION OF CORPORATIONS

Department of State / Division of Corporations / Search Records / Search by FEI/EIN Number /

Detail by FEI/EIN Number

Florida Profit Corporation
WHARTON-SMITH, INC.

Filing Information

Document Number	G94383
FEI/EIN Number	59-2392802
Date Filed	04/03/1984
Effective Date	04/02/1984
State	FL
Status	ACTIVE
Last Event	AMENDMENT
Event Date Filed	03/21/2024
Event Effective Date	NONE

Principal Address

750 MONROE RD
SANFORD, FL 32771

Changed: 04/25/2006

Mailing Address

750 Monroe Road
Sanford, FL 32771

Changed: 01/02/2020

Registered Agent Name & Address

CORPORATION SERVICE COMPANY
1201 HAYS STREET
TALLAHASSEE, FL 32301-2525

Name Changed: 10/07/2019

Address Changed: 10/07/2019

Officer/Director Detail

Name & Address

Title President, CEO, Treasurer	Title Chairman, Asst. Secretary	Title COO	Title COO
SMITH, TIMOTHY S 750 MONROE RD SANFORD, FL 32771	DAVOLI, RONALD F 750 MONROE RD SANFORD, FL 32771	HEWITT, PATRICK J 750 MONROE RD SANFORD, FL 32771	CRAFTON, DARIN A 750 MONROE ROAD Sanford, FL 32771



TAB B:

COMPANY PROFILE - HISTORY & QUALIFICATIONS OF FIRM

Wharton-Smith, Inc.
CONSTRUCTION GROUP

CITY OF PORT ORANGE
1867
FLORIDA

COMPANY PROFILE

Wharton-Smith, Inc. is a privately held corporation founded 40 years ago on April 2, 1984 in Central Florida. As a construction manager, design-builder, and general contractor, Wharton-Smith helps build communities delivering water and wastewater treatment facilities, state-of-the-art schools and educational facilities, fire/police stations and public safety facilities, sports and recreational park complexes, mixed-use developments, and more.

Wharton-Smith was founded by Bill Wharton and George Smith, who envisioned growing a company that would encompass strong work ethic and have a positive impact within the communities we serve. As an *ENR Top 400 Contractor*, with a strong financial backing, Wharton-Smith continues to uphold these founding ideals under the current leadership of Tim Smith, President and CEO.

Wharton-Smith's approach to successful team collaboration starts with having the right perspective. Our perspective focuses on building and sustaining long-term relationships with our clients and industry partners. Our company's mission statement reflects that perspective and our culture teaches that people, clients and employees, are the most important and critical factor for our success. The positive result of this perspective is approximately 85% of our work being with repeat clients for projects of all sizes.



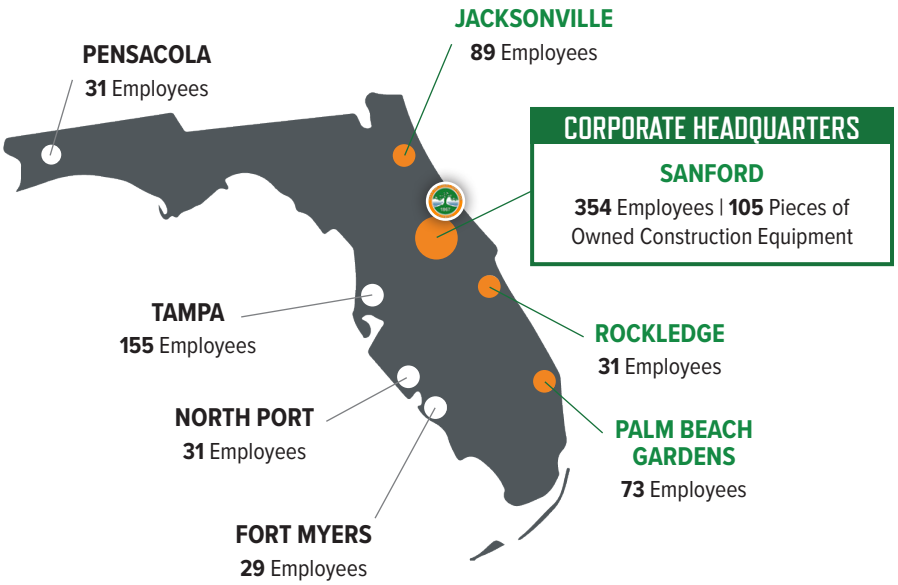
Left to right: Ronald F. Davoli - Chairman of the Board; George E. Smith - Founder; Timothy S. Smith - President & CEO

KEY FACT: ***Wharton-Smith is a "blended" firm offering the City of Port Orange the expertise in both utility and vertical construction.***

Our people are our greatest asset and we have the depth and diversity to deliver your project successfully. Wharton-Smith also owns our own Florida-based fleet of heavy equipment to provide fast response times and eliminate the risks associated with the current market conditions.

THE MOST RESOURCES IN FLORIDA

Wharton-Smith has ample and available resources to successfully complete the River Crossing Force & Water Mains project. We currently employ **547 staff in our East Coast and Central Florida offices!** Below is a graphic display of our Florida resources in both manpower and owned construction equipment.



DISCIPLINE	FIRM	EAST/CENTRAL FL
Exec. Management	69	47
Field Administrative	27	18
Field Management	135	78
Field Supervisor	62	30
Field Craft	146	84
Administrative	200	147
Office Management	199	114
Interns	46	29
TOTAL	884	547

The City of Port Orange sits in a geographic location that can be serviced by four Wharton-Smith branch offices.

RELEVANT WORK HISTORY WITH GOVERNMENT FACILITIES IN FLORIDA

Wharton-Smith has 40 years of experience providing quality construction services for public and municipal clients. Approximately 90% of Wharton-Smith's work is for municipalities including many **critical infrastructure projects involving both utility and vertical construction**. As community builders, we understand the importance of being good stewards of public funds while working closely with our clients and design team partners to fulfill a community vision.

The majority of our public work has been delivered through the Construction Management at Risk (CMAR) methodology. Since 1995, we have continued to refine and improve our CMAR processes and procedures to increase the likelihood of success as we work with owners, designers and engineers, and developers. These lessons learned have helped our project teams to manage projects collaboratively and bring added value to these projects. The key to successful construction management is communication, and we believe in forming strong partnerships with all team members from the outset of every project.

As Construction Manager, we coordinate functions and deliverables throughout all project phases including cost estimating, value engineering analysis, constructability and design reviews, project operations and management, schedule management, cost control, quality control, and safety. The foundation of our CMAR delivery is our open-book principle with the cost estimates, GMP process, and subcontractor selection, as well as our delivery of accurate cost and schedule updates throughout the project. Our open-book policy and transparent communication ensures that there are no surprises, and guarantees a successful project.

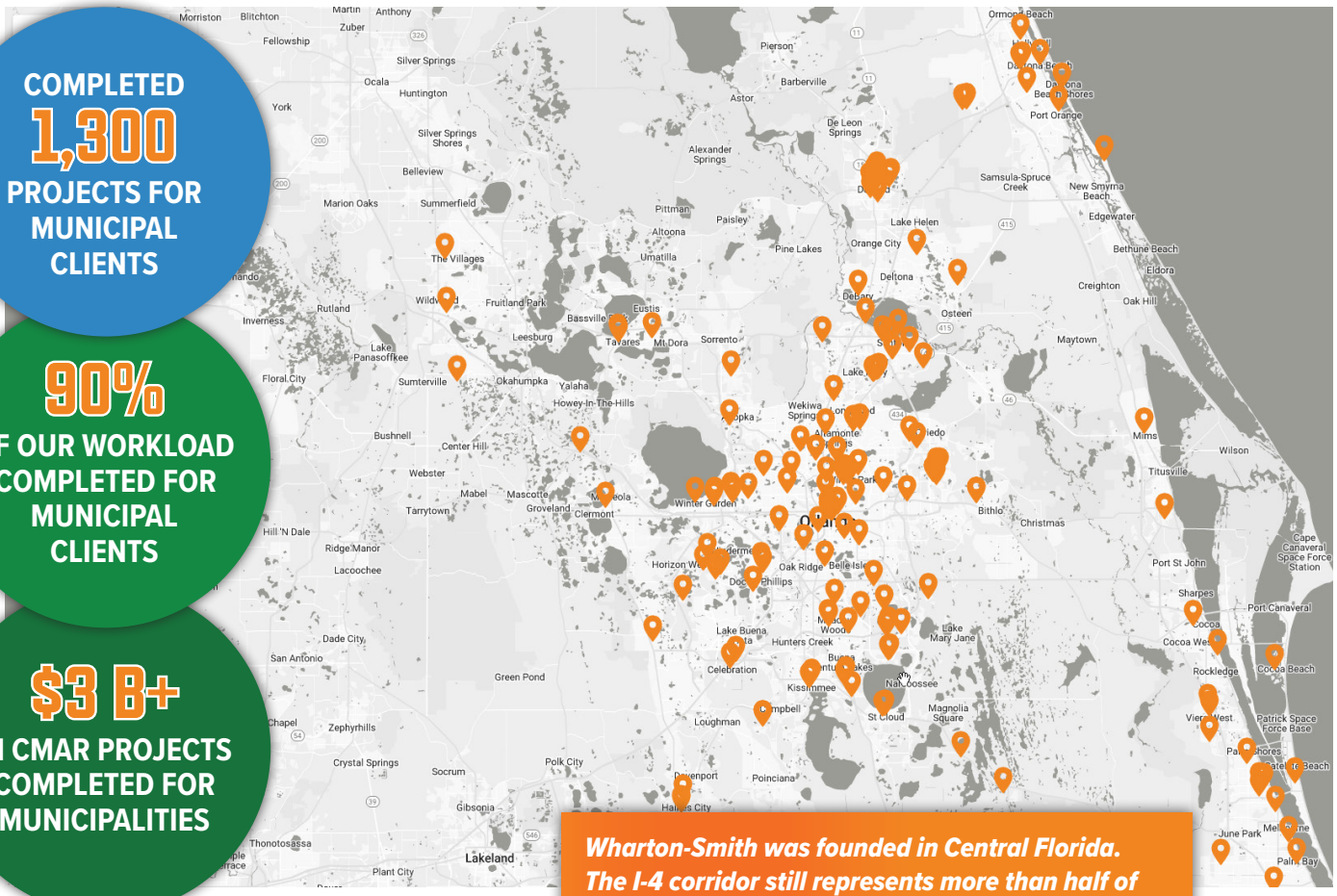
We have successfully partnered with more than 80 municipalities throughout the state of Florida ranging from small renovation and conversion projects under $1 million to the new construction of public water and wastewater infrastructure in excess of $300 million.

As public sector builders, Wharton-Smith has **permitted over 1,300 government projects for your neighbors** such as Volusia County, Volusia County School Board, City of New Smyrna Beach, City of Orange City, City of Daytona Beach, City of DeLand, City of Titusville, Brevard County Public Schools, City of Palm Coast, and City of Beverly Beach to name a few. We look forward to continuing our collaborative relationship with the City of Port Orange on this River Crossing Force & Water Mains project.

COMPLETED 1,300 PROJECTS FOR MUNICIPAL CLIENTS

90% OF OUR WORKLOAD COMPLETED FOR MUNICIPAL CLIENTS

$3 B+ IN CMAR PROJECTS COMPLETED FOR MUNICIPALITIES



Wharton-Smith was founded in Central Florida. The I-4 corridor still represents more than half of Wharton-Smith's annual revenue each year!

COLLABORATION IS THE CORNERSTONE OF OUR APPROACH.

The City of Port Orange has wisely selected Construction Management at Risk (CMAR) delivery to give you the highest probability of success on this critical infrastructure project. CMAR delivery gives you an opportunity to experience collaborative benefits not always available with other project delivery models, such as innovation, cost savings, schedule acceleration, and an end product built with reliability and sustainability. Wharton-Smith firmly believes and adheres to CMAR best practices. Our CMAR delivery plan for the River Crossing Force & Water Mains project outlines how we intend to follow these best practices:

BEST PRACTICE

CMAR team members should be educated and trained in the Construction Management at Risk process.

HOW WE ACHIEVE THIS? Wharton-Smith's experienced team has delivered water and wastewater treatment, and force main projects under the Construction Manager at Risk delivery for the past 30 years.

BEST PRACTICE

The project team should establish logistics and infrastructure to support integrated project delivery.

HOW WE ACHIEVE THIS? During preconstruction, the project will be managed out of our Corporate Headquarters office in Sanford. Wharton-Smith also has ample resources to provide support to the project team if any challenges may arise. Once construction begins, our team will be located in our on-site construction trailers.

BEST PRACTICE

The project team should establish processes to facilitate communication, collaboration, and issue/ dispute resolution.

HOW WE ACHIEVE THIS? Our team members have a strong history of collaboration on successful projects in Florida. We will operate as a truly integrated CMAR team collaborating efficiently and effectively with the City of Port Orange and Kimley Horn staff, as well as subcontractors and suppliers by having a clear organizational structure and open lines of communication.

BEST PRACTICE

The project team should recognize the benefit of including experienced trade contractors on its team early during design and procurement to expedite schedule.

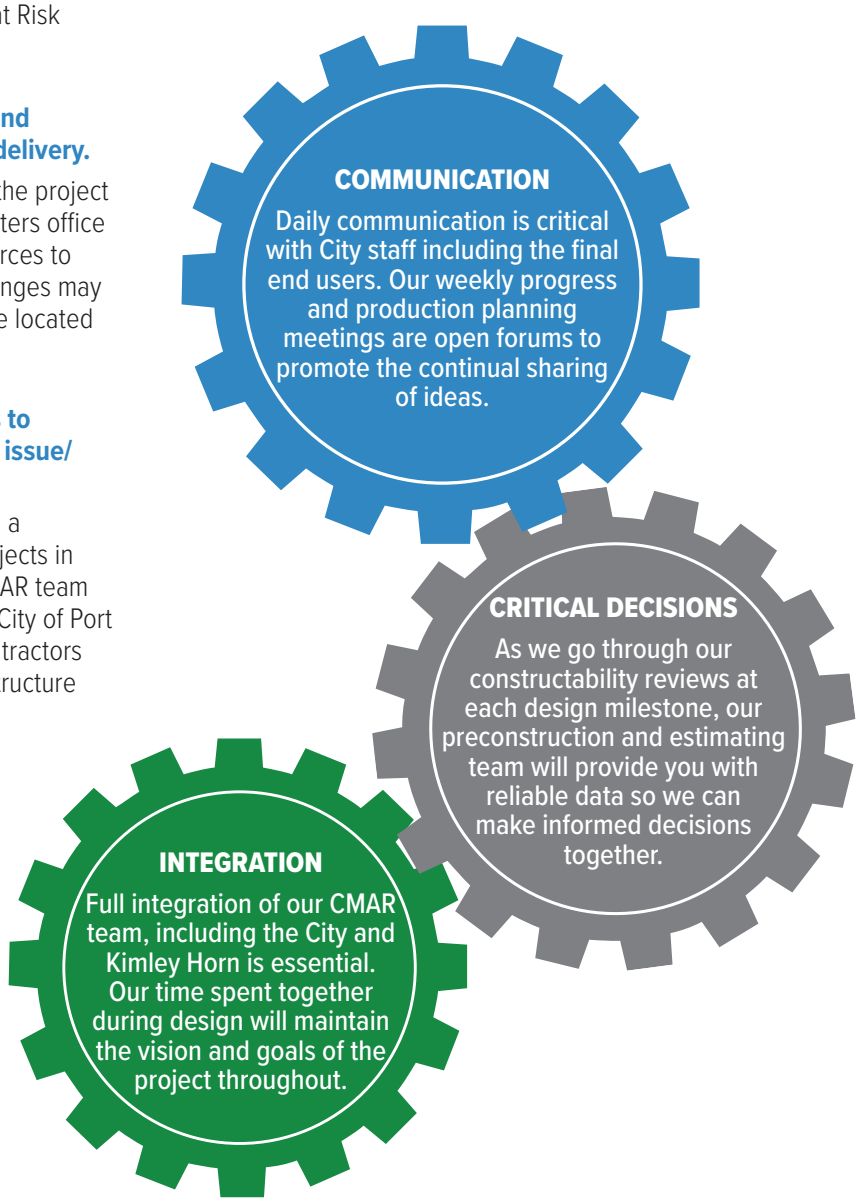
HOW WE ACHIEVE THIS? Wharton-Smith has relationships with thousands of subcontractors in Florida, including those that specialize in HDD. We have already reached out to TB Landmark, a premier drilling contractor in Florida, to gain insight on how to expedite schedule and lower risk.

COLLABORATION SPOTLIGHT

WHARTON-SMITH + KIMLEY HORN

CMAR is most effective when the design team and construction manager share a common vision to accomplish owners' goals with the highest quality projects. Wharton-Smith and Kimley Horn have proven that our teams work effectively together, particularly in the Florida water and wastewater treatment market.

All members of our project team have experienced success with Kimley Horn on several Florida water and wastewater projects. Our firms' synergy and cohesion will provide seamless preconstruction and construction phases for the City of Port Orange.



TECHNICAL EXPERTISE WITH YOUR CRITICAL COMPONENTS WILL LOWER COST AND SAVE TIME.

LOCAL TEAM

Experience in the Florida water industry *that matters*:

- #1 Florida-based water builder (*ENR*, 2023)
- #5 wastewater builder in U.S. (*ENR*, 2023)
- Headquartered in Florida
- 230+ in-house craftsmen to self-perform work

385
employees in Central Florida

CMAR DELIVERY

Refined CMAR processes *that matter to you*:

- Preconstruction services (with dedicated staff)
- Owner Direct Purchase (ODP)
- Competitive bidding process
- Open-book transparency

$4B+
in Florida CMAR

100+
Florida municipal CMAR clients

200+
CMAR water/wastewater projects

TRENCHLESS METHODS

Experience with trenchless technology *that matters*:

- Horizontal directional drilling (HDD)
- Micro-tunneling
- Jack & Bore
- Evaluate custom drilling fluids
- Advanced material selection
- Bore put management

35+
similar projects (last 20 years)

ALL OF THE CITY'S KEY PROJECT COMPONENTS ARE WHARTON-SMITH'S CORE COMPETENCIES.

FORCE MAIN/TRANSMISSION MAIN PIPING

Experience with all aspects of pipe systems *that matters*:

- Restraints
- Cathodic protection and coatings
- Pressure testing, flushing, and disinfection plans
- Excavation, backfill, and restoration
- Competitive bidding

RELEVANT CASE STUDY

RESOLVING CRITICAL SUBSURFACE CONFLICTS UTILIZING BIM TECHNOLOGY

HAMLIN WRF & PUMP STATION (ORANGE COUNTY)



OVERVIEW: Wharton-Smith was selected as the general contractor for the construction of a 5.0 MGD Water Reclamation Facility for Orange County, Florida.

CHALLENGE: The design team consisted of 14 firms and not all cross-discipline checks had taken place when we were brought onboard. There were dozens of elevation conflicts with various piping systems.

SOLUTION & RESULT: Wharton-Smith provided cost-free 3D modeling prior to digging and ordering of the pipe. Our project team, **led by Mike Alexakis**, discovered conflicts and developed solutions in conjunction with the design team. The project was completed months ahead of schedule and under budget.

OUR TEAM OF EXPERTS HAVE DONE THIS BEFORE.

The River Crossing Force & Water Mains project represents a large capital investment that needs to be completed on time and on budget. Building projects in today's market face both unexpected and expected challenges such as inflation, supply chain delays, adverse weather, technical challenges, and craft labor shortages. **This is precisely why the City of Port Orange needs, and deserves, a well-rounded team that is fully capable of guiding and navigating through these challenges**.

Some of the core qualities the Wharton-Smith team offers:

co • he • sion.

noun. *The act or state of sticking together tightly.*

Teamwork comes from people, not companies. Our proposed team members have **worked together for decades** on water, wastewater, and force main projects similar to the River Crossing project. Our internal cohesion enables us to establish trust with the City that much faster. ***Established trust provides lower costs and faster lead times***.

sta • bil • i • ty.

noun. *The quality state or degree of being stable.*

The team members to the right offer the City an **average tenure of 20+ years** of service. Our consistent service and stability ensure the team we propose will finish this project. They are committed to their careers and the City can rest easy knowing ***this team will be here tomorrow and at the end of the project***.

ex • pe • ri • ence.

noun. *The state of having gained knowledge through direct observation or participation.*

Our proposed staff of seasoned professionals have ***spent a lifetime building similar projects to the River Crossing Force & Water Mains project***.

ex • per • tise.

noun. *Possessing expert level of knowledge or skill in a particular subject.*

Our plan is to leverage our team's technical expertise to provide the City with all your project's needs while meeting your budget. To accomplish this, our team of preconstruction experts will dive deep into the design details. Many times, we can **build the same project for less cost without sacrificing quality** using alternative techniques. ***There is money to be saved***.

TEAM MEMBER	AVAILABILITY	
	PRECON	CONSTRUCTION
MICHAEL ALEXAKIS Principal-in-Charge	20%	20%
SCOTT JAMISON Project Executive	30%	30%
NATHAN HILLARD Client Service Manager	20%	20%
ERIK ANDERSON Preconstruction Director	30%	As Needed
DWAYNE KREIDLER Preconstruction Manager	60%	As Needed
ADAM BERGDAHL Sr. Project Manager	30%	100%
BILL McMULLEN Sr. Superintendent	20%	100%
TRAVIS CHAPUT Safety Manager	As Needed	20%
CHRIS GAYNER Quality Control Manager	As Needed	10%

SAFETY IS OUR #1 PRIORITY.

Wharton-Smith's first priority is to make sure all project team members get home safely to their families every night. This is not possible without making safety a company-wide effort—**safety is everyone's job**! Our comprehensive safety program for each project includes a site-specific safety plan, personal protective equipment (PPE), weekly inspections, daily meetings with all jobsite employees, and identification of the nearest emergency response personnel (Port Orange Fire Station 71). All field management staff are certified as competent persons in the following areas: trenching, scaffolding, confined space entry, fall protection, and CPR/First Aid.

Wharton-Smith employs 16 full-time safety personnel that visit jobsites and perform regular safety inspections as their full-time duties. Our highly-trained safety staff holds multiple certifications including those issued by OSHA. Your project site will be visited and inspected at least twice monthly by dedicated and local **Safety Manager Travis Chaput**. Travis will monitor compliance with all OSHA, Port Orange, and Wharton-Smith standards.

TRAINING— All field personnel assigned to the River Crossing Force & Water Mains project are OSHA-certified as competent persons in several areas of jobsite safety. We also offer necessary training to subcontractors, when required.

SITE-SPECIFIC SAFETY PLAN— During preconstruction, our team will submit a site-specific safety plan to the City of Port Orange for approval. In this plan, we outline our plan for all areas of safety related to the project and the site.

INSPECTIONS— Our **Superintendent Bill McMullen** will perform daily documented safety inspections of the jobsite. Additionally, this project will be inspected by **Safety Manager Travis Chaput** on a regular basis.

MEETINGS— Our superintendent and foremen hold safety task assignment (STA) meetings with our employees and craft workers, subcontractors, and all laborers every morning to review potential dangers. Our field management team also holds weekly "toolbox" safety meetings for all on-site personnel.

SITE VISITS FROM GUESTS— As visitors enter the site, they are required to sign in to our visitors log located in the jobsite trailer so we can account for everyone on the project site. For their safety, we require all guests to wear safe clothing and personal protective equipment (safety vest, hard hat, glasses, close-toed shoes, etc.). Guests that are unfamiliar with the site will be escorted around by Wharton-Smith personnel to keep them safe!



BEGINNING-OF-SHIFT TOOL BOX MEETING

MAINTENANCE OF TRAFFIC CONSIDERATIONS

One critical component of any project plan is the Maintenance of Traffic (MOT) Plan. MOT is a process of establishing a safe work zone, providing related transportation management and temporary traffic control for surface streets, bridge crossings, and pedestrian sidewalks. MOT is used during work in the right-of way, and during deliveries that may disrupt traffic.

The Manual on Uniform Traffic Control Devices (MUTCD) and Florida Department of Transportation (FDOT) have developed several MOT design standards; however, due to the location of this project, there will be some circumstances that require special MOT plans. All MOT will need to be carefully developed during preconstruction, marked with clear and adequate signage, and of course, include the safety for both the public and the workers in the work zone.

MOT APPROACH SUMMARY

COLLABORATION

Our project team will closely examine the characteristics and needs for the project location, considering vehicle, residential, business, and pedestrian MOT requirements.

PLANNING

Together, we will develop a written MOT plan for the River Crossing Force & Water Mains project, and ensure all City staff, construction personnel, and subcontractors find the plan viable.

EXECUTION

The Wharton-Smith team will implement the MOT per the approved design prior to any work being performed. Adequate public notification and signage will be utilized so affected areas remain safe.

WHAT OTHERS SAY ABOUT YOU SPEAKS VOLUMES.

*"As the largest construction project to date for the Utility, we couldn't have asked for a smoother and well run project. You and your staff collaborated, value engineered, and consolidated the team to **finish the project with exceptional quality and several months ahead of schedule**. Thanks again to everyone involved for making this so successful. Our staff looks forward to working with Wharton-Smith staff for many years to come."*

- Scott Trigg, Chief Engineer, St. Johns County, FL

*"I look forward to the opportunity to work with the Wharton-Smith team in the future. **They form a team mentality with a common goal to produce a quality project on time and within budget**."*

- Steven Leonard, Project Manager, City of Punta Gorda, FL

*"In working under the CMAR delivery method, Wharton-Smith has demonstrated a very successful **collaborative approach resulting in innovative design and cost-effectiveness for this project**. It is clear they possess a sincere desire to support our community's best interests by consistently providing high-quality service."*

- Michael Ulrich, Water Resources and Utility Director, Volusia County, FL

*"Wharton-Smith has been very easy to work with... **open with communication and attentive to problem solving**. I would recommend them for rehire."*

- Bill Clendening, Sr. Project Manager, JEA

*"One of the things that GRU values most about Wharton-Smith's Construction Management services is the diligence in documentation, open communication, and personal investment their people have in our projects. Their **technical competency and experience in the water and wastewater field also sets them apart**."*

- Rachel Haeseler, Utility Engineer, Gainesville Regional Utilities (GRU)

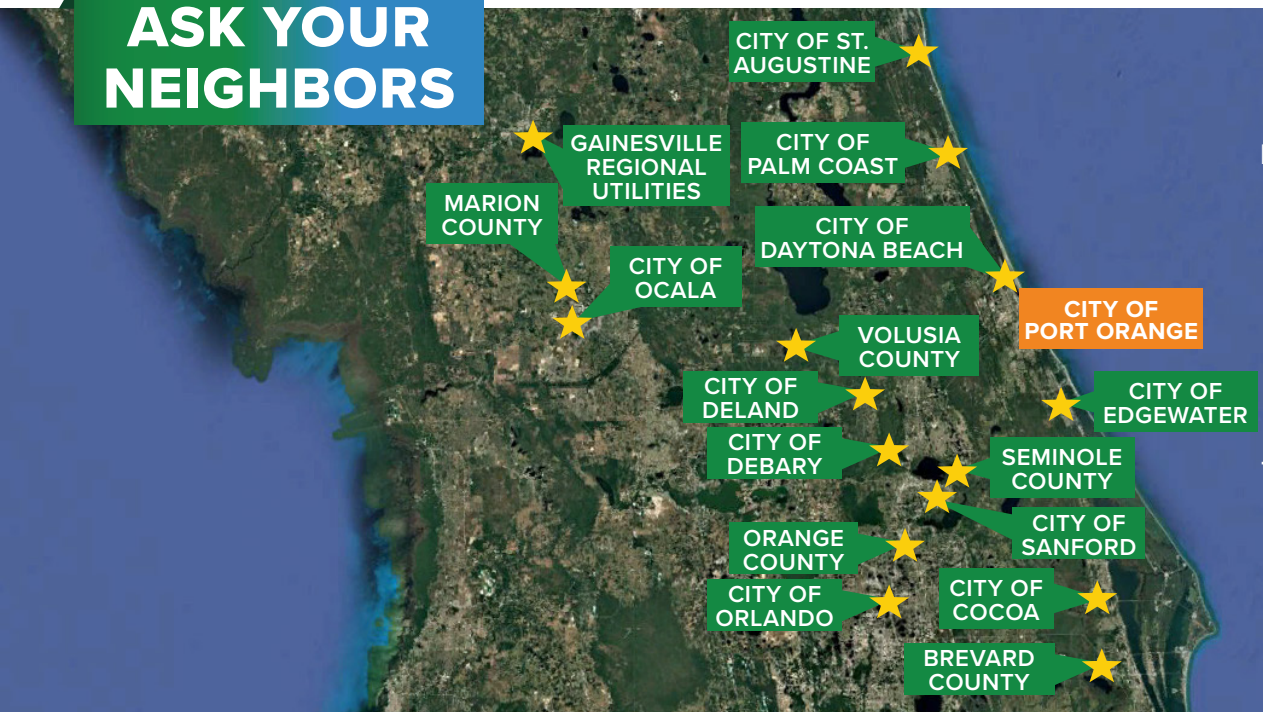
*"I have been in the utility business for over twenty years, I would rate **Wharton-Smith with the best that I have ever had the pleasure to work with**."*

- Steve Flanagan, Project Manager, City of Palm Coast, FL

*"This was the largest wastewater treatment project in the history of Marion County. The **Wharton-Smith team acted as true team players throughout the project, were extremely organized, and truly professional**."*

- David Rasmussen, Engineer of Record, Ardurra (Marion County project)

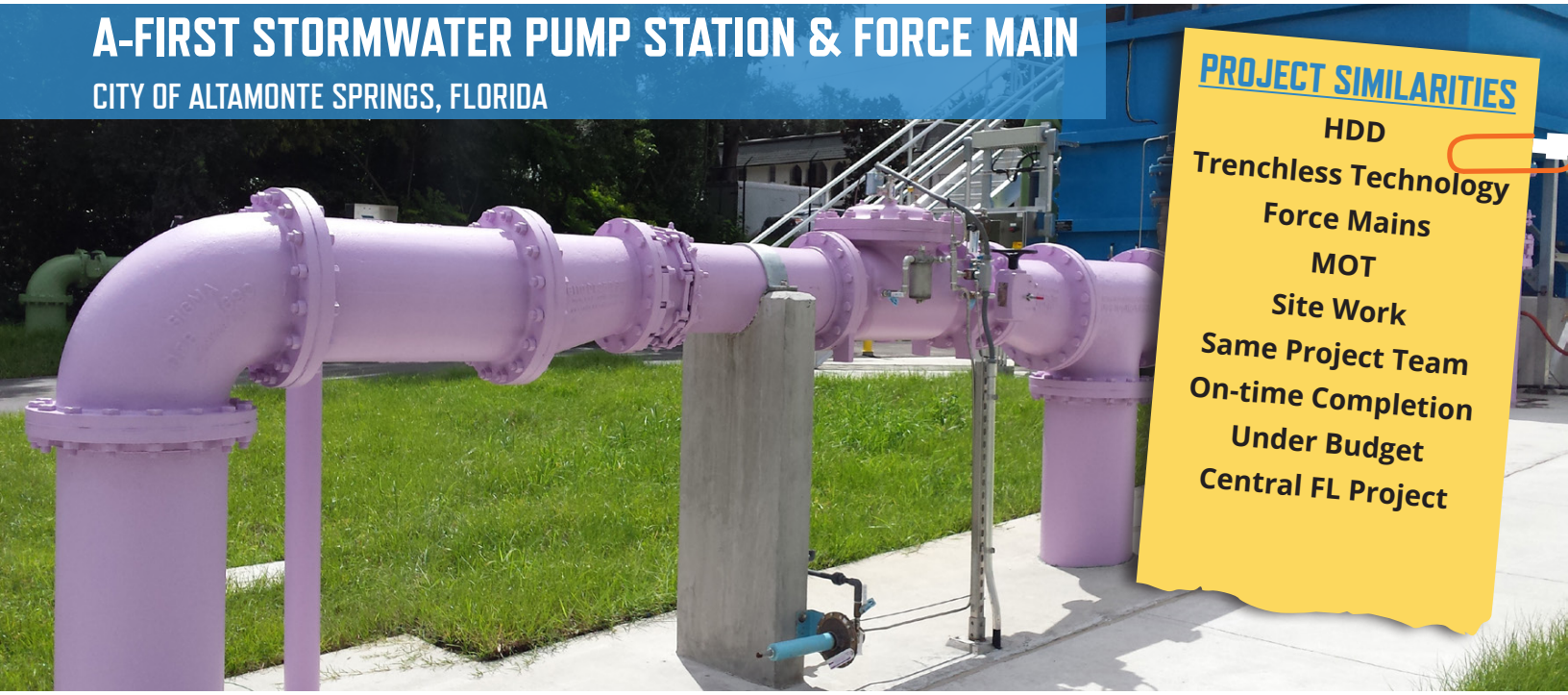
ASK YOUR NEIGHBORS



Wharton-Smith has made significant investment toward being the "***Construction Group of Choice***" for water and wastewater projects in Florida. As illustrated on the left, you can drive in any direction from the City of Port Orange and find a critical project that we have built, most of which are CMAR or Design-Build. We encourage you to ask your neighbors about the level of service and reliability we provide.

A-FIRST STORMWATER PUMP STATION & FORCE MAIN

CITY OF ALTAMONTE SPRINGS, FLORIDA



PROJECT SIMILARITIES

- HDD
- Trenchless Technology
- Force Mains
- MOT
- Site Work
- Same Project Team
- On-time Completion
- Under Budget
- Central FL Project

OWNER INFORMATION

City of Altamonte Springs, FL
225 Newburyport Avenue
Altamonte Springs, FL 32701

Karen McCullen (former Sr. PM)
(407) 875-2829
kmccullen@itsmymaitland.com

CONTRACT AMOUNT

$5,921,341

CONTRACT START DATE

6/2014

CONTRACT END DATE

9/2015

"This project offered many challenges and Wharton-Smith met them all with professionalism and a positive attitude. They did an outstanding job of maintaining the schedule and completed the project on time. The project team at Wharton-Smith worked hard to come up with innovative ways to save money without sacrificing quality. They presented a long list of value engineering options that allowed the City to save a great deal of money."

Karen McCullen | Sr. Engineering PM, City of Altamonte Springs

DESCRIPTION OF SERVICES PROVIDED

Wharton-Smith provided design-bid-build services for the Altamonte-FDOT Integrated Reuse and Storm Water Treatment (A-FIRST) project. The project included **more than 1,800 LF of 16-inch right-of-way force main, 600 LF of HDD piping under the Little Wekiva River**, a 14 MGD pump station, and a 250,000-gallon prestressed storage tank.

This project was innovative, wet weather management initiative aimed at mitigating retention concerns for the I-4 Ultimate Improvements project, addressing regional water supply, and providing water quality improvements within the Wekiva River Basin.

The scope of work consisted of modifications to the existing stormwater pump station, construction of a flow control assembly for automate control of discharge, modifications and construction of approximately 1,550 feet of 16- and 20-inch force main, and connection of the RAF to the City's Reclaimed Water Distribution System by construction of 700 feet of 16-inch reclaimed water main.

SIMILAR TEAM MEMBERS

Nathan Hillard; Chris Gayner







COUNTRY CLUB WTP UPGRADES

SEMINOLE COUNTY, FLORIDA



PROJECT SIMILARITIES

- CMAR Delivery
- HDD
- Trenchless Technology
- Force Mains
- MOT
- Site Work
- Same Project Team
- On-time Completion
- Under Budget
- Central FL Project

OWNER INFORMATION

Seminole County, FL
500 W. Lake Mary Boulevard
Sanford, FL 32773

Tom Foster, Head Operator
(407) 314-6877
tfoster@seminolecountyfl.gov

CONTRACT AMOUNT

$21,158,556

CONTRACT START DATE

9/2012

CONTRACT END DATE

3/2015

"During construction, Wharton-Smith worked closely with our operations staff to ensure that all start-up and switch over of new equipment worked seamlessly and minimized the disruption of service to our existing customers. The collaboration established amongst the team early in the process allowed for quick resolutions to situations discovered during construction which helped to keep the project on schedule."

Carol Hunter | Environmental Services Director, Seminole County

DESCRIPTION OF SERVICES PROVIDED

Wharton-Smith provided **Construction Management at Risk (CMAR) services** for upgrades to the existing Country Club Water Treatment Plant for Seminole County.

The project consisted of construction of a 6.7 MGD expansion including new ozone treatment, **230 LF of 36-inch Jack & Bore, 3,000 LF of open cut 20-inch ductile iron piping, 800 LF of 24-inch directional drill**, sidestream injection system, dissipation chamber, LOX storage and feed system, sodium hypochlorite and fluoride storage and feed system, and two 1.2-MG ground storage tanks.

The project also included a high service pump station, hydropneumatic tank system, transfer pump station, back-up diesel generators, on-site lift station, electrical building, ozone building, GAC filter system, 30,000-gallon backwash storage tank, yard piping, and electrical and instrumentation and controls upgrades.

SIMILAR TEAM MEMBERS

Nathan Hillard; Scott Jamison; Chris Gayner

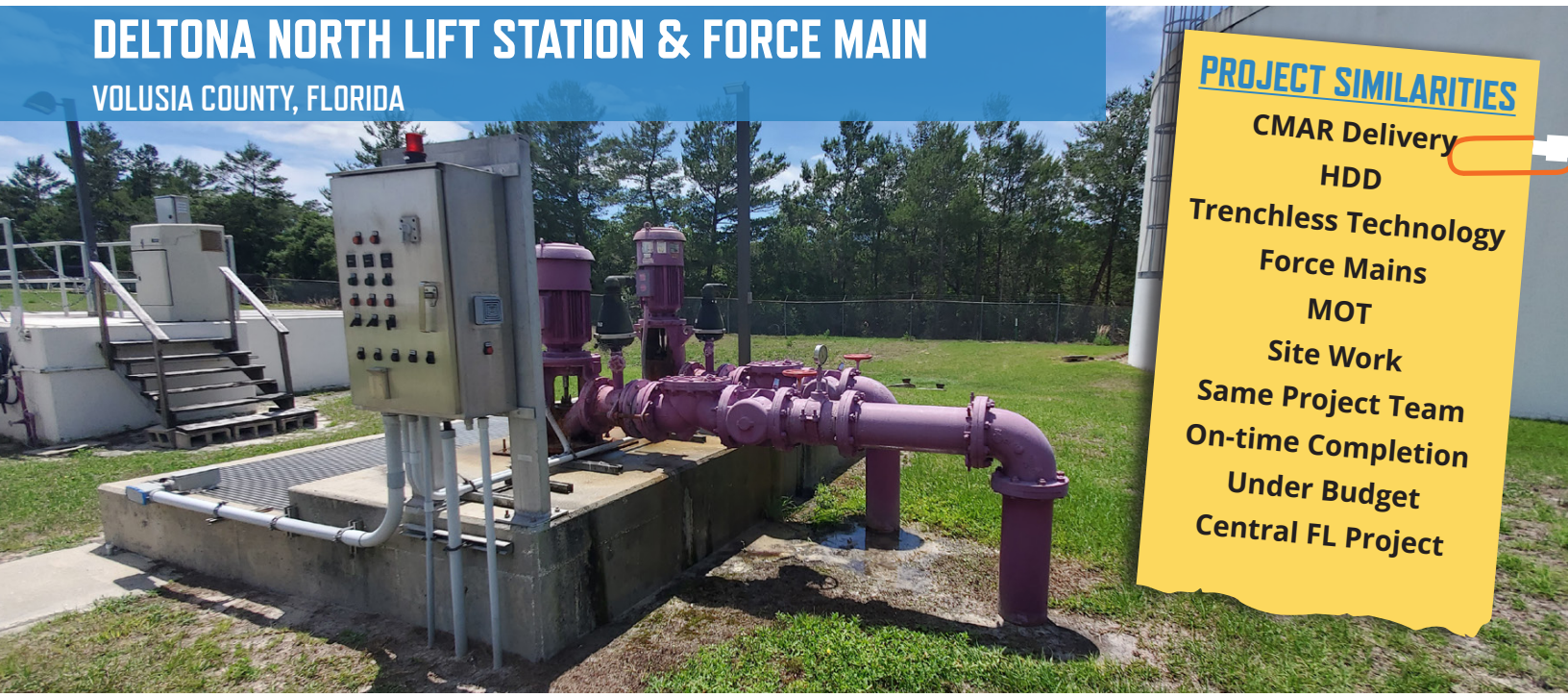






DELTONA NORTH LIFT STATION & FORCE MAIN

VOLUSIA COUNTY, FLORIDA



PROJECT SIMILARITIES

- CMAR Delivery
- HDD
- Trenchless Technology
- Force Mains
- MOT
- Site Work
- Same Project Team
- On-time Completion
- Under Budget
- Central FL Project

OWNER INFORMATION

Volusia County, FL
123 W. Indiana Avenue
DeLand, FL 32720

Michael Ulrich, Utility Director
(386) 736-5935
mulrich@volusia.org

CONTRACT AMOUNT

$5,196,880

CONTRACT START DATE

5/2020

CONTRACT END DATE

6/2021

"The scope of this project included approximately 3 miles of 12-inch force main (direct bury and directional drilling)... The team took advantage of several value engineering proposals during final design to increase value and lower project costs. During construction the team overcame several obstacles without impacting project cost and schedule. The project was completed under the final GMP and within the timeline."

Erin Reed | Water & Utilities Engineer, Volusia County

DESCRIPTION OF SERVICES PROVIDED

Wharton-Smith provided **Construction Management at Risk (CMAR) services** for the construction of a lift station and **force main** for Volusia County.

The project consisted of a new lift station with 12-foot by 17-foot deep precast polymer concrete structure, which was the first polymer structure installed by Volusia County. The lift station includes three 70-HP submersible pumps, one mixer, one Huber drum screen, one diesel bypass pump, new electrical room, and one new 300-kW generator to replace the existing generator.

Approximately **3 miles of force main was constructed from the new lift station and connected to an existing 12-inch force main** located at the intersection of Leavitt Avenue and Rhode Island Avenue in Orange City.

SIMILAR TEAM MEMBERS

Nathan Hillard; Erik Anderson; Scott Jamison; Adam Bergdahl; Chris Gayner







EAST WTP & TRANSMISSION MAINS

CITY OF MIRAMAR, FLORIDA



PROJECT SIMILARITIES

- Collaborative Delivery
- HDD
- Trenchless Technology
- Force Mains
- MOT
- Site Work
- Same Project Team
- On-time Completion
- Under Budget
- Central FL Project

OWNER INFORMATION

City of Miramar, FL
13900 Pembroke Road
Miramar, FL 33027

Robin Bain, Project Manager (former)
(623) 217-7202
rbain.reclaim@gmail.com

CONTRACT AMOUNT

$31,677,973

CONTRACT START DATE

8/2017

CONTRACT END DATE

9/2020

"I would like to commend your firm for the outstanding delivery of our nanofiltration addition project. Your firm managed the design phase excellently. During construction, your on-site management staff were professional, safe, and provided the highest quality product. I would high recommend Wharton-Smith to any utility that wants a project delivered on time and under budget."

Roy Virgin | Director of Utilities, City of Miramar

DESCRIPTION OF SERVICES PROVIDED

Wharton-Smith provided Progressive Design-Build (PDB) services for the replacement of the 6.7 MGD East Reverse Osmosis WTP for the City of Miramar, Florida.

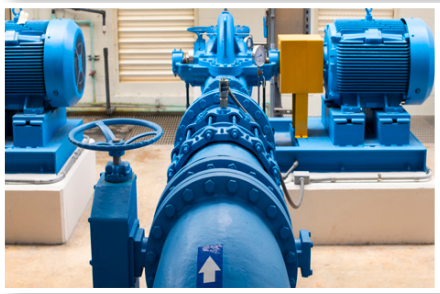
The scope included four raw water supply pumps, piping, valves, electrical, controls, and miscellaneous appurtenances for four Biscayne Aquifer Wells, two off-site wells, and two on-site wells, as well as **3,755 LF of raw water transmission mains**.

The project also included construction of an Operations/Process Building which consisted of 5-micron filtration, four 1.5 MGD nanofiltration membrane treatment skids, pre- and post-chemical feed systems and bulk chemical storage facilities, four high-pressure feed pumps, and motor control centers. Upgrades were made to the plant's electrical and I&C systems.

SIMILAR TEAM MEMBERS

Nathan Hillard; Chris Gayner







BLACK CREEK INTAKE & PUMP STATION

ST. JOHNS RIVER WATER MANAGEMENT DISTRICT (SJRWMD)



PROJECT SIMILARITIES

- HDD
- Trenchless Technology
- Force Mains
- MOT
- Site Work
- Same Project Team
- On-time Completion
- Under Budget
- Central FL Project

OWNER INFORMATION

St. Johns River Water Management District (SJRWMD)
P.O. Box 1429
Palatka, FL 32178

Bob Naleway, Bureau Chief
(386) 312-2366
rnaleway@sjrwmd.com

CONTRACT AMOUNT

$15,800,000

CONTRACT START DATE

11/2022

CONTRACT END DATE

9/2024

DESCRIPTION OF SERVICES PROVIDED

Wharton-Smith provided design-bid-build services for the construction of a new pump station including four vertical turbine pumps driven by VFDs, raw water intake structure with new intake screen air backwash system, and a masonry block electrical building.

The project included **750 LF of 42-inch steel micro-tunneling** containing the new 24-inch intake piping. Additional scope of work consists of erosion and sedimentation control, clearing and grubbing, yard piping and valves, new asphalt driveway, and site work.

The project required a 45-foot deep excavation on the upper 1/3-acre sloped project site within the wetlands and along a busy highway. Our project team, led by Mike Alexakis, negotiated an agreement with the adjacent property owner to allow access, parking, and storage. This solution made for safer working conditions and better ability to excavate the area.

SIMILAR TEAM MEMBERS

Mike Alexakis; Nathan Hillard; Chris Gayner







TAB C:

QUALIFICATIONS, PROFESSIONAL LICENSE, CERTIFICATIONS OF THE FIRM'S KEY PERSONNEL AS PRESENTED BY RESUMES, EDUCATION, AND TRAINING

Wharton-Smith, Inc.
CONSTRUCTION GROUP

CITY OF PORT ORANGE
1867
FLORIDA

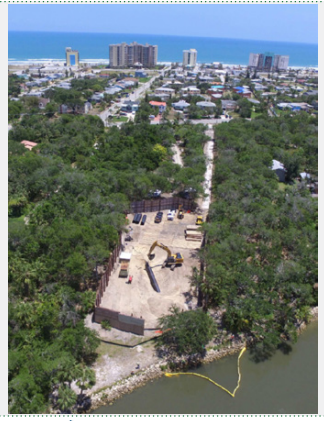
LOCAL TEAM READY TO SERVE YOU.

Wharton-Smith is proud to present the City of Port Orange with our team of permanently-based professionals from Volusia and northern Brevard Counties for the River Crossing Force & Water Mains project. Our entire proposed project team lives, works, plays, and contributes economically to Port Orange and the surrounding communities. Wharton-Smith's team is illustrated in the organizational chart below.

***WS BENEFIT:** Wharton-Smith can offer savings on general conditions by utilizing similar resources, such as staffing, trailers, temporary facilities, etc., from our ongoing Public Utilities Field Operations Facility with the City. Selection of our firm will greatly reduce costs to the City for temporary facilities and mobilization, along with overlap with some project support staff.*



INDUSTRY PARTNER SPOTLIGHT



TB LANDMARK

T B Landmark CONSTRUCTION, INC.

Being headquartered in Florida for 40 years, Wharton-Smith has developed long-standing relationships with thousands of subcontractors, many of which trusted by neighboring Central Florida clients on their force main projects.

Wharton-Smith has been partnering with TB Landmark for over 5 years with upwards of $11.5 million of work. TB Landmark is a proven performer for challenging horizontal directional drills (HDD), and have **previously drilled under the Halifax River** (see left). There will be no learning curve for this team.



WHARTON-SMITH AND KIMLEY HORN HAVE SUCCESSFUL PROJECT HISTORY.

The Wharton-Smith and Kimley Horn team has produced some of Florida's most impressive water and wastewater treatment facility projects over the past decade. Not only do Wharton-Smith and Kimley Horn get teamed together on CMAR projects, the cohesion and collaborative nature of our firms have led us to choose to be partners on several Design-Build projects for owners throughout Florida. Our firms represent a true partnership that works together to improve the value we offer to our clients. Not only have our teams worked successfully on the Bay Laurel Center CDD North WRF project ($125 million), as well as the City of Ocala's Membrane WTP ($100 million), St. Lucie County's Water and Wastewater Treatment Facilities project ($90 million), City of Winter Haven's One Water Program ($300 million), Sarasota County's Bee Ridge WRF Process Improvements project (2023), and the Village of Wellington's WWTP Renewal and Rehab project (2021).

WHARTON-SMITH HAS...

34 PROJECTS TOTALING **$820M** WITH Kimley»Horn

"Cohesion comes from people, not companies. Our firms are currently delivering multiple Design-Build and CMAR projects together. Our partnership works because we share a common vision of delivering a quality product with honesty and transparency while exceeding our clients' expectations."

- Michael Alexakis, Principal-in-Charge, Wharton-Smith

EXAMPLES OF OUR SUCCESSFUL COLLABORATION:

ALTERNATE SITE PLAN COLLABORATION
BAY LAUREL CENTER CDD NORTH WRF

CASE STUDY

Background: Wharton-Smith and Kimley Horn were selected as the CMAR and designer for Bay Laurel Center CDD's greenfield $125 million North WRF.

Challenge: Our teams recognized early that the project's original budget was in grave danger as it was created prior to the supply chain and inflation issues caused by the COVID-19 pandemic.

Collaborative Solution: Our dedicated preconstruction team worked with Kimley Horn to offer Bay Laurel more than 100 value engineering ideas including an alternate site plan. Ultimately, the alternate site plan was accepted and **saved the client more than $2 million.**



CREATIVE SCHEDULE ACCELERATION KEEPS PROJECT ON TRACK
BAY LAUREL CENTER CDD NORTH WRF

CASE STUDY



Background: Wharton-Smith and Kimley Horn were selected as the CMAR and designer for Bay Laurel Center CDD's greenfield $125 million North WRF.

Challenge: Increased home sales within the Bay Laurel Center CDD moved the facility "need date" up more than one year.

Collaborative Solution: Understanding the urgency of the need for this WRF as soon as possible, Wharton-Smith and Kimley Horn's project teams began drafting accelerated schedule ideas the during preconstruction and design phase. Our teams collaborated to produce biddable documents at each design milestone. For example, at 60% design, we were able to bid all the process equipment and long lead piping which avoided delays in the delivery of materials so our construction team could hit the ground running upon approval of the GMP.

THE SUCCESS OF YOUR PROJECT STARTS WITH SELECTING THE RIGHT PROJECT MANAGEMENT TEAM.

Adam Bergdahl, Sr. Project Manager, and Bill McMullen, Sr. Superintendent, have been working together to provide excellent Construction Management services for water and wastewater projects for the past five years, completing consecutive projects together along the way, including the City of DeLand's Wiley M. Nash WRF Improvements project.

This recent experience together has cultivated a team synergy that will ultimately save the City of Port Orange time and money by streamlining communication on your project! Several Central Florida utilities have benefited from this dynamic duo who have found innovative ways to streamline schedules, provide cost-saving options to meet budgets, and complete construction without affecting ongoing operations. Adam and Bill will make the City proud by seamlessly constructing the River Crossing Force & Water Mains project!



46
YEARS OF COMBINED EXPERIENCE IN CENTRAL FL

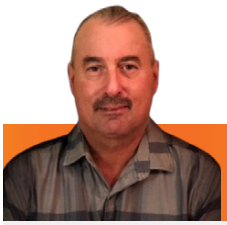


ADAM BERGDAHL
SR. PROJECT MANAGER

"The River Crossing Force & Water Mains project is a unique project, and I couldn't be more thrilled at the chance to build for the City of Port Orange while ensuring safety is a priority throughout. Bill and I will work to ensure this project exceeds all of your expectations along the way."

Adam Bergdahl, Sr. Project Manager, has a successful similar work history. Clients appreciate Adam's ability to communicate clearly and precisely throughout each project, ensuring everyone remains on the same page.

Since joining Wharton-Smith in 2009, Adam has been a valued asset to every project he touches and an excellent resource for those working with him. He has an unmatched ability to provide value management services to keep tight budgets in check and has never finished a project late!



BILL McMULLEN
SR. SUPERINTENDENT

"Maintaining proper communication and early engagement during preconstruction will ultimately set this project up for success, and I look forward to proving to the City of Port Orange why Wharton-Smith is the Construction Group of Choice amongst our clients."

Bill McMullen, Sr. Superintendent, is perfectly aligned to complete the River Crossing Force & Water Mains project for the City of Port Orange. Having recently worked on Volusia County's DeLeon Springs Utility Extension Force Main project, amongst other similar projects shown on his resume, he provides the City with unmatched experience you will not receive elsewhere.

Bill has been a dedicated member of the Wharton-Smith family since 1995 and is known for his ability to work through tight schedules, keep a safe and clean jobsite, and hold subcontractors accountable throughout each project.



18 Years of Experience

18 Years with Wharton-Smith

ROLE & RESPONSIBILITIES

As Principal-in-Charge, Mike will ensure CMAR best practices are upheld including analyzing, managing, and mitigating project risks. Mike will draw on his vast Central and East Coast Florida water/wastewater experience to provide expertise for planning, design review, construction, and commissioning activities between the City of Port Orange, Kimley Horn, and our project team.

EDUCATION

BS, Civil Engineering, University of Central Florida

LICENSES AND CERTIFICATIONS

- Designated Design-Build Professional (DBIA)
- Registered Engineer in Training, State of Florida
- FMI Project Manager Academy
- NPDES Certified Stormwater Inspector
- OSHA 10-Hour

MIKE ALEXAKIS, DBIA, EIT

PRINCIPAL-IN-CHARGE

DEMONSTRATED SIMILAR PROJECT EXPERIENCE

Deltona North Lift Station & Force Main, *Volusia County, FL*
$5.2 M | 2021 | CMAR

Wharton-Smith provided **Construction Management at Risk (CMAR) services** for the construction of a lift station and **force main** for Volusia County. The project consisted of a new lift station with 12-foot by 17-foot deep precast polymer concrete structure, which was the first polymer structure installed by Volusia County. The lift station includes three 70-HP submersible pumps, one mixer, one Huber drum screen, one diesel bypass pump, new electrical room, and one new 300-kW generator to replace the existing generator. Approximately **3 miles of force main was constructed from the new lift station and connected to an existing 12-inch force main** located at the intersection of Leavitt Avenue and Rhode Island Avenue in Orange City.

Black Creek Intake & Pump Station, *St. Johns River Water Management District*
$15.8 M | 2024 | Design-Bid-Build

Wharton-Smith provided design-bid-build services for the construction of a new pump station including four vertical turbine pumps driven by VFDs, raw water intake structure with new intake screen air backwash system, and a masonry block electrical building. The project included 750 LF of 42-inch steel micro-tunneling containing the new 24-inch intake piping. Additional scope of work consists of erosion and sedimentation control, clearing and grubbing, yard piping and valves, new asphalt driveway, and site work. The project required a 45-foot deep excavation on the upper 1/3-acre sloped project site within the wetlands and along a busy highway. Our project team, led by Mike Alexakis, negotiated an agreement with the adjacent property owner to allow access, parking, and storage. This solution made for safer working conditions and better ability to excavate the area.

Hamlin WRF & Master Pump Station, *Orange County, FL*
$114.0 M | 2022 | Design-Bid-Build

Wharton-Smith provided design-bid-build services for the construction of a new greenfield 5.0 MGD facility including preliminary treatment structures with screening, grit, and odor control; activated sludge treatment train with BNR process and diffused aeration; process air blower system and building; secondary clarifiers and clarifier splitter box; on-site pump stations; tertiary filters; chlorine contact tank; chemical feed and storage systems; sludge holding tanks; gravity belt thickener equipment; a 5-MG ground storage tank; and a variety of pumps. The project also included 3,600 LF of 36-inch diameter off-site force main master pump station complete with a CIP wet well, electrical building, and odor control system.



23 Years of Experience

21 Years with Wharton-Smith

ROLE & RESPONSIBILITIES

As Project Executive, Scott will ensure CMAR best practices are upheld including analyzing, managing, and mitigating project risks. Scott will work closely with Mike Alexakis to leverage Wharton-Smith's vast Central and East Coast Florida water/ wastewater experience to provide expertise for planning, design review, construction, and commissioning activities between the City of Port Orange, Kimley Horn, and our project team.

EDUCATION

BS, Civil Engineering, University of Central Florida

LICENSES AND CERTIFICATIONS

- Registered Professional Engineer, State of Florida
- OSHA 10-Hour

SCOTT JAMISON, PE

PROJECT EXECUTIVE

DEMONSTRATED SIMILAR PROJECT EXPERIENCE

Deltona North Lift Station & Force Main, *Volusia County, FL*
$5.2 M | 2021 | ***CMAR***

Wharton-Smith provided **Construction Management at Risk (CMAR) services** for the construction of a lift station and **force main** for Volusia County. The project consisted of a new lift station with 12-foot by 17-foot deep precast polymer concrete structure, which was the first polymer structure installed by Volusia County. The lift station includes three 70-HP submersible pumps, one mixer, one Huber drum screen, one diesel bypass pump, new electrical room, and one new 300-kW generator to replace the existing generator. Approximately **3 miles of force main was constructed from the new lift station and connected to an existing 12-inch force main** located at the intersection of Leavitt Avenue and Rhode Island Avenue in Orange City.

DeLeon Springs Utility Extension, *Volusia County, FL*
$10.4 M | 2022 | ***CMAR***

Wharton-Smith provided **Construction Management at Risk (CMAR) services** for the construction of a new force main, watermain, and generator set. The work also includes construction of a new Lift Station at the McInnis Elementary School in order to decommission the school's existing Wastewater Treatment Plant. Approximately 19,800-feet of 8-inch sanitary force main will be installed, including **5,600-feet installed by horizontal directional drilling (HDD)**. Parallel to it will be installation of **18,000-feet of 12-inch water main, with 5,300-feet installed by HDD**. The project is in collaboration with the Volusia County School Board and the City of Deland.

Country Club WTP Upgrades, *Seminole County, FL*
$21.2 M | 2015 | ***CMAR***

Wharton-Smith provided **Construction Management at Risk (CMAR) services** for upgrades to the existing Country Club Water Treatment Plant for Seminole County. The project consisted of construction of a 6.7 MGD expansion including new ozone treatment, **230 LF of 36-inch Jack & Bore, 3,000 LF of open cut 20-inch ductile iron piping, 800 LF of 24-inch directional drill**, sidestream injection system, dissipation chamber, LOX storage and feed system, sodium hypochlorite and fluoride storage and feed system, and two 1.2-MG ground storage tanks. The project also included a high service pump station, hydropneumatic tank system, transfer pump station, back-up diesel generators, on-site lift station, electrical building, ozone building, GAC filter system, 30,000-gallon backwash storage tank, yard piping, and electrical and instrumentation and controls upgrades.



22 Years of Experience

20 Years with Wharton-Smith

ROLE & RESPONSIBILITIES

As Client Service Manager, Nathan will serve a liaison between our project team and the City of Port Orange. He will also assist with staffing, outlining project plans, and setting project goals and deadlines. Nathan will also ensure project quality and performance standards meet and exceed the City's expectations. He will leverage his 22 years of experience and 40+ CMAR water/ wastewater projects to ensure on time and budget completion.

EDUCATION

BS, Civil Engineering, University of Central Florida

LICENSES AND CERTIFICATIONS

- Designated Design-Build Professional (DBIA)
- Registered Engineer in Training, State of Florida
- OSHA 40-Hour

NATHAN HILLARD, DBIA, EIT

CLIENT SERVICE MANAGER

DEMONSTRATED SIMILAR PROJECT EXPERIENCE

Deltona North Lift Station & Force Main, *Volusia County, FL*
$5.2 M | 2021 | ***CMAR***

Wharton-Smith provided **Construction Management at Risk (CMAR) services** for the construction of a lift station and **force main** for Volusia County. The project consisted of a new lift station with 12-foot by 17-foot deep precast polymer concrete structure, which was the first polymer structure installed by Volusia County. The lift station includes three 70-HP submersible pumps, one mixer, one Huber drum screen, one diesel bypass pump, new electrical room, and one new 300-kW generator to replace the existing generator. Approximately **3 miles of force main was constructed from the new lift station and connected to an existing 12-inch force main** located at the intersection of Leavitt Avenue and Rhode Island Avenue in Orange City.

A-FIRST Stormwater Pump Station & Force Main, *City of Altamonte Springs, FL*
$5.9 M | 2015 | Design-Bid-Build

Wharton-Smith provided design-bid-build services for the Altamonte-FDOT Integrated Reuse and Storm Water Treatment (A-FIRST) project. The project included **more than 1,800 LF of 16-inch right-of-way force main, 600 LF of HDD piping under the Little Wekiva River**, a 14 MGD pump station, and a 250,000-gallon prestressed storage tank. This project was innovative, wet weather management initiative aimed at mitigating retention concerns for the I-4 Ultimate Improvements project, addressing regional water supply, and providing water quality improvements within the Wekiva River Basin. The scope of work consisted of modifications to the existing stormwater pump station, construction of a flow control assembly for automate control of discharge, modifications and construction of approximately 1,550 feet of 16- and 20-inch force main, and connection of the RAF to the City's Reclaimed Water Distribution System by construction of 700 feet of 16-inch reclaimed water main.

East WTP & Transmission Mains, *City of Miramar, FL*
$31.7 M | 2020 | ***Progressive Design-Build***

Wharton-Smith provided Progressive Design-Build (PDB) services for the replacement of the 6.7 MGD East Reverse Osmosis WTP for the City of Miramar, Florida. The scope included four raw water supply pumps, piping, valves, electrical, controls, and miscellaneous appurtenances for four Biscayne Aquifer Wells, two off-site wells, and two on-site wells, as well as **3,755 LF of raw water transmission mains**. The project also included construction of an Operations/Process Building which consisted of 5-micron filtration, four 1.5 MGD nanofiltration membrane treatment skids, pre- and post-chemical feed systems and bulk chemical storage facilities, four high-pressure feed pumps, and motor control centers. Upgrades were made to the plant's electrical and I&C systems.



15 Years of Experience

12 Years with Wharton-Smith

ROLE & RESPONSIBILITIES

As Senior Project Manager, Adam will be responsible for supervision and oversight of all construction activities on the jobsite. He will lead the coordination of our onsite field management team and subcontractors, including staffing, scheduling and cost control, outlining project plans, and setting project goals and deadlines. Adam will ensure the City's project adheres to the design documents and quality expectations of the City and Kimley Horn.

EDUCATION

BS, Civil Engineering, University of Central Florida

LICENSES AND CERTIFICATIONS

- Registered Engineer in Training, State of Florida
- Qualified SWPPP Inspector
- Scaffolding
- Fall Protection
- MOT Inspector
- OSHA 40-Hour

ADAM BERGDAHL, EIT

SENIOR PROJECT MANAGER

DEMONSTRATED SIMILAR PROJECT EXPERIENCE

Wiley M. Nash WRF Expansion, *City of DeLand, FL*
$61.7 M | 2026 | CMAR

Wharton-Smith is providing **Construction Management at Risk (CMAR) services** for upgrades and expansion of the existing Wiley M. Nash WRF for the City of DeLand. The scope consists of a 2 MGD capacity expansion as well as an upgrade to advanced wastewater treatment including a new dual train, 4-stage BNR process, oxidation ditch, new master lift station, new degrit and splitter structure, two new clarifiers, new UV disinfection system at the chlorine contact chamber, and all associated yard piping and electrical gear upgrades needed to administer the new equipment.

Turnpike WWTF Improvements Phase I, *City of Leesburg, FL*
$18.0 M | 2022 | CMAR

Wharton-Smith provided **Construction Management at Risk (CMAR) services** for the Leesburg Turnpike Wastewater Treatment Facility (WWTF) Improvements project for the City of Leesburg, FL. The project team modified three existing SBR basins by adding mechanical mixing/aeration equipment/piping, constructed a fourth new SBR basin along with mixing/aeration equipment, and constructed a new decant water pump station to pump SBR decant water to two disk filters. The team was required to demolish existing centrifugal screw pumps to facilitate the new decant pump station. The team also constructed a sodium hypo feed system that included a new pre-engineered metal building, effluent and in-plant re-use pump stations and improvements, and four aerobic digesters. Finally, digesters were constructed, which included all associated piping, equipment, and electric to power all of it.

Country Club WTP Upgrades, *Seminole County, FL*
$21.2 M | 2015 | CMAR

Wharton-Smith provided **Construction Management at Risk (CMAR) services** for upgrades to the existing Country Club Water Treatment Plant for Seminole County. The project consisted of construction of a 6.7 MGD expansion including new ozone treatment, **230 LF of 36-inch Jack & Bore, 3,000 LF of open cut 20-inch ductile iron piping, 800 LF of 24-inch directional drill**, sidestream injection system, dissipation chamber, LOX storage and feed system, sodium hypochlorite and fluoride storage and feed system, and two 1.2-MG ground storage tanks. The project also included a high service pump station, hydropneumatic tank system, transfer pump station, back-up diesel generators, on-site lift station, electrical building, ozone building, GAC filter system, 30,000-gallon backwash storage tank, yard piping, and electrical and instrumentation and controls upgrades.



BILL McMULLEN

SENIOR SUPERINTENDENT

31 Years of Experience

29 Years with Wharton-Smith

ROLE & RESPONSIBILITIES

As Senior Superintendent, Bill is responsible for leading the supervision of employees and coordination of construction activities for the project, including inspections, daily reports, look-ahead schedules, delivery coordination, production planning, weekly subcontractor meetings, storage and installation requirements, quality control, labor and equipment resource management, as well as start-up, commissioning, close-out.

LICENSES AND CERTIFICATIONS

- OSHA 10-Hour
- FDEP Stormwater Certified
- Trenching & Excavation
- Rigging
- Confined Space
- Scaffolding
- Fall Protection
- Backhoe Operator Certified

DEMONSTRATED SIMILAR PROJECT EXPERIENCE

Deltona North Lift Station & Force Main, *Volusia County, FL*
$5.2 M | 2021 | CMAR

Wharton-Smith provided **Construction Management at Risk (CMAR) services** for the construction of a lift station and **force main** for Volusia County. The project consisted of a new lift station with 12-foot by 17-foot deep precast polymer concrete structure, which was the first polymer structure installed by Volusia County. The lift station includes three 70-HP submersible pumps, one mixer, one Huber drum screen, one diesel bypass pump, new electrical room, and one new 300-kW generator to replace the existing generator. Approximately **3 miles of force main was constructed from the new lift station and connected to an existing 12-inch force main** located at the intersection of Leavitt Avenue and Rhode Island Avenue in Orange City.

Wiley M. Nash WRF Expansion, *City of DeLand, FL*
$61.7 M | 2026 | CMAR

Wharton-Smith is providing **Construction Management at Risk (CMAR) services** for upgrades and expansion of the existing Wiley M. Nash WRF for the City of DeLand. The scope consists of a 2 MGD capacity expansion as well as an upgrade to advanced wastewater treatment including a new dual train, 4-stage BNR process, oxidation ditch, new master lift station, new degrit and splitter structure, two new clarifiers, new UV disinfection system at the chlorine contact chamber, and all associated yard piping and electrical gear upgrades needed to administer the new equipment.

Player's Club WRF Expansion, *St. Johns County, FL*
$32.9 M | 2020 | Design-Bid-Build

Wharton-Smith provided design-bid-build services for expansion of the Player's Club Water Reclamation Facility (WRF) for St. John's County. The scope included the construction of a new 2.4 MGD WRF to expand capacity of the existing wastewater treatment facility. Operations could not be impacted throughout duration of construction of the new plant. The new WRF consisted of various site improvements including a new 3,312 SF operations building, a new 1,892 SF main electrical and blower building, a new 2,016 SF dewatering and chemical feed building, and a new precast concrete electrical building. Work also included the headworks structure, an odor control system, BNR tank, two prestressed clarifier tanks, a prestressed sludge tank, disk filter system, UV disinfection system, effluent pump station, a reuse pump station, and turbo blowers and PD blowers.



20 Years of Experience

19 Years with Wharton-Smith

ROLE & RESPONSIBILITIES

As Preconstruction Director, Erik will oversee all preconstruction efforts such as design and constructability reviews, cost estimating, schedule development, risk management, selection of qualified subcontractors, and development of the Guaranteed Maximum Price (GMP). His experience devising effective strategies to reduce costs through value engineering will ensure a best-value GMP for the City of Port Orange.

EDUCATION

MS, Industrial Engineering,
University of Central Florida

BS, Mechanical Engineering,
University of Central Florida

LICENSES AND CERTIFICATIONS

- Registered Professional Engineer, State of Florida
- Associate Design-Build Professional
- OSHA 10-Hour

ERIK ANDERSON, PE, ASSOC. DBIA

PRECONSTRUCTION DIRECTOR

DEMONSTRATED SIMILAR PROJECT EXPERIENCE

Deltona North Lift Station & Force Main, *Volusia County, FL*
$5.2 M | 2021 | ***CMAR***

Wharton-Smith provided **Construction Management at Risk (CMAR) services** for the construction of a lift station and **force main** for Volusia County. The project consisted of a new lift station with 12-foot by 17-foot deep precast polymer concrete structure, which was the first polymer structure installed by Volusia County. The lift station includes three 70-HP submersible pumps, one mixer, one Huber drum screen, one diesel bypass pump, new electrical room, and one new 300-kW generator to replace the existing generator. Approximately **3 miles of force main was constructed from the new lift station and connected to an existing 12-inch force main** located at the intersection of Leavitt Avenue and Rhode Island Avenue in Orange City.

Dyal WTP Chemical Conversion Reliability Improvements, *City of Cocoa, FL*
$19.8 M | 2022 | ***CMAR***

Wharton-Smith provided Construction Management at Risk services on the renewal and rehabilitation of the existing Dyal Water Treatment Facility for the City of Cocoa, FL. The City of Cocoa CCRI project consisted of adding two new bulk liquid storage chemical facilities with PEMB canopies to discontinue the use of the SHC and AMS gas lines. There was also the addition of a new PEMB High Service Pump Station with Owner refurbished high service pumps. This included a second 54" FW line to SR 520 and a surge tank. The project also included the addition of an 8,100 SF Training Building with offices, a kitchen, and a new septic system. The existing chlorine gas storage room was converted to a polymer room for the new polymer feed system. Four new ponds and a dry pond were added throughout the site. The existing plant entrance road was demolished and replaced with a new entrance and a guard shack.

Turnpike WWTF Improvements Phase I, *City of Leesburg, FL*
$18.0 M | 2022 | ***CMAR***

Wharton-Smith provided **Construction Management at Risk (CMAR) services** for the Leesburg Turnpike Wastewater Treatment Facility (WWTF) Improvements project for the City of Leesburg, FL. The project team modified three existing SBR basins by adding mechanical mixing/aeration equipment/piping, constructed a fourth new SBR basin along with mixing/aeration equipment, and constructed a new decant water pump station to pump SBR decant water to two disk filters. The team was required to demolish existing centrifugal screw pumps to facilitate the new decant pump station. The team also constructed a sodium hypo feed system that included a new pre-engineered metal building, effluent and in-plant re-use pump stations and improvements, and four aerobic digesters. Finally, digesters were constructed, which included all associated piping, equipment, and electric to power all of it.



29 Years of Experience

2 Years with Wharton-Smith

ROLE & RESPONSIBILITIES

As Preconstruction Manager, Dwayne will assist with the preparation and issuance of bid packages, track and analyze data to reduce gaps between estimates and actual costs, and obtain and track subcontractor bids to negotiate price that lead to a best-value GMP. His vast experience also provides our team with an additional set of eyes for constructability reviews and value engineering opportunities. Dwayne will also collaborate with the City of Port Orange to develop subcontractor selection process.

EDUCATION

BS, Environmental Engineering, University of Central Florida

LICENSES AND CERTIFICATIONS

- Registered Professional Engineer, State of Florida
- Associate Design-Build Professional
- OSHA 10-Hour

DWAYNE KREIDLER, PE, ASSOC. DBIA

PRECONSTRUCTION MANAGER

DEMONSTRATED SIMILAR PROJECT EXPERIENCE

Wiley M. Nash WRF Expansion, *City of DeLand, FL*
$61.7 M | 2026 | CMAR

Wharton-Smith is providing **Construction Management at Risk (CMAR) services** for upgrades and expansion of the existing Wiley M. Nash WRF for the City of DeLand. The scope consists of a 2 MGD capacity expansion as well as an upgrade to advanced wastewater treatment including a new dual train, 4-stage BNR process, oxidation ditch, new master lift station, new degrit and splitter structure, two new clarifiers, new UV disinfection system at the chlorine contact chamber, and all associated yard piping and electrical gear upgrades needed to administer the new equipment.

Turnpike WWTF Improvements Phase II, *City of Leesburg, FL*
$30.0 M | 2025 | CMAR

Wharton-Smith provided **Construction Management at Risk (CMAR) services** for the Leesburg Turnpike Wastewater Treatment Facility (WWTF) Improvements Phase II project for the City of Leesburg, FL. The scope of the project includes modifications to the existing preliminary treatment structure, two new sequencing batch reactors, aeration system modifications, modifications to the decant pump station, new disk filter unit, new chlorine contact tank, upgrades to the effluent transfer pump station, and upgrades to the biosolids management and dewatering facilities.

South County Advanced WWTP Expansion, *Hillsborough County, FL*
$96.7 M | 2025 | Design-Build

Wharton-Smith is providing Design-Build services for the multi-phase expansion of the existing 10 MGD South County AWTF for Hillsborough County, FL. Phase 1 includes a 3-MG reject water additional storage capacity holding pond and pump station and associated yard piping, electrical, and instrumentation and controls. Phase 2 consists of re-rating capacity of the plant by 1 MGD by adding six pumps at the intermediate pump station, two filter cells, chlorine contact basin, six pumps at the effluent pump station, sodium hypochlorite and sodium bisulfite chemical systems, stormwater systems, associated yard piping, electrical and controls. Phase 3 increases capacity by 2 MGD by implementing improvements at the headworks influent flow distribution, new center flow band screens system, improvements on biological nutrient removal basins, new IMLR pumps, expanding the clarifier inflow splitter box, adding clarifier number five and six, RAS pump station number three, WAS pump station, five pumps at the reclaim water pump station, and associated electrical and controls.



10 Years of Experience

1 Years with Wharton-Smith

ROLE & RESPONSIBILITIES

As Safety Manager, Travis is responsible for overseeing all safety measures on the project. He will develop a site-specific safety program with our Senior Superintendent Bill McMullen, conduct safety audits, visit the jobsite at least twice monthly, and will ensure OSHA and City of Port Orange safety policies and procedures are implemented and being practiced.

EDUCATION

BS, Occupational Safety & Health, Columbia Southern University

LICENSES AND CERTIFICATIONS

- Construction Health & Safety Technician (CHST)
- OSHA 510-Hour
- OSHA 500-Hour
- ASSP (American Society for Safety Professionals) Safety Management Certification
- ASSP Risk Management Certification
- Advanced Rigger
- MEWP Trainer
- Forklift Trainer
- HAZWOPER 40

TRAVIS CHAPUT, CHST

SAFETY MANAGER

DEMONSTRATED SIMILAR PROJECT EXPERIENCE

Port Orange Field Operations Facility, *City of Port Orange, FL*
$21.2 M | 2026 | CMAR

Wharton-Smith is currently providing **Construction Management at Risk (CMAR) services** for the construction of the City of Port Orange's Public Utilities Field Operations Facility. The facility consists of a 11,500 SF Administration Building, 12,300 SF warehouse building, and all associated improvements.

Wiley M. Nash WRF Expansion, *City of DeLand, FL*
$61.7 M | 2026 | CMAR

Wharton-Smith is providing **Construction Management at Risk (CMAR) services** for upgrades and expansion of the existing Wiley M. Nash WRF for the City of DeLand. The scope consists of a 2 MGD capacity expansion as well as an upgrade to advanced wastewater treatment including a new dual train, 4-stage BNR process, oxidation ditch, new master lift station, new degrit and splitter structure, two new clarifiers, new UV disinfection system at the chlorine contact chamber, and all associated yard piping and electrical gear upgrades needed to administer the new equipment.

Turnpike WWTF Improvements Phase II, *City of Leesburg, FL*
$30.0 M | 2025 | CMAR

Wharton-Smith provided **Construction Management at Risk (CMAR) services** for the Leesburg Turnpike Wastewater Treatment Facility (WWTF) Improvements Phase II project for the City of Leesburg, FL. The scope of the project includes modifications to the existing preliminary treatment structure, two new sequencing batch reactors, aeration system modifications, modifications to the decant pump station, new disk filter unit, new chlorine contact tank, upgrades to the effluent transfer pump station, and upgrades to the biosolids management and dewatering facilities.



CHRIS GAYNER, PE

QUALITY CONTROL MANAGER

32 Years of Experience

24 Years with Wharton-Smith

ROLE & RESPONSIBILITIES

As Quality Control Manager, Chris coordinates all pre-job planning meetings, QA/QC meetings, and reviews the quality of the construction work in place. He will also lead all QA/QC efforts from preconstruction with design reviews to in the field with our on-site project management staff through the commissioning process. Chris' worked his way through the project management ranks on Wharton-Smith's most challenging water and wastewater projects and will leverage that experience to bring significant value to the City of Port Orange.

EDUCATION

BS, Electrical Engineering, University of Ohio

LICENSES AND CERTIFICATIONS

- Licensed Professional Engineer, State of Florida
- OSHA 10-Hour

DEMONSTRATED SIMILAR PROJECT EXPERIENCE

Deltona North Lift Station & Force Main, *Volusia County, FL*
$5.2 M | 2021 | CMAR

Wharton-Smith provided **Construction Management at Risk (CMAR) services** for the construction of a lift station and **force main** for Volusia County. The project consisted of a new lift station with 12-foot by 17-foot deep precast polymer concrete structure, which was the first polymer structure installed by Volusia County. The lift station includes three 70-HP submersible pumps, one mixer, one Huber drum screen, one diesel bypass pump, new electrical room, and one new 300-kW generator to replace the existing generator. Approximately **3 miles of force main was constructed from the new lift station and connected to an existing 12-inch force main** located at the intersection of Leavitt Avenue and Rhode Island Avenue in Orange City.

A-FIRST Stormwater Pump Station & Force Main, *City of Altamonte Springs, FL*
$5.9 M | 2015 | Design-Bid-Build

Wharton-Smith provided design-bid-build services for the Altamonte-FDOT Integrated Reuse and Storm Water Treatment (A-FIRST) project. The project included **more than 1,800 LF of 16-inch right-of-way force main, 600 LF of HDD piping under the Little Wekiva River**, a 14 MGD pump station, and a 250,000-gallon prestressed storage tank. This project was innovative, wet weather management initiative aimed at mitigating retention concerns for the I-4 Ultimate Improvements project, addressing regional water supply, and providing water quality improvements within the Wekiva River Basin. The scope of work consisted of modifications to the existing stormwater pump station, construction of a flow control assembly for automate control of discharge, modifications and construction of approximately 1,550 feet of 16- and 20-inch force main, and connection of the RAF to the City's Reclaimed Water Distribution System by construction of 700 feet of 16-inch reclaimed water main.

Black Creek Intake & Pump Station, *St. Johns River Water Management District*
$15.8 M | 2024 | Design-Bid-Build

Wharton-Smith provided design-bid-build services for the construction of a new pump station including four vertical turbine pumps driven by VFDs, raw water intake structure with new intake screen air backwash system, and a masonry block electrical building. The project included 750 LF of 42-inch steel micro-tunneling containing the new 24-inch intake piping. Additional scope of work consists of erosion and sedimentation control, clearing and grubbing, yard piping and valves, new asphalt driveway, and site work. The project required a 45-foot deep excavation on the upper 1/3-acre sloped project site within the wetlands and along a busy highway. Our project team, led by Mike Alexakis, negotiated an agreement with the adjacent property owner to allow access, parking, and storage. This solution made for safer working conditions and better ability to excavate the area.

WHARTON-SMITH LICENSES AND CERTIFICATIONS



Ron DeSantis, Governor — Melanie S. Griffin, Secretary — Florida dbpr

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

CONSTRUCTION INDUSTRY LICENSING BOARD

THE GENERAL CONTRACTOR HEREIN IS CERTIFIED UNDER THE PROVISIONS OF CHAPTER 489, FLORIDA STATUTES

SMITH, TIMOTHY SCOT
WHARTON-SMITH INC
750 MONROE ROAD
SANFORD FL 32771

LICENSE NUMBER: CGC1511243
EXPIRATION DATE: AUGUST 31, 2026
Always verify licenses online at MyFloridaLicense.com

ISSUED: 06/04/2024
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Wharton-Smith's General Contractor License



Ron DeSantis, Governor — Melanie S. Griffin, Secretary — Florida dbpr

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

CONSTRUCTION INDUSTRY LICENSING BOARD

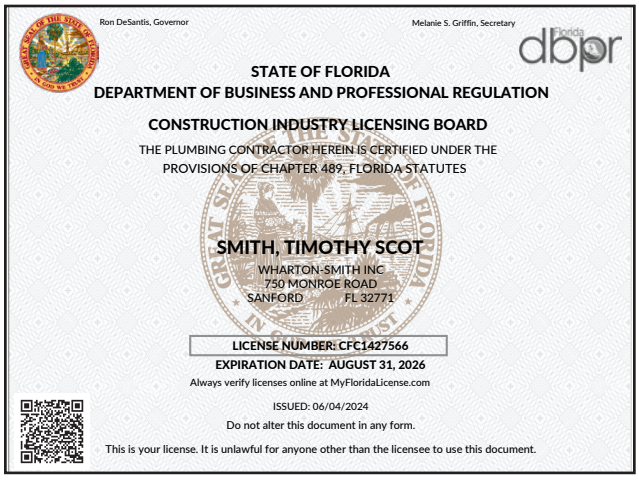
THE GENERAL CONTRACTOR HEREIN IS CERTIFIED UNDER THE PROVISIONS OF CHAPTER 489, FLORIDA STATUTES

HEWITT, PATRICK JOHN
WHARTON-SMITH, INC.
750 MONROE ROAD
SANFORD FL 32771

LICENSE NUMBER: CGC055975
EXPIRATION DATE: AUGUST 31, 2026
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ISSUED: 06/04/2024
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Wharton-Smith's Mechanical Contractor License



Ron DeSantis, Governor — Melanie S. Griffin, Secretary — Florida dbpr

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

CONSTRUCTION INDUSTRY LICENSING BOARD

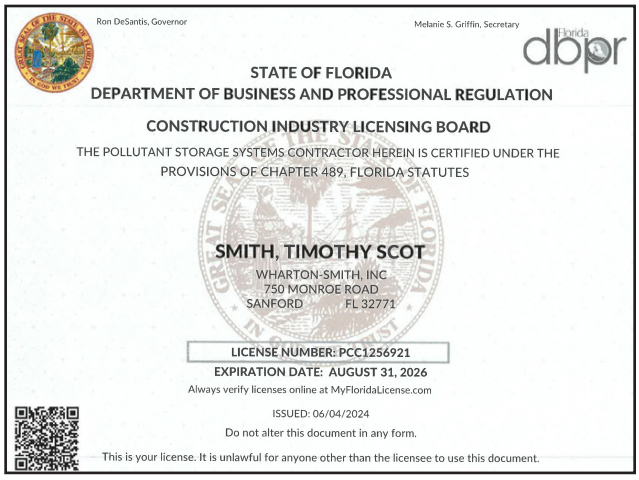
THE PLUMBING CONTRACTOR HEREIN IS CERTIFIED UNDER THE PROVISIONS OF CHAPTER 489, FLORIDA STATUTES

SMITH, TIMOTHY SCOT
WHARTON-SMITH INC
750 MONROE ROAD
SANFORD FL 32771

LICENSE NUMBER: CFC1427566
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ISSUED: 06/04/2024
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Wharton-Smith's Plumbing Contractor License



Ron DeSantis, Governor — Melanie S. Griffin, Secretary — Florida dbpr

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

CONSTRUCTION INDUSTRY LICENSING BOARD

THE POLLUTANT STORAGE SYSTEMS CONTRACTOR HEREIN IS CERTIFIED UNDER THE PROVISIONS OF CHAPTER 489, FLORIDA STATUTES

SMITH, TIMOTHY SCOT
WHARTON-SMITH, INC
750 MONROE ROAD
SANFORD FL 32771

LICENSE NUMBER: PCC1256921
EXPIRATION DATE: AUGUST 31, 2026
Always verify licenses online at MyFloridaLicense.com

ISSUED: 06/04/2024
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Wharton-Smith's Pollutant Storage Contractor License



Ron DeSantis, Governor — Melanie S. Griffin, Secretary — Florida dbpr

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

CONSTRUCTION INDUSTRY LICENSING BOARD

THE UNDERGROUND UTILITY & EXCAVATION CO HEREIN IS CERTIFIED UNDER THE PROVISIONS OF CHAPTER 489, FLORIDA STATUTES

DAVOLI, RONALD FRANK
WHARTON-SMITH INC
750 MONROE ROAD
SANFORD FL 32771

LICENSE NUMBER: CUC056506
EXPIRATION DATE: AUGUST 31, 2026
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Wharton-Smith's Underground Utility Excavation License



Volusia County
FLORIDA

Wharton-Smith currently has

107

team members that live in Volusia County!



TAB D:

QUALITY OF INNOVATIVE APPROACH & VALUE-ADDED SERVICES

Wharton-Smith, Inc.
CONSTRUCTION GROUP

CITY OF PORT ORANGE
1867
FLORIDA

WE BRING INNOVATIVE SOLUTIONS TO THE TABLE.

At Wharton-Smith, we are committed to delivering high-quality, efficient, and environmentally responsible horizontal directional drilling (HDD) solutions. Our proven track record and innovative approach positions us as the ideal partner for the City of Port Orange's critical infrastructure project.

30+

YEARS OF EXPERTISE IN HORIZONTAL DIRECTIONAL DRILLING

35+

PROJECTS SIMILAR TO THE RIVER CROSSING FORCE & WATER MAINS PROJECT

APPROACH TO RIVER CROSSING PROJECT

OBJECTIVE: Install a 20-inch sanitary sewer force main and a 16-inch water main beneath the Halifax River.

METHODOLOGY: Utilize horizontal directional drilling (HDD) to minimize environmental impacts and ensure the successful completion of your project.

STRATEGY: Implement Wharton-Smith's value engineering approaches (see page 56) and risk mitigation strategies (see page 57) gained from our lessons learned over past performances to deliver your project on time and under budget.

PAST EXPERIENCES PROVIDE VALUE FOR PORT ORANGE'S PROJECT.

Wharton-Smith recently completed a utility extension project as the Construction Manager at Risk for Volusia County. This project consisted of several similar scope components as the City of Port Orange's River Crossing Force & Water Mains project, including **13,000 linear feet of horizontal directional drilled pipelines**.

VALUE-ADDED SOLUTION

The design of this project included pipeline routing that could potentially impact the surrounding environment; therefore, the project required effective solutions to meet FDOT and FDEP requirements while also optimizing project costs.

Wharton-Smith's project team, consisting of **Mike Alexakis, Scott Jamison, and Bill McMullen, collaborated with the County and design team** during preconstruction to develop potential solutions to this project risk. Collaboratively, the team adjusted the pipeline routing by modifying portions of the open-cut installation to HDD, and repositioned the bore pit locations for improved alignment with existing conditions. Ultimately, this value-added solution mitigated environmental impacts throughout the life cycle of the project and allowed Wharton-Smith to return **over $700,000 in project savings** to the County.

THE CORE OF OUR TEAM

The proposed project team of **Principal-in-Charge Mike Alexakis, Project Executive Scott Jamison, and Senior Superintendent Bill McMullen** recently completed the DeLeon Springs Utility Extension project together for Volusia County.





HORIZONTAL DIRECTIONAL DRILLING



BORE PIT MANAGEMENT



PERFORMING HDD NEAR BUSY ROADWAYS

WE PROVIDE VALUE-ADDED SOLUTIONS.

As mentioned previously, our goal is to add value to your project. The list below displays a few of our early value engineering opportunities along with our four factors of analysis. This list will be verified and expanded exponentially once we have a full design submittal in hand. We are excited for the opportunity to impress the City with our ideas and ability to think outside-the-box.

VE OPPORTUNITIES	BENEFITS	TIME SAVINGS	COST SAVINGS	IMPROVED CONSTRUCTABILITY
OPTIMIZED DRILL PATHS	Reduces drilling length and complexity, minimizing resource use.	✓	✓	✓
ADVANCED MATERIAL SELECTION	Increases durability and reduces maintenance costs over time.		✓	✓
PHASED CONSTRUCTION APPROACH	Allows for implementation of lessons learned and adjustments in subsequent phases.		✓	✓
PUBLIC COMMUNICATION STRATEGY	Reduces opposition and enhances public relations, facilitating smoother project execution.	✓		✓
ENHANCED TRAINING PROGRAMS	Improves crew efficiency and safety, reducing the risk of errors.	✓	✓	✓
PRE-DRILL HYDROGRAPHIC SURVEYS	Identifies underwater conditions and obstacles, allowing for better planning (bathometric survey).	✓	✓	✓
CONTINUOUS ENVIRONMENTAL MONITORING	Ensures compliance and minimizes environmental impacts.		✓	✓
CUSTOMIZED DRILLING FLUIDS	Tailored to specific soil and environmental conditions.	✓	✓	✓
ENTRY CASING	Eliminates the opportunity for betonite to enter the Halifax River.		✓	✓
IMPLEMENTATION OF A REAL-TIME MONITORING SYSTEMS	Tracks drilling progress and conditions, allowing for immediate response to issues.	✓	✓	✓
POST-CONSTRUCTION RESTORATION PLANS	Enhances environmental recovery and community relations post-project completion.			✓

LOWERING COST VIA PRECONSTRUCTION VALUE ENGINEERING EFFORTS

RWRF INFLUENT PUMP STATION (ALTAMONTE SPRINGS, FL)



VALUE ENGINEERING SUCCESS

OVERVIEW: Wharton-Smith was selected as the CMAR for the City of Altamonte Springs headworks and influent pump station project.

CHALLENGE: The design included a 27-foot deep pump station which presented many challenges in regards to dewatering, shoring, and protecting of the existing adjacent infrastructure.

SOLUTION: CMAR delivery allowed for collaboration between our preconstruction team, the owner, and the design team to redesign the pump station wet well for a caisson-type installation. Wharton-Smith performed a delegated design and installed the shoring system for the headworks channel, resulting in **project savings in excess of $1 million and no collateral damage.**

WE PROACTIVELY MANAGE RISK.

Risk management begins with proactively and effectively identifying potential issues that could affect the project's success. This process starts by dissecting your project into critical areas, components, and schedule activities. For each identified potential issue, our CMAR team and the City will collaboratively review the potential cost and schedule impact, probability, and most importantly, the risk mitigation strategy. This helps to identify how the team will work together to **mitigate potential risks long before** they are encountered. By identifying, discussing, and assigning responsibility to each item, frequency of each occurrence can be greatly reduced. For those items that still present cost risk, allowances and contingencies are created. **Below is a sample preliminary risk register specifically developed for the River Crossing Force & Water Mains project:**

Risk ID	Risk Issue	Cost Impact ($)	Schedule Impact (Days)	Probability (0-100%)	Risk Mitigation Strategy	Weighted Cost Exposure (Prob x PCI)
1	Hydrological Factors	TBD	10	50%	Conduct hydrological studies and monitor river conditions.	TBD
2	Geotechnical Challenges	TBD	20	60%	Perform extensive geotechnical investigations and adjust HDD techniques.	TBD
3	Environmental Impact	TBD	5	75%	Develop an environmental management plan and monitor regularly.	TBD
4	Operational Risks	TBD	10	40%	Establish a robust project management framework with proven performers.	TBD
5	Pipe Staging	TBD	5	15%	Establish all easements and permitting required for stringing out piping for efficient installation.	TBD
6	Bore Pit Management	TBD	10	25%	Ensure bore pit dimensions, slope, and drainage systems are designed properly and are continuously monitored.	TBD
7	Fluid / Mud Management	TBD	10	40%	Use controlled drilling techniques and appropriate drilling fluids.	TBD
8	HDD Technology (Inaccurate Drill Path)	TBD	40	20%	Utilize Gyroscope technology versus wire line in efforts to minimize course deviation.	TBD
9	Existing Utilities	TBD	15	40%	Perform subsurface utility exploration (SUE) on each bank prior to construction to verify there are no existing conflicts in route of drill path.	TBD
10	Weather-related Issues	TBD	15	90%	Establish a weather monitoring protocol and flexible work schedules. Execute drills during dry season as schedule allows.	TBD
11	Regulatory Compliance	TBD	0	40%	Engage with regulatory agencies early for compliance and documentation.	TBD
12	Underground Obstructions	TBD	40	50%	Conduct pre-drill surveys to identify potential conflicts.	TBD
13	Inadvertent Return	TBD	25	45%	Minimize drilling pressures by performing a hydrofracture analysis to avoid frac-out.	TBD
13	Erosion and Scour	TBD	10	35%	Implement sediment control measures and monitor river flow.	TBD
14	Environmental Contamination	TBD	10	40%	Utilize environmentally friendly drilling fluids and spill prevention protocols.	TBD
15	Public Safety	TBD	0	40%	Establish clear safety protocols and communicate regularly with the community.	TBD
		TBD	**235**			**TBD**

WE PLAN THE WORK.

Wharton-Smith utilizes Primavera P6 software for computer-generated Critical Path Method (CPM) scheduling. Our proposed **Sr. Project Manager, Adam Bergdahl**, has 15 years of experience with creating and maintaining CPM schedules.

With oversight from our in-house Scheduling Department, Adam will create a full CPM schedule early in preconstruction. Our team's recent experience with similar force main and horizontal directional drilling projects in Florida allows us to create an accurate schedule with durations that we know are attainable. Below, we have proactively identified some of the schedule challenges for the River Crossing Force & Water Mains project, plus our approach to mitigating them:

DESIGN SCHEDULE

CMAR best practices of co-locating, constant and open communication, and integrating permits in our baseline schedule.

ADEQUATE TIME ALLOTTED FOR PERMITTING

After our initial project kickoff meeting, we will incorporate time frames for all permits into our baseline schedule.

EARLY SITE INVESTIGATIONS

The project schedule will include detailed preconstruction activities to ensure that there are no existing conflicts in route of the drill path.

STRATEGIC HDD PLANNING

Our team will ensure that Kimley Horn selects the best bore pit locations, avoids conflicts and specifies pipe products that accomplish the design intent with lowest cost.

THEN WE WORK THE PLAN.

Wharton-Smith's Production Planning System (PPS) has served as the backbone of our CMAR project delivery for over a decade. The PPS system is utilized in the field during Production Planning Meetings with subcontractors and craft laborers. Each trade has representatives present for our beginning- and end-of-shift meetings in which conversation is facilitated to detail the work that is actually happening on the project site. This allows the subcontractors to coordinate and plan activities, and develop solutions and strategies to resolve potential conflicts or delivery delays on a short-term basis. At the end of these meetings, the information tracked on the boards is transferred to our formal P6 CPM schedule, and updates are provided to all stakeholders.



Production Planning meetings are led inside our on-site trailer with our project team, self-perform crews, subcontractors, and owners facilitating open conversation about the work goals of each day.

The PPS provides very detailed daily assignments and goals so that each worker on site knows what their responsibility is for that day. This system drives the project schedule, quality control, and safety on construction tasks everyday, and our teams have seen tremendous results by utilizing the PPS which begins with subcontractor involvement.

WHAT IS THE PRODUCTION PLANNING SYSTEM? The process of planning all work three to six weeks in advance to ensure all prerequisite work is complete, and all necessary materials are on site.

WHY IS THIS SYSTEM SO IMPORTANT? It ensures every crew on the jobsite effectively and efficiently completes their daily production goals without any incidents or defects.

WHEN IS IT DONE? Production Planning meetings are held at each day's beginning- and end-of-shift meetings. Additionally, a weekly meeting is held that is dedicated to updating the production goals and look-ahead schedules.

WHERE IS IT DONE? Every Wharton-Smith jobsite has a dedicated Production Planning room in the on-site construction trailer.

WHO PARTICIPATES IN THESE MEETINGS? Wharton-Smith project team members, subcontractors, and the design team are all required to participate. Representatives from the City are also encouraged to engage in the process.

HOW DOES THIS SYSTEM WORK? Work days are organized into columns. Each row represents a different work crew (trade), including those of subcontractors. Each color sticky note represents a different project structure or component, and actual current and upcoming work activities are listed on the sticky notes. Activities missing any prerequisite work or materials are turned at a 45-degree angle.

WE PROVIDE COST CERTAINTY.

Our team will continually update the cost model throughout the life-cycle of preconstruction. Having accurate modeling ensures the projects stays on budget and avoids delays and expensive re-design costs. Wharton-Smith still bids design-bid-build projects, which gives us a unique ability to provide you with real-time cost data from the earliest design milestones. Our **Preconstruction Director, Erik Anderson**, has 20 years of experience including dozens of similar force and water main projects. He will lead all preconstruction activities and provide our dedicated preconstruction team, led by **Dwayne Kreidler**, with the cost estimates that will help to compile the GMP(s) for this project. To assist the City's financial department, accompanying each cost estimate, Wharton-Smith will provide an estimated payment disbursement schedule.

EMPLOYEE SPOTLIGHT



ERIK ANDERSON, PE, DBIA
PRECONSTRUCTION DIRECTOR

Erik has 20 years of industry experience and is responsible for overseeing Wharton-Smith's Water/ Wastewater Division Preconstruction Services Department. His responsibilities include the review of contract documents, estimating, subcontractor selection process, value engineering, constructability reviews, and preparing Guaranteed Maximum Price (GMP) packages.

WHARTON-SMITH'S PRECONSTRUCTION AND ESTIMATING DEPARTMENTS ARE LOCATED IN CENTRAL FLORIDA. THIS ALLOWS US TO KEEP OUR FINGERS ON THE PULSE OF THE WASTEWATER ECONOMY. OUR VOLUME OF WORK GIVES US THE **STRONGEST BUYING POWER AND GUARANTEES WE WILL RECEIVES BIDS FROM THE BEST SUBCONTRACTORS** IN THE STATE. SIMPLY PUT, NO OTHER FIRM CAN PROVIDE THE SAME COST SAVINGS.

60% DESIGN COST ESTIMATE

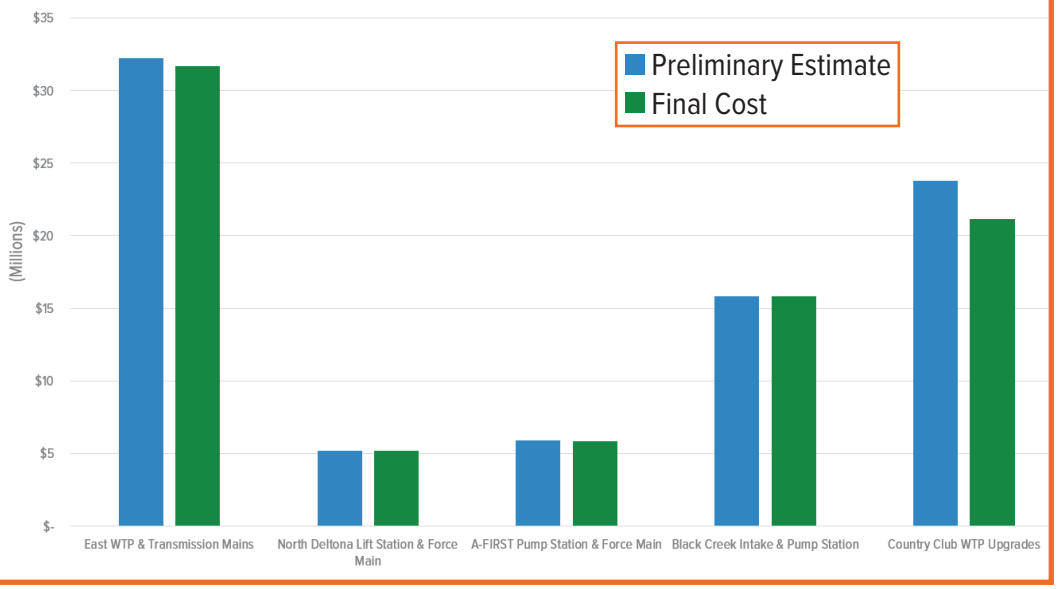
Our preconstruction team, led by **Erik Anderson and Dwayne Kreidler**, will perform detailed takeoffs on all trades. Adequate contingencies and allowances will be carried for design items still unknown or needing clarification. General conditions are adjusted based on the schedule. A partial GMP for long lead piping and early work activities will be suggested to provide schedule gains.

90% DESIGN COST ESTIMATE (GMP)

Wharton-Smith issues competitive bid packages to subcontractors and suppliers including detailed scopes of work, bid forms, and instructions to bidders. The bids are received, reviewed, and recommendations of award are made to the City of Port Orange. General conditions are finalized and all GMP bids and documents are provided to the City for full transparency.

- **CITY OF MIRAMAR**
  EAST WTP & TRANSMISSION MAINS
- **VOLUSIA COUNTY**
  NORTH DELTONA LIFT STATION & FORCE MAIN
- **CITY OF ALTAMONTE SPRINGS**
  A-FIRST PUMP STATION & FORCE MAIN
- **ST. JOHNS RIVER WATER MANAGEMENT DISTRICT**
  BLACK CREEK INTAKE & PUMP STATION
- **SEMINOLE COUNTY**
  COUNTRY CLUB WTP UPGRADES

COST CERTAINTY OF RECENT WHARTON-SMITH CMAR PROJECTS



Reference project in Tab B

GMP DEVELOPMENT THAT GIVES THE CITY THE BEST VALUE.

Wharton-Smith's bidding process is a holistic five-step process that will be championed by **Preconstruction Director Erik Anderson**. This bidding process has been refined over the past 30 years and has been reviewed and approved by FDEP and various federal and grant funding agencies. ***This same process has been used on all of our recent Construction Management at Risk (CMAR) projects***.

1. DETERMINE WORK PACKAGES

Wharton-Smith's dedicated preconstruction team will work with your selected designer and City staff to determine the most optimal work packages to bid.

2. QUALIFIED BIDDERS LIST

Being headquartered in Central Florida for 40 years, Wharton-Smith has developed long-standing relationships with thousands of subcontractors. We also hold outreach events to encourage local participation, clarify bids, and foster buy-in with local subcontractors.

3. DEVELOP BID PACKAGES

Upon selection, we will review the design documents to confirm the bid packages are complete, accurate, and are void of any gaps or missions.

4. RECEIVE BIDS

We will receive bids from qualified subs at your offices or ours, on a single day or multiple days depending on the City's preference.

5. REVIEW & RECOMMEND

Once bids are received, our preconstruction team thoroughly reviews them for completeness and accuracy. The bids will then be tabulated and provided to the City with recommendations for award.

TOTAL TRANSPARENCY!

GMP COMPONENT	HOW WE MAINTAIN TRANSPARENCY?
Subcontracts	Competitive sealed bids, reviewed with the City, mutually agreed award
Purchase Orders	Competitive sealed bids, reviewed with the City, mutually agreed award
General Conditions	Presented open-book with mutually agreed staffing and temporary facilities
Bond	Copy of bond invoice provided
Insurance	Complete backup provided for insurance costs (self-insured)
Allowances	Discussed & mutually agreed amount for items like building permits, geotechnical testing, etc.
Contingency	Discussed & mutually agreed amount for unforeseen costs. Risk register developed to determine contingency amount
Fee	Openly discussed & negotiated. Fee from previous CMAR projects to illustrate current market

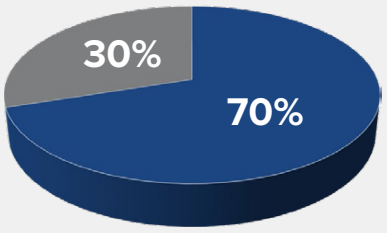
SELF-PERFORMANCE PROVIDES BEST VALUE GUARANTEED MAXIMUM PRICE.

In addition to collecting bids from subcontractors, **Wharton-Smith is capable of submitting our own competitive bids for self-performing site work, concrete, force and transmission mains, piping, mechanical and equipment installation**. For transparency, our bids will be provided before the other bids are due. Alternatively, we are comfortable on an open-book cost plus fee for self-performing the scopes we collectively agree upon.

Wharton-Smith began in Central Florida in 1984 as a self-performing general contractor, and have maintained that service over the 40 years since. Our approach provides value to our clients by reducing subcontractor layers of markup, bond, supervision, and insurance. Additionally, self-performance allows us to have better **control of the elements that matter most—schedule, safety, quality**.

YOU CAN TRUST WE WILL PROVIDE THE LOWEST PRICING. OUR RECENT BIDDING SUCCESS THROUGHOUT THE SOUTHEAST U.S. PROVES IT.

We typically self-perform 50% or more of a project (see table to right). Our bid price has provided an **average savings of more than 20%** on the work packages we bid. This leads to our self-performance **reducing total project costs by 10%** or more.



RIVERSIDE WTP BREAKDOWN

- Self-Perform
- Subcontractors

Below are several water and wastewater projects where we have provided self-performance services:

PROJECT	COST	SELF-PERFORM %
Hillsborough County Northwest Regional WRF	$193.2 M	**64%**
City of Cayce Regional WWTP Expansion	$54.2 M	**70%**
Orange County Hamlin WRF	$114.0 M	**52%**
Georgia-Pacific Foley WWTP Upgrades (plant only)	$50 M+	**60%**
Catawba River Raw Water Reservoir Expansion	$14.1 M	**65%**
Polk County Northeast Regional WRF Expansion Ph. 2	$32.2 M	**66%**

QUALITY CONTROL STARTS WITH PLANNING.

A successful quality control program must be comprehensive and be implemented throughout the life cycle of the project from preconstruction and design through completion.

Quality management has to be more than a manual or a Quality Manager that visits the site once a month. Wharton-Smith's Quality Management Program is effective because we have a tried-and-true process and our in-house craft workers are experienced and have received extensive training. Quality control begins on "ground zero."

The focus on quality control needs to begin during the preconstruction phase. The development of the qualified bidders list for the River Crossing Force & Water Main project is the critical first step in our focus on quality, allowing Wharton-Smith to invite only pre-qualified subcontractors and suppliers that are proven performers, capable, and available, both with manpower and financially, to provide the quality product that meets our joint expectations.

As the project transitions to construction, pre-task planning is a critical step for all field activities. During pre-task planning meetings, our goal is to actively collaborative with all subcontractors and reach a common understanding regarding project requirements for before moving forward with each task. This extra pre-planning steps allows any conflicts to be addressed ahead of time, avoiding costly re-work and potential schedule impacts in the field. We employ a Production Planning system to ensure high quality execution (see page 58).

RELEVANT PROJECT CASE STUDY

COHESION WITH KIMLEY HORN EXPEDITES LONG LEAD PIPING

NORTH WRF (OCALA, FL)



OVERVIEW: Wharton-Smith was selected as the CMAR for Bay Laurel Center CDD's $125 million, 5.0 MGD North WRF.

CHALLENGE: Increased home sales within the District moved the facility need date up more than one year.

SOLUTION: Understanding the urgency of the need for this facility, our preconstruction team began drafting accelerated schedule ideas prior to selection. **Our team collaborated with Kimley Horn** to produce biddable documents at each design milestone. At 60%, **we bid all the process equipment and long lead pipe to avoid delays in the schedule**.

EMPLOYEE SPOTLIGHT



CHRIS GAYNER, PE

QUALITY CONTROL MANAGER

Prior to leading Wharton-Smith's QA/QC Department, Chris worked though the project management ranks on our water/wastewater projects. With his 30+ years of experience, Chris understands the collaborative nature of CMAR projects. He has overseen the pre-planning and quality of work being put in place on nearly every one of Wharton-Smith's Florida water and wastewater treatment projects.



COLLABORATE

Employing quality management meetings early in the project life cycle will ensure our project team and subcontractors understands the City of Port Orange and Kimley Horn's expectations.



PLAN

The City of Port Orange is encouraged to attend our Production Planning meetings to ensure your awareness on upcoming work and our plan to execute that work.



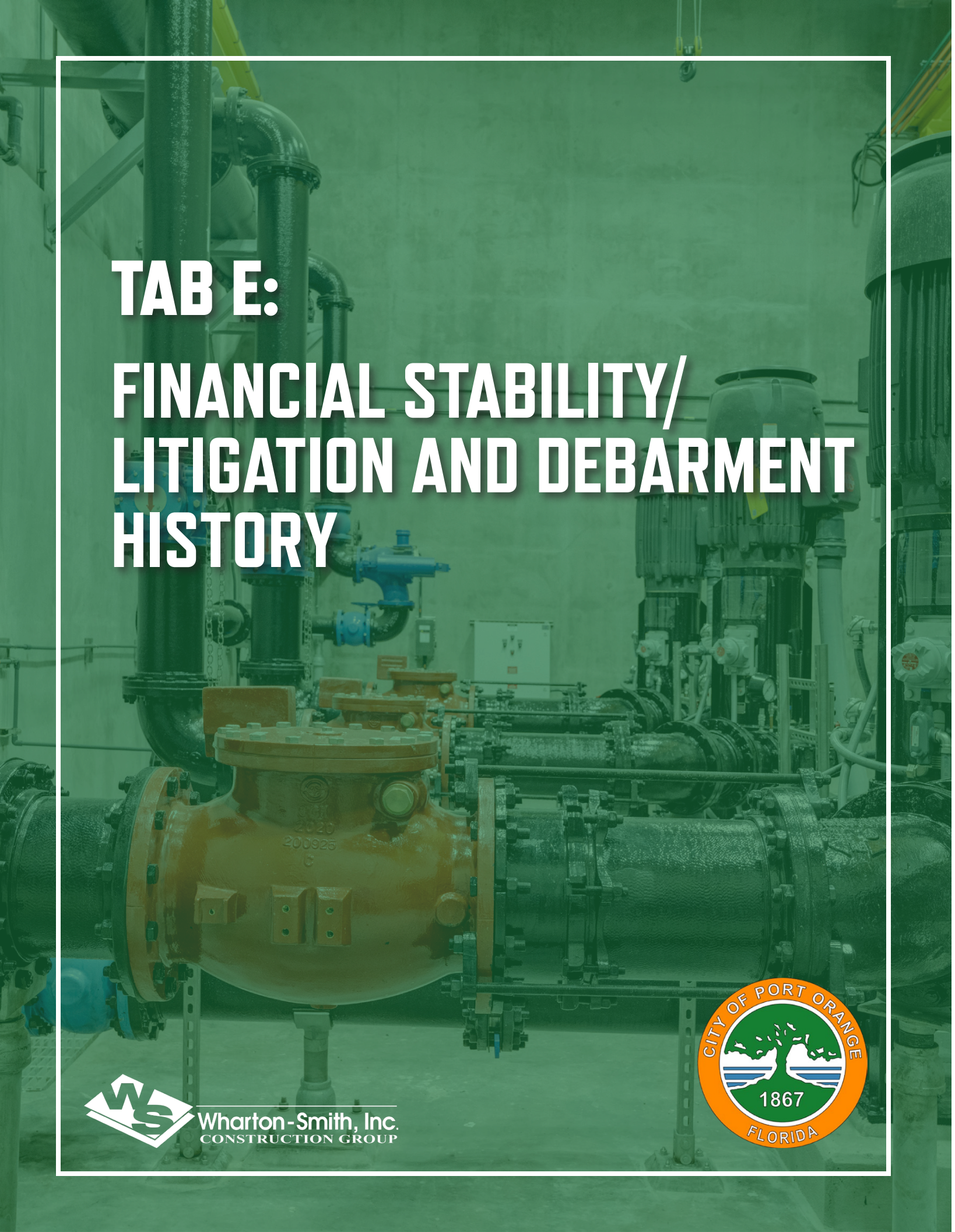
EXECUTE

Our 230+ in-house, experienced craftsmen are known for their quality execution for utilities throughout Florida.



MINDSET

Going the extra step during the pre-planning process ensures cost and schedule impacts are avoided before they become change orders in the field.



TAB E:

FINANCIAL STABILITY/ LITIGATION AND DEBARMENT HISTORY

Wharton-Smith, Inc.
CONSTRUCTION GROUP

CITY OF PORT ORANGE
1867
FLORIDA

TAB E — FINANCIAL STABILITY/LITIGATION & DEBARMENT HISTORY

All Respondents shall submit a financial statement, preferably a certified audit from the last available fiscal year.

Wharton-Smith, Inc. has provided a copy of our audited financial statements from the last available fiscal year enclosed in a separate envelope marked "CONFIDENTIAL pursuant to Florida Statutes Section 119.071(1)(c)".

This tab shall contain information on the nature and magnitude of any litigation or proceeding whereby, during the past five (5) years, a court or administrative agency has ruled against the firm in any matter related to the professional activities of the firm. Include any class actions within your company where named, industry investigations by Attorneys General, in addition to individual cases.

Wharton-Smith believes that potential conflicts can easily be avoided by developing trustworthy relationships early on with all parties involved on a project and by encouraging open communications. The successes we have had on our projects are due in large part to our commitment to partnering and conflict prevention and resolution. Occasionally, a situation arises where a third-party mediation is needed, despite all efforts to avoid it. Our litigation record for the past 5 years is as follows:

Wharton-Smith, Inc. vs. Clay Road 628 Development, L.P. and Montgomery County MUD No. 138 (Case No. 24-04-06018, District Court in the Four Hundred Fifty Seventh Judicial District Court, Montgomery County, Texas): In April 2024, Wharton-Smith filed suit against Clay Road 628 Development, L.P. and Montgomery County MUD No. 138 over nonpayment for work performed. ***Case is ongoing***.

Wharton-Smith, Inc. vs. Frankenmuth Mutual Insurance Company, Allstate PSP LLC d/b/a Allstate Paving & Site Development, and Sandstone Site Service LLC (Case No. 2024-CA-000372, the Circuit Court of the Eighteenth Judicial Circuit, in and for Seminole County, Florida): In February 2024, Wharton-Smith filed suit against its subcontractor, Allstate PSP LLC d/b/a Allstate Paving & Site Development and Sandstone Site Service LLC, and their surety, Frankenmuth. Wharton-Smith declared Allstate in default and filed a performance bond claim against Allstate's surety, Frankenmuth, in July of 2023. Despite repeated demands, Frankenmuth refused to fulfill its obligations under the bond. ***Settled at mediation in August 2024***.

Wharton-Smith, Inc. vs. Frankenmuth Mutual Insurance Company, and American Site Contracting, LLC (Case No. 2022-CA-000999, the Circuit Court of the Eighteenth Judicial Circuit, in and for Seminole County, Florida): In April 2022, Wharton-Smith filed suit against its subcontractor, American Site Contracting, and their surety, Frankenmuth. American Site abandoned its work and shut down the company's operations entirely in early 2021, and Wharton-Smith terminated American Site for default and filed a performance bond claim against American Site's surety, Frankenmuth, in April of 2021. Despite repeated demands, Frankenmuth refused to fulfill its obligations under the bond. ***Settled at mediation in November 2023***.

UCF Stadium Corporation f/k/a Golden Knights Corporation, et al. vs. Dant Clayton Corporation, Wharton-Smith, Inc., et al. (Case No. 2017-CA-008259-O, The Circuit Court, Ninth Judicial Circuit, Orange County, Florida): In September 2017, UCF filed suit against Dant Clayton Corporation, Wharton-Smith, and others over alleged breach of contract regarding the design-build contracts for the construction of their stadium. Wharton-Smith was then dismissed from the suit with a Tolling Agreement that they could be brought back in before April 1, 2019. In December 2018, Wharton-Smith was brought back into the lawsuit. ***Settled at mediation in January 2020***.

This tab shall contain information on the nature and magnitude of any debarment or proceeding during the past five (5) years in any matter related to the professional activities of the firm.

Wharton-Smith, Inc. has never been debarred by any entity since our inception in 1984, including in the past (5) years.

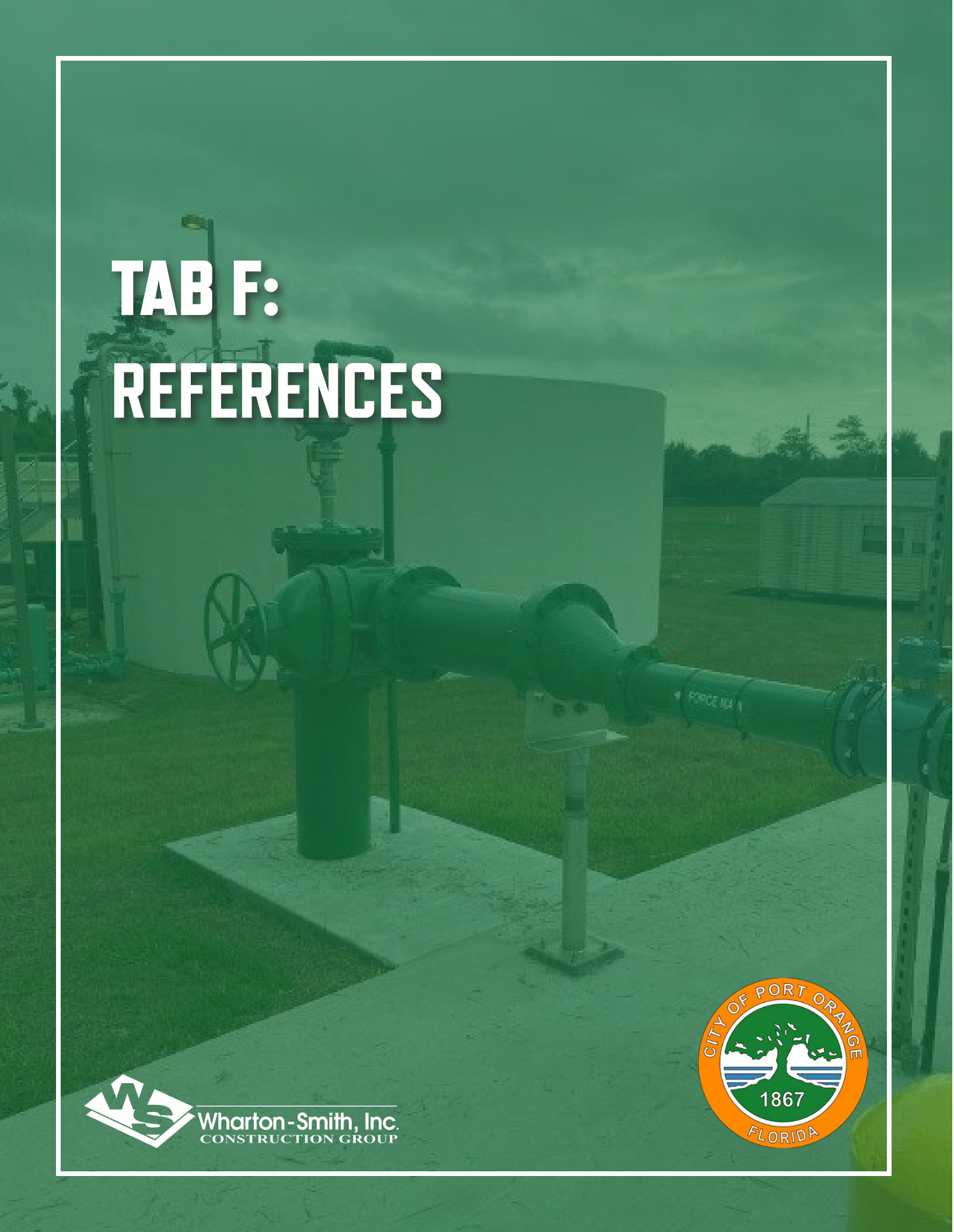
This tab shall include any debarment actions against your company by the City or other public entity.

Wharton-Smith, Inc. has never been debarred by the City of Port Orange or any other public entity.

Respondent must indicate whether any contract awarded by another government agency has been terminated for default or convenience.

Wharton-Smith, Inc. has never had a contract terminated for default or convenience.

TAB F:
REFERENCES



Wharton-Smith, Inc.
CONSTRUCTION GROUP

CITY OF PORT ORANGE
1867
FLORIDA

FORM 9.8 — PROFESSIONAL REFERENCES FOR PREVIOUS EXPERIENCE

FORM 9.8 – PROFESSIONAL REFERENCES FOR PREVIOUS EXPERIENCE

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

1. Company Name: Volusia County
   Contact Person: Michael Ulrich
   City, State: DeLand, FL
   Telephone Number: (386) 943-7027
   Email Address: mulrich@volusia.org
   Description of goods/services provided: CMAR services for various force main projects including Deltona North Lift Station included in Tab B of this proposal
   Contract Amount: $5,196,880
   Start/End Date of Contract: 5/4/2020 - 6/17/2021
2. Company Name: City of Leesburg
   Contact Person: Cliff Kelsey
   City, State: Leesburg, FL
   Telephone Number: (352) 435-9442
   Email Address: cliff.kelsey@leesburgflorida.gov
   Description of goods/services provided: CMAR services for multi-phase wastewater expansion project
   Contract Amount: $39,884,358 (Phase II only)
   Start/End Date of Contract: 9/1/2023 - 6/1/2024 (Phase II only)
3. Company Name: City of Altamonte Springs
   Contact Person: Karen McCullen (formerly with City; now with City of Maitland)
   City, State: Altamonte Springs, FL
   Telephone Number: (407) 875-2829
   Email Address: kmccullen@itsmymaitland.com
   Description of goods/services provided: CMAR services for several water/wastewater projects including A-FIRST project included in Tab B of this proposal
   Contract Amount: $5,921,341
   Start/End Date of Contract: 6/16/2014 - 9/15/2015 Type text here

This document must be completed and returned with your Submittal.

FORM 9.8 — PROFESSIONAL REFERENCES FOR PREVIOUS EXPERIENCE

FORM 9.8 – PROFESSIONAL REFERENCES FOR PREVIOUS EXPERIENCE

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

1. Company Name: City of Daytona Beach
   Contact Person: Eric Smith
   City, State: Daytona Beach, FL
   Telephone Number: (386) 671-8829
   Email Address: smitheric@codb.us
   Description of goods/services provided: Design-Build services for in-plant pump station and headworks project
   Contract Amount: $22,000,000
   Start/End Date of Contract: _____

This document must be completed and returned with your Submittal.

VOLUSIA COUNTY LETTER OF RECOMMENDATION

Volusia County
FLORIDA

Public Works Department
Water Resources and Utilities

January 13, 2022

Mr. Nathan Hillard
Director of Collaborative Delivery
Wharton-Smith, Inc.
750 Monroe Road
Sanford, FL, 32771

Dear Nate:

I wish to take this opportunity to thank you and all Wharton-Smith team members for the responsive service and performance exhibited in recent utility main extension projects benefitting state protected springs within Volusia County.

In working under a construction manager at risk (CMAR) delivery method and also in cooperation with Jones Edmunds & Associates (JEA) as design consultant, your firm has successfully executed its role as construction manager by ensuring timely completion of an important nutrient reduction initiative benefitting Volusia Blue Spring. The project included installation of a high-capacity lift station at the county's wastewater treatment facility in Deltona and construction of approximately three (3) miles of sewer force main which connected to existing infrastructure in Orange City, ultimately leading to the county's regional water reclamation facility in DeBary.

At the present time, your firm is also teamed with JEA to (1) complete design and construction of 3.5 miles of potable water and wastewater mains (2) install a master pump station, and (3) handle demolition of an existing wastewater treatment facility. This springs protection project, benefitting DeLeon Spring, has required significant planning and coordination effort involving Volusia County Utilities, DeLand Utilities, the Florida Department of Transportation, Duke Energy, and the Volusia County School Board.

Once again, in working under the CMAR delivery method, Wharton-Smith and Jones Edmunds have demonstrated a very successful collaborative approach resulting in innovative design and cost effectiveness for this state and local joint funded project. It is clear that both firms possess a sincere desire to support our community's best interests by consistently providing high-quality service.

Sincerely,

Michael Ulrich, Director
Volusia County Water Resources & Utilities
mulrich@volusia.org
(386) 943-7027 ext 12724.

123 West Indiana Avenue, 4th Floor • DeLand, Florida 32720
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www.volusia.org

CITY OF ALTAMONTE SPRINGS LETTER OF RECOMMENDATION

Altamonte Springs

May 10, 2016

Subject: **Letter of Reference for Wharton-Smith, Inc.**

To whom it may concern:

Wharton-Smith recently completed the A-First Reuse Augmentation Facility and Stormwater Pump Station for the City of Altamonte. The project offered many challenges and Wharton-Smith met them all with professionalism and a positive attitude.

It was imperative that we meet or improve the schedule on this project. The stormwater pump station serves a critical purpose in our community. This pump station alleviates flooding concerns in vital areas of our City including Crane's Roost Park. Wharton-Smith did an outstanding job of maintaining the project schedule and completed the project on-time, even when presented with obstacles.

Wharton-Smith took a partnering approach on all issues we encountered. Client satisfaction was their first priority and they worked hard to bring solutions to the table rather than just problems.

Lastly, the project team at Wharton-Smith worked hard to come up with innovative ways to save money without sacrificing quality. They presented us with a long list of value engineering options that allowed the City to save a great deal of money. Those funds were then used to make significant upgrades to the project including a new ground storage tank, a new perimeter retaining wall, and new electrical buildings.

I would recommend Wharton-Smith to provide construction management or general contracting services. Please feel free to contact my office at 407-571-8335 should additional information be needed.

Sincerely,

Karen McCullen, PE
Senior Engineering Project Manager

225 Newburyport Avenue, Altamonte Springs, Florida 32701-3697

CITY OF LEESBURG LETTER OF RECOMMENDATION

May 25th, 2023

SUBJECT: REFERENCE LETTER

To Whom it May Concern,

Please accept this reference letter for Wharton-Smith Inc. for the outstanding construction work they have completed on the Turnpike Waste Water Plant Phase I Expansion Project.

The City of Leesburg, FL has and continues to experience significant growth. In order to facilitate that growth, we recognized the need to increase our wastewater treatment capacity. Wharton-Smith played a significant role in the construction, value engineering, procurement and commissioning of a 1.5 MGD expansion to our existing wastewater treatment plant.

Wharton-Smith was a critical strategic partner that not only helped us establish the criteria for the expansion but also helped us achieve our capacity requirements in the most economically feasible manner. Their support and ability to adapt to ever changing requirements helped the City of Leesburg ensure wastewater treatment is not a limiting factor to growth in our service area.

Please contact the undersigned with any questions pertaining to this letter.

Sincerely,

Clifford Kelsey
Public Works Director
Leesburg, Florida
Cliff.Kelsey@leesburgflorida.gov
(352) 435-9442 (o)
(352) 801-1752 (c)

City of Leesburg – 501 West Meadow St., PO Box 490630 - Leesburg, FL 34749
352-728-9786





Wharton-Smith, Inc.
CONSTRUCTION GROUP



750 MONROE ROAD
SANFORD, FL 32771

(407) 321-8410

WWW.WHARTONSMITH.COM

Evaluation Ranking Summary

Date: November 5, 2024

RFSQ #24-03 Construction Manager at Risk for Construction of Force & Water Mains (River Crossing)

Firm Name	Total Weighted Score (Maximum 50)
Prime Construction Group, Inc.	42.78
Wharton-Smith, Inc.	47.53

Comments
On November 5, 2024 a Statement of Qualifications Evaluation Committee scored the statements received from the firms listed above for RFSQ #24-03 Construction Manager at Risk for Construction of Force & Water Mains (River Crossing). The committee agreed by consensus to recommend for award **Wharton-Smith, Inc.** based on a combination of overall scores and their ability to best meet the needs of the City.

"Failure to file a protest within the time prescribed in section 120.57(3), Florida Statutes, or failure to post the bond or other security required by law within the time allowed for filing a bond shall constitute a waiver of proceedings under chapter 120, Florida Statutes." The 72 hour posting requirement will elapse on November 8, 2024 at 4:00 PM EST

NOTICE OF INTENT TO AWARD

RFSQ #24-03 Construction Manager at Risk for Construction of Force & Water Mains (River Crossing)

November 5, 2024

On November 5, 2024, a Statement of Qualifications Evaluation Committee comprised of City of Port Orange staff, scored in a publicly noticed meeting, two (2) Statements of Qualifications received for ***RFSQ #24-03 Construction Manager at Risk for Construction of Force & Water Mains (River Crossing).***

After reviewing and scoring the responses, City Staff has made a recommendation to award to:

Wharton-Smith, Inc.

Respectfully Submitted,

Jill Poolman, NIGP-CPP, CPPO, CPPB, FCCM
Purchasing Manager

"Failure to file a protest within the time prescribed in section 120.57(3), Florida Statutes, or failure to post the bond or other security required by law within the time allowed for filing a bond shall constitute a waiver of proceedings under chapter 120, Florida Statutes." The 72-hour posting requirement will elapse on November 8, 2024 at 4:00 PM EST.

NOTICE of PUBLIC MEETING

RFSQ #24-03

Construction Manager at Risk for Construction of Force & Water Mains (River Crossing)

Notice is hereby given that a Statement of Qualifications Evaluation Scoring Meeting for the above referenced Request for Statement of Qualifications will be held on Tuesday, November 5, 2024 at 11:00 AM EST. This meeting will be held in City Council Chambers at:

The City of Port Orange
1000 City Center Circle
Port Orange, FL 32129

CITY OF PORT ORANGE, FLORIDA

REQUEST FOR STATEMENT OF QUALIFICATIONS

RFSQ #24-03
CONSTRUCTION MANAGER AT RISK FOR CONSTRUCTION OF FORCE & WATER MAINS (RIVER CROSSING)

City of Port Orange Purchasing Division

Prepared by: Jill Poolman, NIGP-CPP, CPPO, CPPB/Purchasing Manager
Release Date: September 20, 2024

Due Date & Time: October 22, 2024 at 2:30 PM

Legal Notice to Respondents

RFSQ #24-03

Construction Manager at Risk for Construction of Force & Water Mains (River Crossing)

Notice is hereby given that the City of Port Orange is seeking Statements of Qualifications for RFSQ #24-03 Construction Manager at Risk for Construction of Force & Water Mains (River Crossing). Submissions of Statements of Qualifications will be accepted in the City Clerk's Office, Port Orange City Hall, 1000 City Center Circle, Port Orange, Florida until **2:30 PM Eastern Standard Time (EST) on Tuesday, October 22, 2024** which may be amended by addendum issued by the City. All untimely statements will not be considered and will be returned to the Respondent unopened. All statements will be evaluated to ensure they contain all required forms in order to deem the Respondent responsive or non-responsive. Statements will be opened and read aloud **October 22, 2024 at 2:30 PM (EST)** in Council Chambers.

There will be a Non-Mandatory Pre-Submittal Conference for the project at **10:00 AM (EST) on Tuesday**, **October 1, 2024** at City Hall, Council Chambers (1st floor), 1000 City Center Circle, Port Orange, Florida 32129. All attendees to the Pre-Submittal Conference must sign in. The representative of each Respondent shall be an authorized employee of the Respondent and shall sign in accordingly. Respondents are urged to obtain the solicitation documents and familiarize themselves with the documents prior to the Pre-Submittal Conference.

DESCRIPTION: In accordance with the Consultants' Competitive Negotiation Act (CCNA) Section 287.055, Florida Statutes, the City is seeking Statements of Qualifications from qualified individuals and/or firms interested in providing Construction Manager at Risk (CMAR) services for the construction of a 20-inch sanitary sewer force main crossing the Halifax River at Dunlawton Avenue, and for the construction of a 16-inch water main crossing the Halifax River at Fleming Avenue.

The City will require the awarded Contractor to furnish and pay for a Payment and Performance Bond equal to one hundred percent (100%) of project value to be recorded by the City, with the Clerk of the Circuit Court, Volusia County, Florida. After recording, the City will furnish to the Contractor the recording information for the bond to evidence that the Contractor has met the requirement of Florida law. The City will bill the cost of recording to the Contractor.

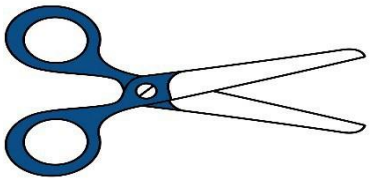
All Statements of Qualifications are solicited and will be evaluated on the criteria outlined in this RFSQ. An evaluation committee comprised of City staff has been appointed to evaluate and rank the Statements of Qualifications received in accordance with the Code of Ordinances City of Port Orange, Chapter 2, Article VI, Division 2, Section 2-278, and all statements will be evaluated in accordance with the provisions thereof. Code of Ordinances, City of Port Orange is on file in the Office of the City Clerk, City Hall, 1000 City Center Circle, Port Orange, Florida 32129, and at www.municode.com.

Copies of the RFSQ documents, requirements, scope of service and all other pertinent information necessary to submit a complete package may be obtained electronically from the City of Port Orange Purchasing webpage at https://www.port-orange.org/bids.aspx and DemandStar at www.demandstar.com.

All questions shall be directed in writing to Jill Poolman at: jpoolman@port-orange.org and purchdiv@port-orange.org and reference "Questions on RFSQ #24-03 Construction Manager at Risk for Construction of Force & Water Mains (River Crossing)" in the subject line. **Last day for questions will be Tuesday, October 8, 2024 at 5:00 PM (EST).**

The Cone of Silence begins with the issuance of the solicitation document and continues until City Council meets to make a final decision on an award. During this time respondents, suppliers, contractors and sub-contractors are prohibited from all communications regarding the solicitation with City staff, City consultants, City legal counsel, City agents, or elected officials. Any respondent who initiates any discussions or attempts to influence a member or members of the aforementioned shall be disqualified from continued participation in the procurement process with regard to that particular solicitation. While the Cone of Silence is in effect, all communications from potential respondents, suppliers, contractors and sub-contractors must be directed to the Purchasing Division @ purchdiv@port-orange.org .

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



SEALED STATEMENT OF QUALIFICATIONS – DO NOT OPEN

SEALED STATEMENT NO. **RFSQ #24-03**

STATEMENT TITLE: **Construction Manager at Risk for Construction of Force & Water Mains (River Crossing)**

DUE DATE AND TIME: **October 22nd AT 2:30 PM EST**

SUBMITTED BY: _____
(Name of Company)

ADDRESS: _____

_____

DELIVER TO: **CITY OF PORT ORANGE CITY CLERK'S OFFICE**
ATTN: JILL POOLMAN, NIGP-CPP, CPPO, CPPB
1000 CITY CENTER CIRCLE
PORT ORANGE, FL 32129

DATE/TIME RECEIVED: _____
(To be stamped by Clerk's Office)

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SECTION 1 – PURPOSE AND OVERVIEW

The purpose for this Request for Statement of Qualifications (RFSQ) is to solicit competitive sealed Statements of Qualifications, in compliance with the Consultants Competitive Negotiation Act. F.S. 287.055, from qualified individuals and/or firms that are interested in providing the City of Port Orange Construction Manager at Risk (CMAR) services for the construction of a 20-inch sanitary sewer force main crossing the Halifax River at Dunlawton Avenue and the construction of a 16-inch water main crossing the Halifax River at Fleming Avenue.

NOTE: The City may not accept statements from firms, that have had adversarial relationships with the City or firms that have represented entities that have had adversarial relationships with the City. This includes the firm, employees and financial or legal interests. The City will not enter into a contract or conduct business with any firm or any personnel that is listed on the Federal, State, or other local government agencies' Excluded Parties List, Suspended List or Debarment List.

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

[Remainder of this page left intentionally blank]

SECTION 2 – INSTRUCTIONS TO RESPONDENTS

Firms or companies (Respondents) desiring to provide services, as described herein shall submit sealed Statements of Qualifications, including one (1) original, five (5) identical copies and one (1) digital (USB flash drive) version in pdf format, in conformance with the detailed submittal instructions.

TIMELINE (Easter Standard Time)

DESCRIPTION	DATE
Date of Distribution	September 20, 2024
Non-Mandatory Pre-Submittal Conference	October 1, 2024 @ 10:00 AM
Deadline for Questions	October 8, 2024 by 5:00 PM
Final Addendum Posting (If needed)	October 15, 2024 by 5:00 PM
Statements of Qualifications Due	**October 22, 2024 by 2:30 PM**
Evaluation Period	To Be Determined
Public Scoring Meeting	To Be Determined
City Council Meeting for Approval of Recommendation of Award	To Be Determined

The City reserves the right to alter dates as needed.

Statements must be delivered in a sealed envelope/package to:

City of Port Orange City Clerk's Office
Attn: Jill Poolman, Purchasing Manager
Purchasing Division
1000 City Center Circle
Port Orange, Florida 32129

Statements of Qualifications must be delivered **no later** than the date and time listed in the Timeline above. All times referenced are local time.

Statements of Qualifications shall be sealed, and Respondents shall clearly indicate on the outside of their statement the following:

a) Request for Statement of Qualifications (RFSQ) Number and Title
b) Date of Opening
c) Name of Respondent
d) Address of Respondent

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

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

Offers by telephone, fax or email will not be accepted.

All Statements of Qualifications will be opened publicly, and the names of all Respondents shall be read aloud. All conferences and meetings regarding this RFSQ are recorded electronically (audio only).

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

QUESTIONS

All questions shall reference "RFSQ #24-03 Construction Manager at Risk for the Construction of Force and Water Mains (River Crossing)" in the subject line. All questions concerning this RFSQ shall be submitted in writing no later than the date & time referenced in the Timeline above to:

Jill Poolman, NIGP-CPP, CPPO, CPPB
1000 City Center Circle
Port Orange, FL 32129
jpoolman@port-orange.org **and**
purchdiv@port-orange.org

ADDENDA

The City will issue responses to inquiries and any other corrections or amendments it deems necessary in written addenda prior to the Statement due date. Respondents should not rely on any representations, statements or explanations other than those made in this RFSQ or in any addendum to this RFSQ. Where there appears to be a conflict between the RFSQ and any addenda issued, the last addendum issued will prevail.

It is the responsibility of the Respondent to ensure all addenda have been received prior to submitting a Statement and acknowledge such by completing Form 9.3 Addendum and Change Order Procedure Acknowledgement Form. Written responses to questions posed prior to the question deadline, in the form of an addendum, will be provided via the City website: www.port-orange.org/proposals.aspx and Demand Star website: www.demandstar.com.

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

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

CLARIFICATIONS

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

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

MINIMUM QUALIFICATIONS

Respondents shall be licensed to do business in the State of Florida. The City of Port Orange will verify Sunbiz report showing the Respondent's license registered as "Active". (The responding firm's registered name in Sunbiz must match exactly to the name on all documents related to this RFSQ.) Respondents must be properly registered and licensed to engage in the scope of work pertaining to this RFSQ, by all applicable state and local agencies. Respondents must provide a minimum of three (3) verifiable references from similar scopes of work as identified in this RFSQ on the provided Form 9.8 Professional References for Previous Experience. If references cannot be reached using the provided contact information and/or are not responsive, points for this criterion shall reflect as such. **The City of Port Orange is not to be used as a reference.**

NO LOBBYING

All Respondents are hereby placed on notice that the City of Port Orange Council, City Employees/Staff, nor Members of the Evaluation Committee (with the exception of the City of Port Orange Purchasing Division personnel designated to receive requests for interpretations or corrections) are not to be lobbied, directly or indirectly either individually or

collectively, regarding this RFSQ. During the entire procurement process, all Respondents and their subcontractors, sub-consultants, or agents are hereby placed on notice that they are not to contact any persons listed above for such purposes as holding meetings of introduction, dinners, etc. if they intend to submit or have submitted Statements for this project. Any Respondent contacting individuals mentioned herein are in violation of this warning and may automatically be disqualified from further consideration for this RFSQ.

STATEMENT FORMS

Statement Forms are to be completed as directed and without modification and returned as part of the RFSQ submittal prior to the RFSQ deadline for submission. Failure to fill out the Statement Forms as directed and without modification may negatively affect the evaluation of your Statement and may result in rejection of your Statement.

EXCEPTIONS TO SPECIFICATIONS

If taking exception to any portion of the RFSQ requirements, the Respondent must indicate those exceptions as stated on the Respondent's Acknowledgement Form (9.2).

STATEMENT SUBMISSION AND WITHDRAWAL

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

CORRECTION OF STATEMENTS

Correction of inadvertently erroneous Statements shall be permitted up to the time of RFSQ opening. Respondents shall not be allowed to modify their Statements after the opening time and date.

WITHDRAWAL OF STATEMENTS

Statements shall NOT be withdrawn for a period of one-hundred-twenty (120) days subsequent to the Statement opening without the consent of the City of Port Orange, Florida. Negligence on the part of the Respondent preparing the Statement confers no right of withdrawal or modification after the Statement has been opened at the appointed time and place by the City of Port Orange. Any such withdrawn Statement shall not be resubmitted.

OPENING OF STATEMENTS

Statements will be received until the date and time stated in this RFSQ and will be publicly opened and read at the place, time and date stated. The Purchasing Division will not be responsible for the premature opening of a statement not properly addressed and identified.

LITIGATION HISTORY

The City will consider a Respondent's litigation history information in its review and determination of responsibility. All Respondents are required to disclose to the City all "material" cases filed, pending, or resolved during the last five (5) years prior to the solicitation response due date, whether such cases were brought by or against the Respondent, any parent or subsidiary of the Respondent, or any predecessor organization. If the Respondent is a joint venture, the information provided should encompass the joint venture (if it is not newly formed for purposes of responding to this solicitation) and each of the entities forming the joint venture. Although the review of a Respondent's litigation history is an issue of responsibility, the failure to provide litigation history as required in Section 7 may result in a recommendation of non-responsive by the Purchasing Manager.

DEBARMENT HISTORY

The City will consider a Respondent's debarment history information in its review and determination of responsibility. All Respondents are required to disclose to the City all cases of debarment filed, pending, or resolved by the City or other public entity during the last five (5) years prior to the solicitation response due date, whether such actions were brought by or against the Respondent, any parent or subsidiary of the Respondent, or any predecessor organization. If the Respondent is a joint venture, the information provided should encompass the joint venture (if it is not newly formed for purposes of responding to this solicitation) and each of the entities forming the joint venture. Although the review of a Respondent's debarment history is an issue of responsibility, the failure to provide debarment history as required in Section 7 may result in a recommendation of non-responsive by the Purchasing Manager.

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

STATEMENTS MAY BE REJECTED AND/OR RESPONDENT(S) DISQUALIFIED FOR THE FOLLOWING REASONS:
(a) Failure to update the information on file including address, product, service or business descriptions.
(b) Failure to perform according to contract provisions.
(c) Conviction in a court of law of any criminal offense in connection with the conduct of business.
(d) Evidence of a violation of any federal or state antitrust law based on the submission of Statements or the awarding of contracts. Evidence that the Respondent has attempted to give a Board employee a gratuity of any kind for the purpose of influencing a recommendation or decision in connection with any part of the Board's purchasing activity.
(e) Other reasons deemed appropriate by the City.

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

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

SECTION 3 – SCOPE OF SERVICES AND REQUIREMENTS

The purpose for this Request for Statement of Qualifications (RFSQ) is to solicit competitive sealed Statements of Qualifications, in compliance with the Consultants Competitive Negotiation Act. F.S. 287.055, from qualified individuals and/or firms that are interested in providing the City of Port Orange Construction Manager at Risk (CMAR) services for the construction of a 20-inch sanitary sewer force main crossing the Halifax River at Dunlawton Avenue and the construction of a 16-inch water main crossing the Halifax River at Fleming Avenue. The awarded firm will work with the City's design consultant, Kimley Horn & Associates, to get the projects through design.

SECTION 4 – STANDARD PURCHASING DEFINITIONS

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

1. **Addendum** is a formal written document, released prior to the public opening that modifies any aspect of a Solicitation. Plural: Addenda
2. **Alternate Bid** means multiple Bids with substantive variations from the same Bidder in response to a Solicitation.
3. **Amendment** is a formal written agreement, signed by both parties, that modifies an existing contractual agreement.
4. **Appropriate, Appropriated, or Appropriation** means the adoption by the City Council of the City of a budget for a fiscal year that includes payments to be made under the Contract during the respective fiscal year.
5. **Best Value** means the highest overall value to the City based on factors that include, but are not limited to, price, quality, design, and workmanship.
6. **Bid** is a complete, properly signed response to an Invitation to Bid, which if accepted, would bind the Bidder to perform the resultant Contract.
7. **Bid Guaranty (Bid Bond)** guarantees that the Bidder (a) will not withdraw the Bid within the period specified for acceptance, and (b) will execute a Contract and furnish required bonds and any necessary insurance within the

time specified in the Solicitation, unless a longer time is allowed by the City. The guarantee will be returned to the Bidder upon execution of a Contract.

8. **Bidder/Respondent/Respondent** is a person, firm, or entity that that submits a Response to a Solicitation. Any Bidder/Respondent/Respondent may be represented by an agent after submitting evidence demonstrating the agent's authority. The agent cannot certify as to his own agency status.
9. **City** means the City of Port Orange.
10. **Competitive Negotiation** means a method for acquiring goods, services, and construction for public use in which discussions or negotiations may be conducted with responsible offerors who submit Responses through a Request for Statements of Qualifications.
11. **Competitive (Formal) Solicitation** is the process of requesting and receiving two or more sealed bids, proposals, statements of qualifications or replies submitted by responsive Respondents in accordance with the terms of a competitive process, regardless of the method of procurement.
12. **Competitive Range** means the responsive submissions that meet the evaluation criteria and are considered to be reasonably susceptible of award.
13. **Construction** means the process of building, repairing, improving, and alterations, conversion or extension of building, parks, utilities, streets or other improvements or alterations to real property.
14. **Contract** is a written agreement or purchase order issued for the purchase of goods or services.
15. **Contractor** means the person, firm or entity selling goods or services to the City under a Contract.
16. **Deliverables** means the goods, products, materials, and/or services to be provided to the City by a Bidder.
17. **DemandStar** is the official online repository for all City competitive solicitations.
18. **Due Date** means the date and time specified for receipt of Responses to a Solicitation.
19. **End User** is a person, program, agency, or other eligible user who uses a contract to purchase a commodity or contractual service.
20. **Evaluation Committee/Team** is a temporary group of City personnel who are responsible for the evaluation of statements of qualifications as part of a Request for Submission of Qualifications (RFSQ).
21. **Evaluator** is a member of the evaluation committee/team.
22. **Goods** are supplies, materials, or equipment.
23. **Intent to Award** is a document, published on Onvia/DemandStar, that informs the public and respondents of the City's decision to award a contract pursuant to a previously issued competitive solicitation.
24. **Issues** means points, matters, or concerns to be addressed during negotiations.
25. **Lead Negotiator** is the negotiator responsible for leading and facilitating the formal negotiation discussions and selecting other required negotiation team members. Is often the "driver of change" and seeks alternatives/options.
26. **Negotiation Team** is a temporary group of City personnel who are responsible for negotiations.
27. **Negotiator** is a member of the negotiation team.
28. **Offer** means a complete signed Statement submitted to the City in response to a Solicitation.
29. **Outlier** is a bid, offer, or statement which is determined by the Purchasing Director or Manager to be significantly dissimilar to or inconsistent with, competing bids or offers.
30. **Pre-Statement Conference** means a meeting conducted by the Purchasing Office, held in order to allow Respondents to ask questions about the proposed Contract and particularly the Contract specifications with the City department requesting the goods/services.
31. **Price Analysis** is an evaluation of the total cost of a contract in order to determine if the price is reasonable.
32. **Procurement (Process)** is a term used in the governmental sector for the combined functions of acquiring (purchasing) needed goods and/or services, receiving and inspection, inventory management, contract administration, and disposal/surplus.
33. **Professional Services** means those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping, as defined by the laws of the state, or those performed by any architect, professional engineer, landscape architect, or registered surveyor and mapper in connection with his or her professional employment or practice.
34. **Protest** is a formalized process by which respondents have an opportunity to challenge a procurement practice or contract award.
35. **Purchase Order** is an order placed by the Purchasing Division for the purchase of Goods or Services written on the City's standard Purchase Order form and which, when accepted by the Bidder, becomes a contract. The

Purchase Order is the Bidder's authority to deliver and invoice the City for Goods or Services specified, and the City's commitment to accept the Goods or Services for an agreed upon price.

36. **Request for Statement of Qualifications (RFSQ)** means a formal request to prospective Respondents requesting statements of qualifications pursuant to Florida Statute 287.055 "Consultant's Competitive Negotiation Act" which has been advertised for Statement in a newspaper.
37. **Respondent** means an entity that has (or will, i.e. "prospective respondents") submitted a response to a competitive solicitation conducted to create a contractual relationship for the provision of commodities or services.
38. **Response/Submission** means all materials submitted to the City by a respondent as part of a solicitation. A response may be called a bid, proposal, statement of qualifications, or a response, depending on the type of competitive solicitation being issued.
39. **Responsible (Respondent)** is a Respondent who has the capability in all respects to fully perform the contract requirements and the integrity and reliability that will assure good faith performance.
40. **Responsive (Respondent)** is a Respondent that has submitted a bid, proposal, statement of qualifications, or reply that conforms in all material respects to the solicitation.
41. **Scope** means the extent of the area or subject matter that something deals with or to which it is relevant.
42. **Scope of Work** means a description of the work activities, deliverables, and/or timeline that a Respondent must execute in terms of delivering specific commodities or in performance of contractual services.
43. **Services** include all work or labor performed for the City on an independent contractor basis other than construction.
44. **Solicitation** means a formal request, as applicable, for prospective Respondents to submit statements to a Request for Qualifications.
45. **Solicitation Document** means a document, or collection of documents, either paper or electronic, that contains all information required to conduct a competitive procurement project according to §287.057, Florida Statutes.
46. **Stakeholder** means an individual, who is not likely to become a Respondent, who has an interest in the commodities/contractual services needed.
47. **Subcontractor** means a person, firm or entity providing goods or services to a Respondent to be used in the performance of the Respondent's obligations under the Contract.
48. **Subject Matter Expert** means a person who has working or expert knowledge about a particular topic or field.

SECTION 5 – GENERAL TERMS AND CONDITIONS

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

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

1. ADDENDA

When specifications are revised, the City of Port Orange Purchasing Division will issue an addendum addressing the nature of the change. Respondents should acknowledge all addenda by completing Form 9.3 contained herein. Failure to acknowledge the correct number of addenda issued may result in rejection of the statement. It is the responsibility of the Respondent to ensure all addenda have been received prior to submitting a statement. All Addenda shall be posted by the City on www.demandstar.com and City of Port Orange Purchasing Web page at www.port-orange.org/bids.aspx. The City shall issue responses to inquiries and any other corrections or amendments it deems necessary in written addenda issued prior to the Solicitation Statement Due Date. Respondents should not rely on any representations, statements or explanations other than those made in this Solicitation or in any addendum to the Solicitation. Where there appears to be a conflict between the Solicitation and any addenda issued, the last addendum issued shall prevail.

2. ANTI-COLLUSION STATEMENT

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

3. APPLICABLE LAWS

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

4. ASSIGNMENT

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

5. AUTHORITY TO CONDUCT BUSINESS IN FLORIDA

A Florida corporation or partnership is required to provide evidence with its statement that the Respondent is authorized to transact business in Florida and is in good standing with the Florida Department of State. If not with the statement from the successful Respondent, such evidence must be submitted to the City no later than five (5) business days from request of the Purchasing Manager. A foreign (out-of-state) corporation or partnership is required to provide evidence with its statement that the Respondent is authorized to transact business in Florida and is in good standing with the Florida Department of State. If not with the statement from the successful Respondent, such evidence must be submitted to the City no later than five (5) business days from request of the Purchasing Manager. A joint venture is required to provide evidence with its statement that the joint venture, or at least one of the joint venture partners, is authorized to transact business in Florida and is in good standing with the Florida Department of State. If not with its statement, such evidence must be submitted to the City no later than five (5) business days from request of the Purchasing Manager. However, the joint venture is required to provide evidence prior to contract execution that the joint venture is authorized to transact business in Florida and provide the City with a copy of the joint venture Agreement. A joint venture is also required to provide with its statement a Statement of Authority indicating that the individual submitting the joint venture's statement has the legal authority to bind the joint venture. If not with its statement, such evidence must be submitted to the City no later than five (5) business days from the request of the Purchasing Manager.

6. AWARD AND EXECUTION OF CONTRACT

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

7. AWARDS

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

8. BONDS

If this Solicitation requires submission of bid guarantee and performance bonds, there will be a separate section explaining those requirements. When the Purchasing Manager deems it necessary, bid bonds/deposits shall be prescribed and are advertised in the public notices inviting bids. Responses submitted without the required bid bond or certified check shall be deemed non-responsive. Normally, if a bid bond/deposit is requested, it is in the amount of five percent (5%) of the bid amount. Payment and Performance Bonds requested for construction projects shall be in an amount equal to one hundred percent (100%) of the total contract amount which will be recorded by the City, at the Contractor's sole cost and expense, with the Clerk of the Circuit Court, Volusia

County, Florida. After recording, the City will furnish to the contractor the recording information for the bond to evidence that the contractor has met the requirements of Florida law. The City will bill the cost of recording to the contractor. Unsuccessful Respondents are entitled to the return of their bid bond. A successful Respondent shall forfeit any surety required by the Purchasing Manager upon failure of the Respondent to enter into a contract within the time specified after the award of bid.

9. CERTIFICATE OF INSURANCE

If required upon notice of intent to award contract resulting from this solicitation, the selected Respondent will be required to submit a Certificate of Insurance showing proof of adequate coverage for professional general liability, errors and omissions and workers' compensation as identified under the insurance requirements of this solicitation and listing the City of Port Orange as a Certificate Holder prior to execution of the contract.

10. CHANGE ORDER REQUEST NOTIFICATION

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

11. CHANGE ORDERS

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

12. CLEAN UP

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

13. CONDUCT OF RESPONDENTS

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

14. CONE OF SILENCE

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

Exceptions to the Cone of Silence:

- Written communication directed to the Procurement Officer.
- All communications occurring at Pre-Statement Conferences.
- Oral presentations before publicly noticed committee meetings.
- Procurement of goods and services for Emergency situations; and

- Contractors already on contract with the City to perform services for the City are allowed discussions necessary for the completion of an existing contract.

15. CONFLICT OF INSTRUCTIONS

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

16. CONFLICT OF INTEREST

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

17. CONTRACT

Any acquisition above the $100,000 level shall be done through one of the formal competitive methods except upon City Council waiver and/or shall have City Council approval. Only the Purchasing Manager and/or City Manager, have the authority to obligate the City by entering into a written contract to purchase goods and/or services up to $25,000.00. The City of Port Orange, Florida reserves the right to reject any and all Statements or to waive any and all non-substantial irregularity in Statements received, whenever such waiver or rejection is in the best interest of the City.

18. CONTRACT OBLIGATION

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

19. CONTRACT RENEWALS

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

20. COOPERATIVE PURCHASING

The City Manager may elect to purchase through or join with other governmental units in cooperative purchasing ventures when the best interest of the City would be served thereby, provided the same is in accordance with all applicable laws. In the event the City Manager should elect to purchase through or join with other governmental agencies in cooperative purchasing ventures, all purchases in excess of twenty-five thousand dollars ($25,000.00) shall require council approval before the purchasing contracts are entered into. (Code 1981, § 8-33, Ord. 1997-22, § 5.6-1997; Ord. No. 2004-15, § 4, 7-20-2004)

21. COPYRIGHT AND PATENT RIGHTS

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

22. COST INCURRED BY RESPONDENT

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

23. DEBARMENT HISTORY

The City will consider a Respondent's debarment history information in its review and determination of responsibility. All Respondents are required to disclose to the City all cases of debarment filed, pending or resolved by the City or other public entity during the last five (5) years prior to the solicitation statement due date, whether such actions were brought by or against the Respondent, any parent or subsidiary of the Respondent or any predecessor organization. If the Respondent is a joint venture, the information provided should encompass the joint venture (if it is not newly formed for purposes of responding to the solicitation) and each of the entities forming the joint venture. Although the review of a Respondent's debarment history is an issue of responsibility, the failure to

provide debarment history on Form 9.11 as required in the RFP may result in a recommendation of non-responsive by the Purchasing Manager.

24. DEFAULT PROVISIONS

In the event of default by the Respondent the City reserves the right to procure the item(s) solicited from other sources and hold the Respondent responsible for excess costs incurred as a result. If a contractor defaults on a City contract the City Council may elect to refrain from doing business with the Respondent for a period of 36 months from the date of default.

25. DISCLOSURE OF CONFLICTS

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

26. E-VERIFY

Respondents shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Respondent during the term of contract and shall expressly require any subcontractor performing services pursuant to the contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the term of contract. Respondents shall complete Form 9.11 E-Verify Affidavit and include it in the returned Statement package. Failure to include the affidavit may result in rejection of the Statement.

27. EXCEPTIONS TO REQUIREMENTS

For purposes of evaluation, the Respondent must indicate any exception to the requirements, terms, and/or conditions, no matter how minor. This includes any agreement or contract forms supplied by the Respondent that are required to be signed by the City. If exceptions are not stated by the Respondent, in his/her statement, it will be understood that the item(s)/services fully comply with the requirements, terms and/or conditions stated by the City. Exceptions are to be listed by the Respondent on Form 9.2 contained herein and if necessary, listing exceptions on an attachment included with the statement. The City will not determine exceptions based on a review of any attached sales or manufacturer's literature.

28. FACILITIES

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

29. FAILURE TO RESPOND

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

30. FINANCIAL STABILITY

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

31. FORCE MAJEURE

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

32. GOVERNING FORMS

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

33. GOVERNING LAW

Respondents shall comply with all applicable federal, state and local laws and regulations. All Statements are solicited and shall be made pursuant to the Code of Ordinances, City of Port Orange, Chapter 2, Article VI, Division 2, Section 2-263, and all Statements will be evaluated in accordance with the provisions thereof. Code of Ordinances, City of Port Orange is on file in the Office of the City Clerk, City Hall, 1000 City Center Circle, Port Orange, Florida and at www.municode.com. The City of Port Orange is also governed by the Consultants' Competitive Negotiation Act, Section 287.055, Florida Statutes, as the method of selecting architects, engineers and land surveyors. The City has utilized the procedures in the Act for Professional counselors, environmentalists, planners, general contractors, computer systems, designers, telecommunications consultants, maintenance technicians, financial services and other professional services. Every acquisition equal to or greater than $10,000.00 must have a signed, notarized "Public Entity Crimes Form" to comply with Section 287.133(3)(a), Florida Statutes. Also required is the "Drug- Free Preference Form" to comply with Section 287.087, Florida Statutes. Each form is included in the Solicitation.

34. GRANT FUNDING

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

35. HIPAA COMPLIANCE

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

36. INDEMNIFICATION/HOLD HARMLESS

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

37. INDEPENDENT CONTRACTOR

It is expressly understood and agreed by both parties hereto that the City is contracting with the successful Respondent as an independent Contractor. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the successful Respondent under this contract and that the successful Respondent has no authority to bind the City. The Respondent represents itself to be an independent Contractor offering such services to the public and shall not represent himself or his employees to be an employee of the City. Therefore, the Respondent shall assume all legal and financial responsibility for taxes, FICA, employee fringe benefits, worker's compensation, employee insurance, minimum wage requirements, overtime, etc., and agrees to indemnify, save, and hold the City, its officers, agents, and employees, harmless from and against, any and all loss; cost (including attorney's fees); and damage of any kind related to such matters. The Respondent shall further understand that the City cannot save and hold harmless and or indemnify the Respondent and/or the Respondent's employees against any liability incurred or arising as a result of any activity of the Respondent or any activity of the Respondent's employees performed in connection with the Contract.

38. INSPECTIONS AND TESTING

City of Port Orange reserves the right to inspect any item(s) or service location for compliance with specifications and requirements and needs of the using department. If a Respondent cannot furnish a sample of a Statement item,

where applicable, for review, or fails to satisfactorily show an ability to perform, the City can reject the Statement as inadequate and non-responsive.

39. INSURANCE

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

40. INSURANCE CANCELLATION

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

41. INSURANCE REQUIREMENTS

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

IMPORTANT: The City does not accept Workers' Compensation Exemptions. Contractor may use leased employees if the Contractor ensures that all workers who access the jobsite are employees covered by the employee leasing company, and no non-employees are permitted to access the jobsite. Any Contractor using a leased employee shall complete the City's Leased Employee Affidavit Form Exhibit. Policies for Workers' Compensation may be issued by companies authorized as a group self-insurer by F.S. 440.572. Policies other than Workers' Compensation shall be issued by insurers licensed and/or duly authorized under Florida Law to do business in the State of Florida and all insuring companies are required to have a minimum rating of "A-" in the "Best Key Rating Guide" published by A.M. Best & Company, Inc. Contractor shall not commence work under this Contract until the City has received a certificate or certificates of insurance with endorsement evidencing the required insurance. Insurer shall provide the City written notice of cancellation, nonrenewal or any other changes in coverage no later than thirty (30) days prior to the effective date of the change and shall provide notice to the City no later than 10 days after non-payment. The Certificates of Insurance and required insurance policies shall contain provisions that thirty (30) days prior written notice shall be given to the City of any cancellation, intent not to renew, or reduction in the policies or coverages.

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

The City reserves the right to increase insurance coverage as determined for higher risk contracts. The acceptance by the City of any Certificate of Insurance does not constitute approval or agreement by the City that the insurance requirements have been satisfied or that the insurance policy shown on the Certificate of Insurance is in compliance with and does not waive the insurance required by this.

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

Standard Insurance Requirements			
Required	**Insurance**	**Standards**	**Additional Requirements**
☒	Workers' Compensation The Contractor shall maintain coverage for its employees with statutory workers' compensation limits, and no less than the limits indicated in the Schedule of Limits for Employers' Liability. Said coverage shall include a waiver of subrogation in favor of the City. **The City will not accept elective exemptions.** Any Contractor using an employee leasing Company shall complete the Leased Employee Affidavit Exhibit Form.	Contract Amount Limits Up to $10 million Statutory/$500,000 $10 - $20 million Statutory/$1,000,000 Contracts over $20 million to be determined by the City	If contract requires work on or about navigable waters, Longshoreman's and Harbor Workers' coverage required. If vessels involved, Jones Act coverage with limits of $500,000 required
☒	Comprehensive General Liability (including completed operations and contractual liability)	Limits: Combined Single Limit Bodily Injury and Property damage: $1,000,000 each occurrence $1,000,000 aggregate	When work is on or under Railroad rights of way or properties, the Contractor shall take out and maintain during the life of the contract, Railroad protective liability and property damage insurance in amounts as requested by the Railroad.
☒	Comprehensive Business, Automobile Liability to include all owned, hired and non-owned automobiles	Limits: Auto Liability Bodily Injury and Property Damage: $1,000,000 each occurrence $1,000,000 aggregate	
Additional Insurance Requirements			
☐	Property Insurance Builders Risk Additional Coverage:	Limits: Buildings – completed value of contract "All Risk" coverage on latest ISO for or its equivalent. Permission grated to occupy. Owner named as insured AIMA	If agreement required handling or installation of Owner's equipment, coverage should be furnished on "All Risk" form, including transit and Owner shall be named.
☐	Installation Floater (IT)	Limits: Coverage – To Be Determined	
☐	Contractor Pollution Liability	Limits: Coverage - $1,000,000	
☐	Professional Liability/Errors and Omissions	Limits: Coverage - $1,000,000	
☐	Umbrella Policy	Limits: Coverage – To Be Determined	
☐	Payment and Performance Bond required	Limits: Coverage – equal to amount of contract	
	City Manager waives Payment and Performance Bond for work under $200,000 unless otherwise required by Department Director.		
	Unless otherwise required by law, City Manager waives insurance for FOB goods.		

42. INVOICES AND PAYMENTS

All invoices shall be sent to: City of Port Orange, Accounts Payable, P.O. Box 291759, Port Orange, Florida, 32129 or email apbilling@port-orange.org . In accordance with Florida Statutes, Chapter 218, payment will be made within 45 days after receipt of merchandise and a proper invoice. The City will attempt to pay within fewer days if Respondent offers a payment discount. The City cannot make advance payments, make deposits in advance of receipt of goods, or pay C.O.D. Respondents should state any payment discount in the space provided on the proposal form for construction services. If the awarded firm would like to receive payment via ACH, this can be accommodated after the contract is fully executed.

43. IRREVOCABILITY OF STATEMENTS

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

44. LATE SUBMISSIONS, LATE MODIFICATIONS AND LATE WITHDRAWALS

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

45. LEGAL REQUIREMENTS

Applicable provision of all federal, state, county and local laws, and all ordinances, rules and regulations shall govern development, submittal and evaluation of all Statements received in response hereto and shall govern any and all claims and disputes which may arise between person(s) submitting a statement to a Solicitation hereto and the City by and through its officers, employees and authorized representatives or any other person, natural or otherwise; and lack of knowledge by any Respondent shall not constitute a cognizable defense against the legal effect thereof. Upon execution of a contract, the successful Respondent shall hold harmless, indemnify and defend the City of Port Orange, its members, officials, officers and employees against any claim, action, loss, damage, injury, liability, cost and expense of whatsoever kind or nature (including, but not by way of limitation, attorneys' fees and court costs) arising out of or incidental to the performance of the Contract, whether or not due to or caused by negligence of the City of Port Orange, its members, officials, officers or employees. This Contract requirement shall be reflected in the insurance coverage certificate.

46. LICENSES, PERMITS AND TAXES

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

47. LITERATURE (if applicable)

If no brand, model or make is specified, Respondents shall submit descriptive literature and technical data, fully detailing all features, designs, construction, appointments, finishes and the like not covered in the specifications, necessary to fully describe the equipment, material and/or services he/she proposes to furnish.

48. NON-DISCRIMINATION

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

49. NON-EXCLUSIVITY OF CONTRACT

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

50. NON-PERFORMANCE

Failure to meet the expected quality of workmanship, schedule or other criteria agreed upon, shall be considered a default. In case of default, the City may procure the required services from other sources and hold the Consultant responsible for any excess costs occasioned thereby and may immediately cancel the contract.

51. NOTICE TO CONTRACTOR

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

52. POSTPONEMENT/CANCELLATION/WAIVER OF IRREGULARITIES

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

53. PRE-STATEMENT CONFERENCE

The Purchasing Manager shall determine if a pre-statement conference is required and details of the conference shall appear in the Solicitation legal advertisement and Solicitation requirements. The conference shall normally be held in the Council Chambers, located on the first floor of City Hall, 1000 City Center Circle, Port Orange, Florida. A site visit may be included and shall immediately follow unless stated in the advertisement or this solicitation as mandatory, attendance to the pre-statement conference is not mandatory. The representative of each Respondent shall be an authorized employee of the Respondent and shall sign in accordingly.

54. STATEMENT EVALUATION

Respondents who wish to receive a copy of the statement evaluation may obtain it via www.demandstar.com or on the City of Port Orange Purchasing web page at www.port-orange.org/bids.aspx.

55. STATEMENT RETURNS

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

56. PROPRIETARY INFORMATION

Upon receipt by the City, statements to Solicitations, become public records subject to the provisions of Florida's state policy on public records, Section 119, Florida Statutes. If you believe that any portion of your statement is exempt, you should clearly identify the specific documents for which confidentiality is claimed and provide specific legal authority of the asserted exemption. Any financial statement that an agency requires a prospective Respondent to submit in order to prequalify for responding to a proposal for a road or any other public works project is exempt from Section 119.07, Florida Statutes, and Article I, 24(a), Florida Constitution. Respondent must complete Form 9.12 Non-Disclosure Agreement for confidential materials.

57. PROTECTION

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

58. PROTEST

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

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

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

59. PUBLIC ENTITY CRIMES

In accordance Section 287.133 (2)(a), Florida Statutes: A person or affiliate who has been placed on the convicted Respondent list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 Months from the date of being placed on the convicted Respondent list.

60. PUBLIC RECORDS COMPLIANCE

Contractor shall comply with public records laws as set forth in Section 119, Florida Statutes, and shall specifically:

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

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 386-506-5563, cityclerk@port-orange.org, CITY OF PORT ORANGE, 1000 CITY CENTER CIRCLE, PORT ORANGE, FLORIDA, 32129.

The failure of Contractor to comply with a public records request shall constitute a material breach of the contract.

61. PUBLIC RECORDS/PUBLIC MEETING EXEMPTION STATEMENT

Section 119.071(1)(c), Florida Statutes: Any financial statement that an agency requires a prospective Respondent to submit in order to prequalify for responding to a proposal for a road or any other public works project is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. On June 2, 2011, Governor Scott signed HB 7223 into law. This new legislation amends Florida's Public Records and Sunshine Laws, by expanding "exemptions" applicable to bids, proposals and replies to sealed competitive solicitations, and closes evaluation meetings from the public in certain instances. First, Section 119.071, Florida Statutes was amended to provide that sealed bids, proposals, or replies received by a Florida public agency shall remain exempt from disclosure until an intended decision is announced or until 30 days from the opening, whichever is earlier. This means that Respondents will not be able to procure a copy of their competitor's proposals until an intended decision is reached, or 30 days has

elapsed since the time of the bid opening. The prior version of the law provided for a 10-day exemption. Next, Section 286.0113, Florida Statutes was amended to provide that meetings of persons appointed to evaluate proposals and negotiate contracts shall be closed in certain circumstances. Specifically, portions of such meetings may now be closed to the public during oral presentations made by a Respondent, or where a Respondent answers questions. In other words, neither Respondents, nor the public will be permitted to sit in on meetings, unless this exemption is waived by the City Council, wherein their competitors are making presentations or discussing their bid or proposal with the committee members. The portions of these meetings must still be recorded and are subject to disclosure at the time of an intended award decision or within 30 days of the bid or proposal opening, whichever is earlier. Portions of the meetings that do not involve presentations, questions and answers, or negotiation strategy or negotiation sessions are still open to the public and competing Respondents, but the new law limits public attendance to portions of such meetings.

62. QUESTIONS/INTERPRETATIONS

Questions regarding interpretation of Statements, Solicitation results or Solicitation awards shall be directed in writing to the Purchasing Division and referenced by the Solicitation number no later than the last day for questions as specified in the Solicitation documents. The City of Port Orange shall not be responsible for oral interpretations given by any City personnel or representative or others. The issuance of a written addendum is the only official method whereby interpretation, clarification or additional information can be given.

63. RECORDS/AUDIT

The Respondent shall maintain records sufficient to document their completion of the scope of services as a public record and as a requirement of the Contract. At all reasonable times, these records, unless exempt or confidential, shall be subject to review, inspection, copy and audit by persons duly authorized by the City. These records shall be kept for a minimum of three (3) years after completion of the Contract and in accordance with the requirements of public records retention as prescribed by general law. Records which relate to any litigation, appeals or settlements of claims arising from performance under this requirement shall be made available until a final disposition has been made of such litigation, appeals, or claims.

64. REQUEST FOR ADDITIONAL INFORMATION

Prior to the final selection for award, Respondents may be required to submit additional information which the City may deem necessary to further evaluate the Respondent's qualifications to perform under the terms of the Solicitation and subsequent Contract.

65. REVIEW OF STATEMENTS SUBMISSIONS

Each Statement will be reviewed to determine if the Statement is responsive to the submission requirements outlined in the Solicitation. A responsive Statement is one which follows the requirements of the Solicitation, includes all required documentation, is submitted in the format outlined in the Solicitation, is of timely submission, and has the appropriate signatures as required on each document. Failure to comply with these requirements may deem your Statement non- responsive.

66. RIGHT OF NEGOTIATION

The City reserves the right to negotiate with the selected Respondent the exact terms and conditions of the Contract.

67. RIGHT OF WITHDRAWAL

A bid, proposal, statement or reply may not be withdrawn before the expiration of one hundred twenty (120) days from the Statement due date.

68. RIGHTS TO SOLICITATION SUBMITTED MATERIAL

All statements, inquiries or correspondence relating to or in reference to a Solicitation, and all reports, charts and other documentation submitted by Respondents shall become the property of the City when received.

69. RULES, REGULATIONS AND LICENSING REQUIREMENT

The Respondents shall comply with all laws, ordinances and regulations applicable to the services contemplated herein, including those applicable to conflict of interest and collusion. Respondents are presumed to be familiar with all federal, state, and local laws, ordinances, codes and regulations that may in any way affect the services offered.

70. SCRUTINIZED COMPANIES LIST

The Contractor shall refrain from any of the prohibited business activities with the Governments of Sudan and Iran as described in section 215.473, Florida Statutes. Pursuant to section 287.135(5), Florida Statutes, the City may immediately terminate this Contract for cause if the Contractor is found to have submitted a false certification or if the Contractor is placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies

with Activities in the Iran Petroleum Energy Sector List or is engaged in business operations with Cuba or Syria during the term of the contract. The Contractor shall provide a completed Form 9.10 Scrutinized Company Certification, certifying the Contractor's compliance with this section, prior to the execution of this Agreement.

71. SEPARATION AND DISTRIBUTION

The Solicitation has been designed for transmittal as a complete document to interested parties. It is recommended that it not be separated; however, it may be reproduced in its entirety as additional distribution might dictate.

72. SEVERABILITY

If any section, subsection, paragraph, sentence, clause, phrase or word of these requirements or the specifications shall be held invalid, such holding shall not affect the remaining portions of these requirements and the specifications and it is hereby declared that such remaining portions would have been included in these requirements and the specifications as though the invalid portion had been omitted.

73. SIGNATURE REQUIRED

All Statements must show the company name and be signed by a company officer or employee who has the authority to bind the company or firm by their signature. **UNSIGNED STATEMENTS WILL BE REJECTED**. All manual signatures must be original - no rubber stamp, photocopy, etc.

74. SIGNED REPONSE CONSIDERED AN OFFER

The signed Statement is considered an offer on the part of the Respondent, which offer shall be considered accepted upon approval by the City of Port Orange City Council (if required). The City of Port Orange will issue a purchase order or a letter of authorization to the successful Respondent, as authorization for delivery of the items awarded subject to requirements of detailed specifications and those contained herein. In the event of default on the part of the Respondent after such acceptance, the City may take such action as it deems appropriate including legal action for damages or specific performance.

75. SOCIAL, POLITICAL, OR IDEOLOGICAL INTERESTS

Pursuant to Florida Statute 287.05701, the governing body of a county, municipality, special district, or any other political subdivision of the state may not request documentation of or consider a vendor's social, political, or ideological interests when determining if the vendor is responsible. Furthermore, an awarding body may not give preference to a vendor based on the vendor's social, political, or ideological interests.

76. SOLICITATION FORM COMPLETION, SUBMISSION AND RECEIPT OF STATEMENTS

Unless otherwise specified, Respondent shall use the Solicitation forms supplied by the Purchasing Division. Statements shall be typewritten or handwritten in ink and shall bear the original signature of the Respondent's authorized representative. Statements containing erasures or corrections must be initialed by the Respondent in ink. Statements shall be submitted by mail or hand delivery only. No Statement will be accepted by facsimile transmission, e-mail or other electronic delivery. Statements submitted by mail shall be addressed to: Jill Poolman, Purchasing Manager, Purchasing Division, Port Orange City Hall, 1000 City Center Circle, Port Orange, Florida 32129. Statements submitted by hand delivery shall be delivered to: City Clerk, Port Orange City Hall, 1000 City Center Circle, Port Orange, Florida 32129. Statements will be accepted until 2:30 P.M. on the date indicated in the Solicitation documents or an addenda issued by the City. One (1) sealed envelope or package shall be submitted. The sealed envelope/ package must contain the required forms and price proposals, where applicable, and will be evaluated and deemed responsive or non-responsive. Statements (Envelope/Package) shall contain one (1) original and one (1) digital (flash drive) PDF version unless otherwise indicated in the legal advertisement and shall be mailed or delivered as set forth in the preceding paragraph in one (1) SEALED ENVELOPE/PACKAGE. The envelope/package shall be clearly marked on the outside to include the project name, statement number, name and address of the Respondent.

77. STATE LICENSING REQUIREMENTS

All entities defined under Chapters 607, 608, 617 or 620, Florida Statutes, seeking to do business with the City shall be on file and in good standing with the State of Florida's Department of State. Prior to making an offer, the Respondent shall have met the license, certification and any other requirements of the state, county, city and/or other agency of authority with jurisdiction in such matters and should provide copies of documentation that evidence such qualifications with the response to the Solicitation; and, that the Respondent shall provide follow-up evidence that the Respondent maintains such credentials throughout the period of the agreement. A copy of a current certificate of authority from the Secretary of State authorizing the Respondent/Responder to do business in the State of Florida, or other evidence of legal authority to do business in the state, county, city and/or any other

agency of authority should be provided with your statement to the Solicitation. Information concerning certification with the Secretary of State may be obtained at http://ccfcorp.dos.state.fl.us/index.html. Contract documents shall be executed by the entity's duly authorized officer as evidence by entity records.

78. SUBCONTRACTING

The Respondent will not sub-contract or enter into any subcontracting agreements pertaining to this contract, without obtaining written approval from the City of Port Orange.

79. TAXES

The City of Port Orange is exempt from all federal excise, state and local taxes unless otherwise stated in this document. A Tax Exemption Certificate will be furnished upon written request to the City of Port Orange Purchasing Division.

80. TERMINATION

The City of Port Orange reserves the right to terminate the contract for default if the Respondent breaches any of the terms therein, including warranties of the Respondent or if the Respondent becomes insolvent or commits acts of bankruptcy. Such right of termination is in addition to and not in lieu of any other remedies which the City of Port Orange may have in law or equity. Default may be construed as, but not limited to, failure to deliver the proper goods and/or services within the proper amount of time, and/or to properly perform any and all services required to the City's satisfaction and/or to meet all other obligations and requirements. The City may cancel the Contract at any time for breach of contractual obligations by providing the Respondent with a written notice of such cancellation. Should the City exercise its right to cancel the contract for such reasons, the cancellation shall become effective on the date as specified in the notice of cancellation sent to the Respondent.

81. TERMINATION NOTICE

Either party may cancel the contract at any time after award, unless otherwise specified. The City shall be required to give the Respondent notice thirty (30) days prior to the date of cancellation of the contract. The Respondent shall be required to give the City written notice sixty (60) days prior to the date of cancellation of the contract. The City of Port Orange may terminate the contract without cause upon thirty (30) days written notice.

82. USE OF SOLICITATION FORMS

The Respondent shall complete the appropriate Solicitation Form(s) included in the Solicitation. All blanks on the Solicitation Forms shall be completed. If a question or confirmation is not applicable, it should be answered with an "N/A." Supplemental information may be attached to the Solicitation Forms. Failure to fully complete the appropriate Solicitation Forms may result in disqualification of the Statement. If additional space for a statement is required, attach an additional page to the page on which the question is stated. Clearly identify the number of the question to which the statement is attached. Further, if additional Solicitation Form pages are needed, photocopy or replicate as appropriate, and attach such additional pages to the page on which the question or chart is stated. The signature of the Authorized Person or Entity must be that of an officer, partner or a sole proprietor of the entity making the Statement. The original Statement, and each copy submitted shall contain an original signature on the Respondent's Acknowledgement Form contained in each Solicitation.

83. VARIANCES

For purposes of Statement evaluation, Respondents must indicate any variances, no matter how slight, contained in the Statement. No variations or exceptions by a Respondent will be considered or deemed a part of the Statement submitted unless such variances or exceptions are listed in the Statement and referenced in the space provided on the Statement pages. If variances are not stated or referenced as required, it will be assumed that the product or service complies with the City's terms, conditions and specifications. By receiving a Statement, the City does not necessarily accept any variances contained in the Statement. All variances submitted are subject to review and approval by the City. If any Statement contains material variances that, in the City's sole opinion, make that Statement conditional in nature, the City reserves the right to reject the Statement or part of the Statement that is declared, by the City, as conditional.

84. WAIVER OF IRREGULARITIES

The City of Port Orange reserves the right to waive and/or reject any non-substantial irregularity in Statements received whenever such waiver or rejection is in the best interest of the City and/or it does not meet the minimum requirements set forth. All reasonably responsive Statements will be considered. However, the City reserves the right to waive formalities or informalities in Statements, to reject, with or without cause, any or all Statements or portions of Statements, or to interview or not interview individual Respondents and to accept any Statements or

portions of Statements deemed to be in the best interest of the City. The city council shall grant the City Manager to waive any and all non-substantial irregularities in any and all formal Solicitations. (Code 1981, § 8-29; Ord. No. 2015-17, § 1, 5-19-2015)

SECTION 6 – SPECIAL CONDITIONS

PERIOD OF OFFER VALIDITY

Statements of Qualifications offered in this RFSQ must remain firm for a period of one-hundred-twenty (120) days from the RFSQ opening date.

AWARD

It is the intent of the City to recommend an award to the responsive and responsible firm that best demonstrates they can perform the required services as outlined in this RFSQ and can best meet the needs of the City.

COMPETITIVE NEGOTIATIONS

Approval of the recommendation to award by the City of Port Orange will constitute authorization to negotiate with the top-ranked firm. The statement package, signed by the successful respondent, along with documentation included in the statement as required by this RFSQ and other additional materials submitted by the respondent, and accepted by the City, shall be the basis for negotiation of a contract. The City shall negotiate a contract with the top ranked firm at compensation which the City determines is fair, competitive, and reasonable. The firm receiving the award shall be required to execute a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting. During contract negotiations, the City will negotiate fee schedules with the goal of establishing standardized rates.

ELIGIBILITY OF RESPONDENT

1. To be eligible to respond to this RFSQ, the respondent's firm must have been incorporated, organized and/or established for a period of at least three (3) years prior to firm's submittal and have prior experience working with the services described in this RFSQ. Please provide eligibility experience with your submittal.
2. Respondents shall be licensed to do business in the State of Florida. Submit Sunbiz report showing your company registered as "Active". A copy of all required licenses must be provided with submission. During the course of the contract term, if any changes occur in awardee's licensure, the contractor must notify the City of Port Orange.

NOTICE

The City reserves the right to consider cooperative contracts, federal, state municipal etc., in the evaluation process. If in the City's best interest, the City may utilize a cooperative contract in lieu of making an award.

PAYMENT & PERFORMANCE BONDS

The City will require the awarded Contractor to furnish and pay for a Payment and Performance Bond equal to one hundred percent (100%) of project value to be recorded by the City, with the Clerk of the Circuit Court, Volusia County, Florida. After recording, the City will furnish to the Contractor the recording information for the bond to evidence that the Contractor has met the requirement of Florida law. The City will bill the cost of recording to the Contractor.

Respondents will be required to submit with their submittal package (in Tab A) a current (not older than 3 months) Bonding Capacity Letter from a surety company licensed in Florida with proof of their single project and aggregate bonding capacities. Respondents who fail to include the Bonding Capacity Letter with submittal package may have their submittal rejected.

[Remainder of this page left intentionally blank]

SECTION 7 – STATEMENTS OF QUALIFICATIONS SUBMITTAL & REQUIREMENTS

Statements of Qualifications shall include all the information solicited in this RFSQ, and any additional data that the respondent deems pertinent to the understanding and evaluation of the Statement. The respondent should not withhold any information from the written statement in anticipation of presenting the information orally or in a demonstration.

Submittal of a Statement of Qualifications shall constitute the respondent's agreement and intent to follow and adhere to all statements and offerings contained within this RFSQ.

The sections of the submitted Statements that will be scored during the evaluation process are identified with the maximum attainable points. Additional areas used for awarding evaluation points are addressed in "Section 8 – Evaluation of Statements of Qualifications."

In conjunction with other material and information requested in the RFSQ, all respondents responding to this solicitation shall provide one (1) original, five (5) identical copies and one (1) identical digital version in .pdf format on USB flash/thumb drive. The digital version must be an identical copy of the fully signed original submission. All required attachments are to be in 8 ½" by 11" format, clearly legible, tabbed and bound in the following order:

TABLE OF CONTENTS
The Table of Contents should outline in sequential order the areas of submittal. All pages, including enclosures, must be clearly and consecutively labeled and/or numbered and correspond to the Table of Contents.

STATEMENT OF INTEREST
The responding firm will provide a letter, on letterhead, not exceeding two (2) pages, which serves as a statement of interest and introduction to the submittal. The Statement of Interest shall show the RFSQ number and title. This letter must be signed by the person authorized to bind the firm, company, or corporate entity.

TAB A – REQUIRED DOCUMENTS
Include all required City of Port Orange forms. **FAILURE TO PROVIDE ALL INFORMATION** listed on each form may result in the rejection of your statement, or a reduction in evaluation points. Required forms include:

- Form 9.1 Statement Submittal Checklist
- Form 9.2 Respondent's Acknowledgement Form
- Form 9.3 Addendum & Change Order Procedure Acknowledgement Form
- Form 9.4 Drug Free Preference Statement
- Form 9.5 Sworn Statement on Public Entity Crimes
- Form 9.6 Anti-Collusion Form
- Form 9.7 Statement of Qualifications
- Form 9.8 Professional References for Previous Experience (Page 1)
- Form 9.9 Authorized Signors/Negotiators
- Form 9.10 Scrutinized Companies Certification
- Form 9.11 E-Verify Affidavit
- Form 9.12 Debarment, Suspension, and Other Responsibility Matters
- Form 9.13 Non-Disclosure of Confidential Materials
- Exhibit A – List of Confidential Materials (if applicable)
- Form 9.14 No Submittal Response Form
- Appendix A, 44. C.F.R. Part 18 – Certification Regarding Lobbying
- Current Bonding Capacity Letter for Performance & Payment Bonds
- Provide a copy of license to do business in the State of Florida Sunbiz report showing your company registered as "Active".

TAB B - COMPANY PROFILE – HISTORY AND QUALIFICATIONS OF FIRM (Weight 30%)

- Provide a brief narrative, not exceeding two (2) pages of the corporate history of the firm. The narrative shall include the location of the Home or Corporate Office for the Firm and the location of the Office(s) that will be directly working on projects for the City.

- Demonstrate respondent's ability, capability and skill to perform the services as described in this RFSQ, not exceeding ten (10) pages total.
    - This section should include the firm's qualifications and capacity to meet the needs of the City of Port Orange. This may take the form of a narrative or chart and may include pictures or graphics which describe the firm's qualifications, work philosophy, as well as the projected commitment of resources to be used in completion of projects for the City.
    - What ability does the firm have to sustain the potential loss of key personnel and still adequately meet the terms of the contract?
    - Include a list, table or graphic along with a short narrative explanation depicting services, disciplines or practice areas in which the firm has exceptional expertise.
- Projects and Experience – Demonstrate experience to perform professional continuous service projects or services and provide examples of paster performance delivering quality projects or service with innovative or cost saving solutions.

TAB C - QUALIFICATIONS, PROFESSIONAL LICENSE, CERTIFICATIONS OF THE FIRM'S KEY PERSONNEL AS PRESENTED BY RESUMES, EDUCATION AND TRAINING (Weight 25%)

- Provide a description, not exceeding five (5) pages, of the proposed project team. This description should provide the following:
    - Names;
    - Titles;
    - Organization structure for the proposed project team;
    - Clearly identify the proposed role and responsibility in the project team for each member.
- For each person named, provide a brief description of qualifications, not exceeding a total of ten (10) pages. The descriptions should include at a minimum:
    - The professional qualifications and experience for each person;
    - A summary of experience on projects like those described in this RFSQ;
    - Resumes of the proposed personnel to be assigned to this project (to include years of experience and years with the company).
- Provide a copy of any and all professional licenses and certifications as required to perform the services described herein.

TAB D – QUALITY OF INNOVATIVE APPROACH AND VALUE-ADDED SERVICES (Weight 20%)

- Provide example(s) of innovative solutions in which your firm's involvement on a specific project resulted in cost savings.
- Explain in concept how your firm will deliver projects on time and within budget.

TAB E - FINANCIAL STABILITY/LITIGATION and DEBARMENT HISTORY (Weight 10%)

- All Respondents shall submit a financial statement, preferably a certified audit of the last available fiscal year. A third party prepared financial statement and the latest Dunn & Bradstreet report will be accepted in lieu thereof. Enclose the financial statement in a separate envelope marked "CONFIDENTIAL pursuant to Florida Statutes Section 119.071(1)(c)".
- This tab shall contain information on the nature and magnitude of any litigation or proceeding whereby, during the past five (5) years, a court or any administrative agency has ruled against the firm in any matter related to the professional activities of the firm.
- Include any class actions within your company where named, industry investigations by Attorneys General, in addition to individual cases.
- This tab shall contain information on the nature and magnitude of any debarment or proceeding during the past five (5) years against the firm in any matter related to the professional activities of the firm.
- This tab shall include any debarment actions against your company by the City or other public entity.
- Respondent must indicate whether any contract awarded by another government agency has been terminated for default or convenience.
- Respondent has a continuing duty to inform the City of any new claims filed against the Respondent.

TAB F – REFERENCES (Weight 15%)

- Using p. 1 of Form 9.8 Professional References for Previous Experience, provide a minimum of three (3) Client References (DO NOT INCLUDE THE CITY OF PORT ORANGE AS A REFERENCE) within the last five (5) years for the services described in Scope of Services of this RFSQ for which the firm performs.
- All reference contact information MUST be verified as current by the respondent prior to submittal. **If references cannot be verified using the provided contact information, respondent's points for this criterion will be adversely affected.**
- Below is a sample of the verification questions that may be used:
    1. What type of services did the Firm do for you? What was the scope of the project?
    2. Did they meet the terms of the contract?
    3. Was the project completed on time and within budget?
    4. Did the Firm keep you apprised on any issues with the project? How well did the Firm communicate with you?
    5. Did they respond in a timely manner to calls, requests, etc.?
    6. Did they provide adequate staff to take care of the needs of your company/agency?
    7. Did the Firm manage sub-consultants and/or sub-contractors?
    8. How was your experience in working with this Firm? What frustrations, if any, did you have along the way?
    9. What is your level of confidence in using this Firm in the future? Do you feel the Firm will meet your needs in the next 3-5 years?
    10. Overall, would you recommend this Firm?

The information provided under this tab must be current and the City must be able to contact each reference for verification as part of the evaluation process.

SECTION 8 – EVALUATION OF STATEMENTS OF QUALIFICATIONS

EVALUATION PROCEDURE OF WRITTEN STATEMENTS OF QUALIFICATIONS

The Evaluation Committee comprised of City staff will evaluate and rank Statements of Qualifications based on a 10-point weighted score formula. Weights will be assigned to each criterion and will be applied by multiplying the points scored for each criterion by the weighted percentage of each criterion. Scores shall be in whole, half or quarter percent increments. Examples of acceptable scores are 5.25, 5.50 or 6.0 in the 10-point scale. Scores such as 5.10 or 5.80 are NOT acceptable. If an evaluator returns a score for any criterion other than whole, half or quarter percent increments, they will be asked to round up or down based on standard rounding rules. Respondent's resulting weighted scores will be rounded to 2 decimal points also using standard rounding rules.

All interested firms are hereby cautioned not to contact any staff or Council member of the City of Port Orange, or any member of the Evaluation Committee. All questions should be made through the Purchasing Agent noted in this RFSQ and any attempts to lobby or persuade through any other channels may result in disqualification.

All Statements of Qualifications will be subject to a review and evaluation process pursuant to and in compliance with the Consultants Competitive Negotiation Act, Section 287.055, Florida Statutes. It is the intent of the City that all Firms responding to this RFSQ, who meet the requirements outlined herein, will be ranked in accordance with the criteria established in these documents. The City will consider all responsive and responsible Statements received in its evaluation and award process. The committee may choose to conduct an oral interview with each finalist.

The City's evaluation criteria will include consideration of, but will not be limited to the following:

1. Responsiveness of the Statement related to the Scope of Services.
2. The ability, capability and skill of the respondent to perform the contract, including the range of services offered.
3. Whether the respondent can perform the contract with current resources.
4. The character, integrity, reputation, judgment, experience and efficiency of the respondent.

5. Proof of professional licensure provided.
6. The quality of performance of previous contracts.
7. Responsiveness of client references.
8. Such other information as may be secured.

EVALUATION CRITERIA FOR WRITTEN STATEMENTS OF QUALIFICATIONS

TAB B - Company Profile – History and Qualifications of Firm (Weight 30%):
Company history, qualifications, ability and capacity; Experience with related Scope of Work required for this RFSQ…… (0-10 points)

TAB C - Qualifications, Professional License, Certifications of the Firm's Key Personnel (Weight 25%):
Resumes of key staff demonstrating relevant experience; Organizational chart of management and key staff……(0-10 points)

TAB D – Quality of Innovative Approach and Value-Added Services (Weight 20%):
Methods of achieving the identified tasks; Method of addressing possible opportunities and challenges and value-added services……(0-10 points)

TAB E – Financial Stability/Litigation and Debarment History (Weight 10%):
Firm's financial strength as it relates to their ability to perform all services as outlined in this RFSQ……(0-10 points)

TAB F – References (Weight 15%):
All reference contact information MUST be verified as current by the respondent prior to submittal. ***If references cannot be verified using the provided contact information, respondent's points for this criterion will be adversely affected…****……(0-10 points)*

Total Maximum Points: (50 points)

Scoring Guidelines (0 – 10 points):
0-2.0 = Did Not Meet: Not responsive to the question or topic; 2.25-4.0 = Below minimum standards: Responsive to the question or topic, but below acceptable standards; 4.25-6.0 = Marginal: Minimal acceptable performance standards and responsive to the question or topic; 6.25-8.0 = Satisfactory: Above minimum performance, effective and responsive to the question or topic; 8.25-10.0 = Exceeds Expectations for effectiveness and responsiveness to the question or topic. The Evaluator's score times the "weighted value" assigned to the criterion outlined above equals the total score for that section. Resulting scores will be rounded to 2 decimal points. For example:

Criterion: Tab D: Innovative Approach and Value-Added Services	***Evaluator's Score*** *10-point scale*	***Weighted Value of Total***	***Resulting Score***
Firm A	8.50	20%	1.70
Firm B	6.25	20%	1.25

FORMAL ORAL PRESENTATIONS/INTERVIEWS (If Required)
The City may choose to conduct oral interviews with or receive oral presentations from one or more of the respondents. If the City chooses to allow oral interviews and/or presentations, such interviews or oral presentations will not be open to the public pursuant to the conditions set forth in Florida Statute § 286.0113.

The City's Purchasing Division will establish the schedule and respondents will be notified via www.demandstar.com and the City's Purchasing Web page @https://www.port-orange.org/bids.aspx, at least seven (7) calendar days in advance of the date, time and place of the presentations. The specific format of each presentation will be provided to the respondents with the notifications.

The City will allot equal time for each respondent divided into two sequential parts: formal presentations and questions and answers. The times allotted are maximums and no respondent will be penalized for using less than the allotted time.

FINAL RANKING AND RECOMMENDATION FOR AWARD

After oral presentations are completed, the Evaluation Committee will score the presentations to determine a final ranking of the short-listed respondents. Criteria will be weighted based on 100% of total value. The City project manager will create an agenda item recommending award to the City Council. City Council's decision shall be final.

[Remainder of this page left intentionally blank]

SECTION 9 – REQUIRED FORMS

FORM 9.1 – RESPONDENTS SUBMITTAL CHECKLIST

_____ Form 9.2 – Respondents Acknowledgement

_____ Form 9.3 – Addendum and Change Order Procedure Acknowledgement

_____ Form 9.4 – Drug Free Preference Statement

_____ Form 9.5 – Public Entity Crimes Statement

_____ Form 9.6 – Anti-Collusion Form

_____ Form 9.7 – Statement of Qualifications

_____ Form 9.8 – Professional References for Previous Experience

_____ Form 9.9 – Authorized Signatures/Negotiators

_____ Form 9.10 – Scrutinized Companies Certification

_____ Form 9.11 – E-Verify Affidavit

_____ Form 9.12 – Debarment, Suspension and Other Responsibility Matters

_____ Form 9.13 – Non-Disclosure Agreement for Confidential Materiel

_____ Exhibit "A" – Description of Confidential Material

_____ Form 9.14 – No Submittal Request Form

_____ Current Bonding Capacity Letter for Performance & Payment Bonds

_____ Appendix A, 44.C.F.R. Part 18 – CERTIFICATION REGARDING LOBBYING, Certification for Contracts, Grants, Loans, and Cooperative Agreements

_____ Provide a copy of license to do business in the State of Florida Sunbiz report showing your company registered as "Active".

_____ If applicable – copy of county business license of primary business operations

_____ Submission of one (1) original marked "ORIGINAL', five (5) copies and one (1) digital (USB flash drive) version in PDF format

BY: _____
Name of Business

_____
Authorized Signature

_____
Date

This document must be completed and returned with your Submittal

FORM 9.2 – RESPONDENTS ACKNOWLEDGEMENT FORM

I have carefully examined the Request for Statement of Qualifications (RFSQ), Instructions to Respondents, General and/or Special Conditions, Specifications and any other documents accompanying or made a part of this request.

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

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

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

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

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

NO EXCEPTIONS ALLOWED AFTER THE STATEMENT IS SUBMITTED:

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

_____

_____

_____ _____

Name of Business Mailing Address

_____ _____

Authorized Signature City, State & Zip Code

_____ _____

Printed Name and Title Telephone Number

_____ _____

Federal Identification No. E-mail Address

STATE OF:_____ COUNTY OF: _____

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

_____ day of _____, 2024, by_____ and who:

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

_____ Notary Public, State of _____

Printed, typed or stamped name, commission and expiration:

This document must be completed and returned with your submittal

FORM 9.3 – ADDENDUM AND CHANGE ORDER PROCEDURE ACKNOWLEDGEMENT

ADDENDUM ACKNOWLEDGEMENT

I have carefully examined the Request for Statement of Qualifications (RFSQ), Instructions to Respondents, General and/or Special Conditions, Specification and any other documents accompanying or made a part of this RFSQ.

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

Addendum#_____ Date:_____ Addendum#_____ Date:_____

Addendum#_____ Date:_____ Addendum#_____ Date:_____

CHANGE ORDER PROCEDURE ACKNOWLEDGEMENT

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

I acknowledge the above statements regarding all published Addenda and Change Order procedures:

_____
Name of Business

_____
Authorized Signature

_____
Printed Name and Title

STATE OF:_____ COUNTY OF: _____

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

_____ day of _____, 2024, by_____ and who:

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

_____ Notary Public, State of _____

Printed, typed or stamped name, commission and expiration:

This document must be completed and returned with your Submittal

FORM 9.4 – DRUG-FREE PREFERENCE STATEMENT

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

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

1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.

2. Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation and employee assistance programs and the penalties that may be imposed upon employees for drug abuse violations.

3. Give each employee engaged in providing the commodities or contractual services that are under a bid a copy of the statement specified in subsection (1).

4. In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under the request, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of chapter 893 or of any controlled substance the law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.

5. Impose a sanction on or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by an employee who is so convicted.

6. Make a good faither effort to continue to maintain a drug-free workplace through implementation of Section 287.087, Florida Statutes.

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

_____
Name of Business

_____
Authorized Signature

_____
Printed Name and Title

STATE OF:_____ COUNTY OF: _____

The foregoing instrument was acknowledged before me by means of ☐physical presence or ☐online notarization, this _____ day of _____, 2024, by_____ and who:

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

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

This document must be completed and returned with your Submittal

FORM 9.5 – SWORN STATEMENT ON PUBLIC ENTITY CRIMES

UNDER SECTION 287.133(3)(A), FLORIDA STATUTES

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

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

1. The business address of _____(name of Respondent or business) is

   _____.

2. My relationship to _____(name of Offeror or business) is _____

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

_____
Name of Business

_____
Authorized Signature

STATE OF:_____

COUNTY OF: _____

_____
Printed Name and Title

The foregoing instrument was acknowledged before me by means of ☐physical presence or ☐online notarization, this _____ day of _____, 2024, by_____ and who:

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

_____ Notary Public, State of _____

Printed, typed or stamped name, commission and expiration:

This document must be completed and returned with your Submittal

FORM 9.6 – ANTI-COLLUSION FORM

ANTI-COLLUSION STATEMENT FORM:

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

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

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

NAME OF FIRM: _____

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

PRINTED SIGNATURE: _____

TITLE: _____

ADDRESS: _____

CITY, STATE AND ZIP CODE: _____

TELEPHONE: _____

F.E.I.N.: _____

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

This document must be completed and returned with your Submittal

FORM 9.7 - STATEMENT OF RESPONDENT'S QUALIFICATIONS

The undersigned warrants that he or she is duly authorized to complete this document, and hereby affirms that the information contained in Form 9.7 is complete, true and correct to the best of his or her knowledge and belief. If necessary, questions may be answered on separate paper and attached with any additional information that may be pertinent.

A. Name of Respondent: _____

B. Permanent main office address: _____

C. Date organized: _____

D. If a corporation, where incorporated: _____

E. How many years have you been engaged in the business under your present firm or trade name? _____

F. Contracts on hand: (List these, showing amount of each contract and the appropriate anticipated dates of completion.) **USE SEPARATE SHEET & ATTACH TO SUBMITTAL**

G. General character of work performed by your company: _____

H. Have you ever failed to complete any work awarded to you? If so, where and why?_____

I. Have you ever defaulted on a contract? If so, where and why? _____

J. List your major equipment currently owned or leased: **USE SEPARATE SHET & ATTACH TO SUBMITTAL**

K. Experience in work similar to this type of project: _____

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

M. Credit currently available: $_____

N. Give bank name, contact name and phone number: _____

Will you, upon request, fill out a detailed financial statement and furnish any other information that may be required by the Owner? ☐Yes ☐No

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

_____
Name of Business

_____
Authorized Signature

STATE OF:_____

COUNTY OF: _____

_____
Printed Name and Title

The foregoing instrument was acknowledged before me by means of ☐physical presence or ☐online notarization, this _____ day of _____, 2024, by_____ and who:

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

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

This document must be completed and returned with your Submittal

FORM 9.8 – PROFESSIONAL REFERENCES FOR PREVIOUS EXPERIENCE

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

1. Company Name: _____

   Contact Person: _____

   City, State: _____

   Telephone Number: _____

   Email Address: _____

   Description of goods/services provided: _____

   Contract Amount: _____

   Start/End Date of Contract: _____

2. Company Name: _____

   Contact Person: _____

   City, State: _____

   Telephone Number: _____

   Email Address: _____

   Description of goods/services provided: _____

   Contract Amount: _____

   Start/End Date of Contract: _____

3. Company Name: _____

   Contact Person: _____

   City, State: _____

   Telephone Number: _____

   Email Address: _____

   Description of goods/services provided: _____

   Contract Amount: _____

   Start/End Date of Contract: _____

This document must be completed and returned with your Submittal.

(Form 9.8 – Professional References for Previous Experience Page 2)

LISTING OF PREVIOUS EXPERIENCE
COMMERCIAL CLIENT LIST

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

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

1. Contact Name: _____

   Phone: _____

   Current Client: ☐Yes ☐ No

   Number of years of service provided: _____

   Description of service: _____

   _____

2. Contact Name: _____

   Phone: _____

   Current Client: ☐Yes ☐ No

   Number of years of service provided: _____

   Description of service: _____

   _____

3. Contact Name: _____

   Phone: _____

   Current Client: ☐Yes ☐ No

   Number of years of service provided: _____

   Description of service: _____

   _____

This document must be completed and returned with your Submittal

FORM 9.9 – AUTHORIZED SIGNATURES/NEGOTIATORS

The Respondent represents that the following person(s) are authorized to sign and/or negotiate contracts and related documents to which the Respondent will be duly bound:

Name	Title	Phone #
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

_____
Authorized Signature

_____
Print Name of Authorized Signature

This document must be completed and returned with your Submittal

FORM 9.10 SCRUTINIZED COMPANIES CERTIFICATION

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

SCRUTINIZED COMPANIES CERTIFICATION PURSUANT TO SECTION 287.135, FLORIDA STATUTES

I, _____, on behalf
(Print Name and Title)
of_____ ("Company"), certify that _____
(Company Name) (Company Name)
does not:
1. Participate in a boycott of Israel; and
2. Is not on the Scrutinized Companies with Boycott Israel List; and
3. Is not on the Scrutinized Companies with Activities in Sudan List; and
4. Is not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; and
5. Has not engaged in business operations in Syria.

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

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

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

_____ _____
COMPANY NAME SIGNATURE

_____ _____
PRINT NAME TITLE

STATE OF FLORIDA COUNTY OF: _____

The foregoing instrument was acknowledged before me by means of ☐physical presence or ☐online notarization, this _____ day of _____, 2024, by_____ and who:

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

_____Notary Public, State of _____

Printed, typed or stamped name, commission and expiration:

This document to be completed and returned with your Submittal

FORM 9.11 - E-VERIFY AFFIDAVIT

CITY OF PORT ORANGE

CONTRACTOR E-VERIFY AFFIDAVIT

IN ACCORDANCE WITH SECTION 448.095, FLORIDA STATUTES

Project Name: **Construction Manager at Risk for Construction of Force & Water Mains (River Crossing)**

Solicitation Number: **RFSQ #24-03**

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

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

A true and correct copy of _____ (insert contractor company name) proof of registration in the E-Verify system is attached to this Affidavit.

By affixing my signature below, I hereby affirm that I am duly authorized to bind the company reference herein and I will comply with all applicable E-Verify requirements.

_____ _____

Print or Type Name, Title Signature of Affiant

_____ _____

Federal Employer ID Number (FEIN) E-Verify Number

STATE OF FLORIDA

COUNTY OF: _____

The foregoing instrument was acknowledged before me by means of ☐physical presence or ☐online notarization, this _____ day of _____, 2024, by_____ and who:

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

_____ Notary Public, State of _____

Printed, typed or stamped name, commission and expiration:

This document to be completed and returned with your Submittal

FORM 9.12 - CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

(To be completed by Prime Contractor)

PRIMARY COVERED TRANSACTIONS

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). The Contractor must comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into. This certification is a material representation of fact relied upon by City. If it is later determined that the Contractor did not comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, in addition to remedies available to City, the federal government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or respondent agrees to comply with the requirements of 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or respondent further agrees to include a provision requiring such compliance in its lower tier covered transactions.
2. The Contractor hereby certifies that the Contractor is complying with the requirements in Section 1 above. Further, the Contractor verifies 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).
3. The Contractor further certifies to the best of its knowledge and belief that it and its principals and affiliates:
    a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
    b) Have not within a three-year period preceding this been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statues or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
    c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of these offenses enumerated in paragraph (2)(b) of this certification; and
    d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
4. Where the Contractor is unable to certify to any of the statements in this certification, such prospective Contractor shall attach and explanation to this.
5. No subcontract will be issued for this project to any party which is debarred or suspended from eligibility to receive federally funded contracts.

_____ _____

Signature of Contractor's Authorized Official Date

_____

Name and Title of Contractor's Authorized Official

This document must be completed and returned with your Submittal

FROM 9.13 – NON-DISCLOSURE AGREEMENT

FOR

CONFIDENTIAL MATERIALS

REFERENCE# _____

RETURN THIS FORM ONLY IF CONFIDENTIAL MATERIALS ARE BEING INCLUDED WITH THE SUBMITTAL. PLEASE READ THE SECTION IN THE REQUEST TO DETERMINE IF THIS APPLIES.

Respondent: _____

Address: _____

This Agreement is entered into as of the date of the last signature set forth below between the City of Port Orange, a political subdivision of the State of Florida (hereinafter the "City"), and the above-named Respondent (hereinafter the ("Respondent"). The City and the Respondent are collectively referred to as the "Parties" and may be referred to individually as a Party.

RECITALS

WHEREAS, the Respondent asserts that it possesses certain confidential trade secret materials that it wishes to disclose to the City for the purpose of responding to a solicitation or otherwise conducting business with the City; and
WHEREAS, the City desires to review such materials in order to evaluate the City's interest in negotiating and concluding an agreement for the purchase of certain products and services, or otherwise conducting business with the Respondent.
NOW THEREFORE, in consideration of the mutual promises and premises contained herein, the receipt and sufficiency of which are hereby acknowledged, the City and the Respondent agree as follows:

1. Confidential Materials. The Respondent warrants and represents to the City that the materials described in the attached Exhibit A (Description of "Confidential Material") constitute trade secrets as defined by Section 812.081(1)(c), Florida Statutes, or financial statements required by the City for projects as defined in 119.071(1)(c), Florida Statutes. Subject to the terms and conditions of this Agreement, the City agrees not to disclose such Confidential Materials to third parties.
2. Additional Materials. During the course of the review or the business relationship with the City, the Respondent may disclose additional confidential or trade secret information to the City in which case the restrictions and obligations on the use and disclosure of the Confidential Materials imposed by this Agreement shall also apply to such additional information to the extent permitted by Florida law. Any such additional confidential or trade secret information shall be duly marked and stamped "confidential" or "trade secret" prior to delivery to the City, and shall be subject to this Agreement and Section 812.081(2), Florida Statutes, only if written receipt is provided by the City acknowledging receipt of such materials.
3. Exclusions. For purposes of this Agreement, the term "Confidential Materials" does not include the following:
    a. Information already known or independently developed by the City;
    b. Information in the public domain through no wrongful act of the City;
    c. Information received by the City from a third party who was legally free to disclose it;
    d. Information disclosed by the Respondent to a third party without restriction on disclosure;
    e. Information disclosed by requirement of law or judicial order, including without limitation Chapter 119 Florida Statutes; or
    f. Information that is disclosed with the prior written consent of the Respondent, but only to the extent permitted by such consent.

4. Non-Disclosure by Respondent. In the event that the City discloses confidential or trade secret information to Respondent, the Respondent agrees to not disclose such information to any third party or copy such information or use it for any purpose not explicitly set forth herein without the City's prior written consent. Further, upon conclusion of discussions or business transactions between the City and the Respondent, or at any time upon request of the City, Respondent agrees to return such information (including any copies) to the City.
5. Duty of Care. Each Party agrees to treat the other Party's confidential or trade secret information with the same degree of care, but not less than reasonable care, as the receiving Party normally takes to preserve and protect its own similar confidential information and to inform its employees of the confidential nature of the disclosing Party's information and of the requirement of nondisclosure. In the event either Party has actual knowledge of a breach of the nondisclosure requirements set forth in this Agreement, the Party acquiring such knowledge shall promptly inform the other Party and assist that Party in curing the disclosure, where possible, and preventing future disclosures.
6. Limitations of Florida Law. Respondent understands and agrees that its assertion that any item is confidential or a trade secret does not, in and of itself, render such material exempt from the Florida Public Records Law, Chapter 119 of the Florida Statutes, and that the City's ability to prevent disclosure of confidential and trade secret information may be subject to determination by a Florida court that such materials qualify for trade secret protection under Florida law. In the event a third party makes a public records request for the Confidential Materials or other materials deemed by Respondent to be confidential or a trade secret, the City may submit the materials to the court for inspection in camera as set forth in Section 119.07(1)(g) Florida Statutes. Respondent further understands that the City may be required to disclose such information if directed by a court of competent jurisdiction.
7. Indemnification by Respondent. In the event of any litigation instituted by a third party to compel the City to disclose such materials, Respondent shall, at its sole cost and expense, provide assistance to the City in defending the denial of the records request, and shall hold the City harmless from any claim for statutory costs and attorney's fees arising from the City's refusal to disclose such materials.
8. No Additional Obligations. This Agreement shall not be construed in any manner to be an obligation for either Party to enter into any subsequent contract or agreement.
9. Sovereign Immunity. Nothing in this Agreement shall be deemed as a waiver of immunity or limits of liability of the City beyond any statutory limited waiver of immunity or limits of liability, which has been or which may be adopted by the Florida Legislature, regardless of the nature of any claim which may arise, including but not limited to a claim sounding in tort, equity or contract. In no event shall the City be liable for any claim or claims for breach of contract, including without limitation the wrongful disclosure of confidential or trade secret information for an amount which exceeds, individually and collectively, the then current statutory limits of liability for tort claims. Nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim against the City, which would otherwise be barred under the Doctrine of Sovereign Immunity or by operation of law.
10. Notice. Whenever either Party desires to give notice unto the other, it must be given by written notice, sent by registered United States mail, with return receipt requested, addressed to the party for whom it is intended, at the place last specified, and the place for giving of notice in compliance with the provisions of this paragraph. For the present, the Respondent designates the address set forth above as its place for receiving notice, and the City designates the following address for such notice:

    The City of Port Orange, Florida
    Purchasing Manager
    1000 City Center Circle
    Port Orange, FL 32129

11. Governing Law. This Agreement shall be governed by the laws of the State of Florida, and venue for any action arising out of or relating to the subject matter of this Agreement shall be exclusively in Volusia County, Florida, or the Federal City Court for the Middle City of Florida, Jacksonville Division.
12. Respondent and the City hereby expressly waive any rights either may have to a trial by jury of any civil litigation related to this Agreement for any litigation related to or arising from this solicitation and resulting agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers the day and year as set forth below.

The City of Port Orange, FL

BY: _____

NAME: _____

TITLE: _____

DATE: _____

Respondent

BY: _____

NAME: _____

TITLE: _____

DATE: _____

ATTEST:

BY: _____

NAME: _____

TITLE: _____

DATE: _____

EXHIBIT A - DESCRIPTION OF CONFIDENTIAL MATERIAL

FORM 9.14 – NO SUBMITTAL STATEMENT FORM

If your company will not be submitting a statement to this solicitation, please complete this form and return via e-mail prior to the solicitation due date established within to:

City of Port Orange
Purchasing Division
1000 City Center Circle
Port Orange, FL 32129
purchdiv@port-orange.org

This information will assist the Purchasing Division in the preparation of future solicitations.

Solicitation: RFSQ #24-03 Construction Manager at Risk for Construction of Force and Water Mains (River Crossing)

Company Name: _____

Contact Person Name & Title: _____

Address: _____

Telephone: _____ Email Address: _____

Please check a reason for a "no statement".

☐Specifications "too tight" or geared toward on brand or manufacturer (please explain below)
☐Insufficient time to respond
☐Specifications unclear (please explain below)
☐We do not offer this product/service or an equivalent
☐Our product schedule does not permit us to perform within stated timeline for the project
☐Unable to meet specifications
☐Unable to meet bond requirements
☐Unable to hold prices firm throughout the term of the contract period
☐Unable to meet insurance requirements
☐Other: _____

Print Name: _____

Signature: _____ Date:_____

Additional Information:

_____

_____

_____

_____

If submitting this form, only this form needs to be returned. It is not necessary to return the entire solicitation package.

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING Certification for Contracts, Grants, Loans, and Cooperative Agreements

(Required for each bid or offer exceeding $100,000)

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

4. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

_____

Signature of Contractor's Authorized Official

_____

Name & Title of Contractor's Authorized Official

Date: _____

IMPORTANT: This certificate must be completed and returned by the Awarded Respondent, upon issuance of a Notice of Intent to Award by the Purchasing Department of the City of Port Orange. Please note, the City of Port Orange does not accept exemptions for Workers' Compensation coverage.

AFFIDAVIT REGARDING WORKER'S COMPENSATION (FOR INFORMATIONAL PURPOSES ONLY)

State of _____ County of _____

I,_____, being duly sworn according to law, deposes and says (it, he, she, they) have accepted the Workers' Compensation laws of the State of Florida, with its supplements and amendments and has insured (its, his, her, their) liability there under accordance with the terms of said Laws with the _____ Company, under the terms of Policy Number _____for a period from _____, 20_____ to_____, 20_____.

WITNESS:

By: _____

Company: _____

CONTRACTOR:

By: _____

Company: _____

Name/Title: _____

STATE OF _____

COUNTY OF: _____

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

this _____ day of _____, 2024, by_____ and who:

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

_____ Notary Public, State of _____

Printed, typed or stamped name, commission and expiration:

IMPORTANT: This certificate must be completed and returned by the Awarded Respondent, upon issuance of a Notice of Intent to Award by the Purchasing Department of the City of Port Orange.

LEASED EMPLOYEE AFFIDAVIT (FOR INFORMATIONAL PURPOSES ONLY)

EXHIBIT CONTRACT #_____

☐ **I hereby certify that I do not utilize an employee leasing company or employee leased employees. I further agree to notify the City in the event these circumstances change.**

OR

☐ **I affirm that an employee leasing company provides my workers' compensation coverage. I further understand that my contract with the employee leasing company limits my workers' compensation coverage to enrolled worksite employees only. My leasing arrangement does not cover un-enrolled worksite employees, independent contractors, uninsured sub-contractors, or casual labor exposure.**

I hereby certify that 100% of my workers are covered as worksite employees with the employee leasing company. I certify that I do not hire any casual or uninsured labor outside the employee leasing arrangement. I agree to notify the City in the event that I have any workers not covered by the employee leasing workers' compensation policy. In the event that I have any workers not subject to the employee leasing arrangement, I agree to obtain a separate workers' compensation policy to cover these workers. I further agree to provide the City with a certificate of insurance providing proof of workers' compensation coverage prior to these workers entering any City jobsite.

I further agree to notify the City if my employee leasing arrangement terminates with the employee leasing company and I understand that I am required to furnish proof of replacement workers' compensation coverage prior to the termination of the employee leasing arrangement.

I certify that I have workers' compensation coverage for all of my workers through the employee leasing arrangement specified below:

Name of Employee Leasing Company: _____

Worker' Compensation Carrier: _____

A.M. Best Rating Carrier: _____

Inception Date of Leasing Agreement: _____

I further agree to notify the City in the event that I switch employee-leasing companies. I recognize that I have an obligation to supply an updated workers' compensation certificate to the City that documents the change of carrier.

I hereby attest that the information provided in this affidavit is accurate. In addition, I certify that I have read and understand the above statements regarding my responsibility under the Workers' Compensation coverage.

Signature of Contractor: _____

Signature of Owner/Officer: _____

Title: _____ Date: _____

IMPORTANT: This certificate must be completed and returned by the Awarded Respondent, upon issuance of a Notice of Intent to Award by the Purchasing Department of the City of Port Orange.

HUMAN TRAFFICKING AFFIDAVIT
(SECTION 787.06, FLORIDA STATUTES)

STATE OF _____ §
§
COUNTY OF _____ §

The undersigned ("Affiant"), on behalf of the entity listed below ("Entity"), after being duly sworn, hereby attests as follows:

1. My name is _____. I am over the age of Twenty-one years old. I am the _____ of _____, a non-
(Title) (Business Name)
governmental entity which does business in the State of Florida, hereinafter called the "Entity."

2. I have personal knowledge of each and every statement of fact contained herein, and each and every statement of fact is true and correct.

3. Entity does not use coercion, as defined in Section 787.06, Florida Statutes, for labor or services.

4. The undersigned is an officer or representative of the entity and is authorized to execute this affidavit on behalf of the Entity.

5. Under penalties of perjury, I declare that I have read the foregoing Human Trafficking Affidavit and that the facts stated herein are true.

Further Affiant sayeth not.

Date: _____, 20____

Signed: _____

Print Name: _____

Title: _____

SUBSCRIBED AND SWORN before me by means of [__] physical presence or [__] online notarization on the _____ day of _____, 20___ by _____ as _____ on behalf of _____ who is personally known to me or who has produced _____ as identification.

(Notary Seal)

_____

Notary Public, State of _____

Printed name, commission and expiration of commission term

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

PAYMENT AND PERFORMANCE BOND

(Public Works)

Notice and Time Limitations Must Be In Accordance
With Section 255.05(2), (8) and (10), Florida Statutes

BOND NO. _____

PRINCIPAL:
Developer or Contractor: _____
Principal Business Address: _____
_____
Contact Person: _____
Phone Number: _____

SURETY: _____
Address: _____
_____

Contact Person: _____
Phone Number: _____

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

Amount: $_____ **City Case:** _____

Description of Work: _____

Project Location: _____
_____

Legal Description: _____

Front Page

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

Bond No._____

COMBINATION PAYMENT AND PERFORMANCE BOND
FOR
PUBLIC CONSTRUCTION

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

BY THIS BOND, We, _____, as Principal, and _____, a corporation, as Surety, are bound to_____, aFlorida municipal corporation, herein called "Owner" or sometimes referred to as "City," in the sum of _____ **AND**____**/100 DOLLARS** (**$**_____), for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

THE CONDITION OF THIS BOND is that if Principal:

1. Performs the terms of that certain Standard Contract for Services, having an effective date of _____, entered into by and between the Principal and the City, for Police Department Duct/HVAC Mold Remediation, hereinafter referred to as the "Contract," being made a part of this bond by reference, at the times and in the manner prescribed in the Contract; and

2. Promptly makes payments to all claimants, as defined in Section 255.05(1), Florida Statutes, supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the Contract (the "Work"); and

3. Pays Owner all losses, damages, delay damages (including contractually authorized liquidated damages), expenses, costs, and attorney's fees, including appellate proceedings, that Owner sustains because of a breach or material breach by Principal under the Contract documents; and

4. Performs the guarantee of all work and materials furnished under the Contract for the time specified in the Contract, then this bond is void; otherwise it remains in full force.

Notice of Nonpayment and Time Limitations

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

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

IN WITNESS WHEREOF, this performance and payment bond is executed and shall be deemed an original, this____, day of_____, 20___.

Attest: _____

(Principal)

_____ By:_____

(As to Corporate Principal) Secretary

_____ *(Corporate Seal)*

(Witness to Principal)

_____

(Surety)

_____

(Witness to Surety)

By:_____ Name:_____ (Attorney-in-Fact)

(Corporate Seal)

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

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

NON-MANDATORY PRE-SUBMITTAL CONFERENCE

City of Port Orange

October 1, 2024 - 10:00 AM

RFSQ #24-03 Construction Manager at Risk for Construction of Force & Water Mains (River Crossing)

	Name	Signature	Title	Company	Phone	Email
1	Jill Poolman		Purchasing Manager	City of Port Orange	386-506-5718	jpoolman@port-orange.org
2	Joseph Castro		Buyer	City of Port Orange	386-506-5707	jcastro@port-orange.org
3	Chip Kent		Purchasing Agent	City of Port Orange	386-506-5740	ckent@port-orange.org
4	Junos Reed		City Engineer	City of Port Orange	386-506-5754	jreed@port-orange.org
5	Richard Colby		Construction Manager	City of Port Orange	386-506-5760	rcolby@port-orange.org
6	NICOLE McCONNELL		Engineer	Kimley-Horn	386 2710274	nicole.mcconnell@kimley-horn.com
7	NATE HILLARD		VP	Wharton Smith	407-402-0120	nhillard@whartonsmith.com
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CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 4/15/2025

SUBJECT: (C7c) Approval of Task Authorization No. 24 with Kimley-Horn & Associates, Inc. for Design and Construction Manager at Risk (CMAR) Coordination Services for the 16-inch River Crossing Water Main Replacement.

DEPARTMENT: Engineering

GOAL: 2 - Infrastructure

RECOMMENDED MOTION: Move to approve Task Authorization No. 24 with Kimley-Horn & Associates, Inc. for the 16-inch Water Main Replacement Final Design and Construction Manager at Risk (CMAR) Coordination Services for an amount not to exceed $119,882 and authorize the Mayor and City Clerk to execute all required documents.

SUMMARY: The Public Utilities and Engineering Departments are requesting approval of Task Authorization No. 24 with Kimley-Horn & Associates, Inc. under the Master Contract for Engineering and Environmental Services (CA7763) for the 16-inch Water Main Replacement Final Design and Construction Manager at Risk (CMAR) Coordination Services for an amount not to exceed $119,882.

The City currently owns and operates a 16-inch water main which crosses the Halifax River approximately 0.7 miles south of Dunlawton Avenue from S. Atlantic Avenue and Emilia Drive to S. Ridgewood Avenue and Fleming Avenue. Kimley-Horn & Associates, Inc. completed to 60-percent design level under the prior Master Contract for Engineering Services. The City has contracted with a CMAR; Wharton-Smith, Inc., and desires to bring this project to full design.

Task Authorization No. 24 will require a term of three (3) years from the issuance of the Notice to Proceed.

PRESENTER: Junos Reed

ATTACHMENTS:

1.	Kimley Horn and Associates, Inc. Task Authorization No 24 WM Final Design CMAR	Kimley Horn and Associates, Inc. Task Authorization No 24 WM Final Design CMAR.pdf
2.	WM Final Design CMAR proposal	WM Final Design CMAR proposal.pdf
3.	Executed Kimley-Horn Renewal form 1-	Executed Kimley-Horn Renewal form 1-

	14-2025	14-2025.pdf
4.	Kimley-Horn Contract CA7763	Kimley-Horn Contract CA7763.pdf
5.	Kimley-Horn and Associates, Inc. ALL 4.1.2025	Kimley-Horn and Associates, Inc. ALL 4.1.2025.pdf
6.	Kimely Horn - Affidavit for Human Trafficking_08.29.2024	Kimely Horn - Affidavit for Human Trafficking_08.29.2024.pdf

Julia Wiggins	Created/Initiated - 3/10/2025
Richard Colby	Approved - 3/10/2025
Junos Reed	Approved - 3/20/2025
Linda Truitt	Approved - 3/24/2025
Matthew Jones	Approved - 4/3/2025
Wayne Clark	Final Approval - 4/3/2025

TASK AUTHORIZATION NO. 24
Master Contract for Services dated January 18,2022
Between the City of Port Orange, Florida and Kimley-Horn and Associates, Inc.

THIS Task Authorization is entered into by and between the **CITY OF PORT ORANGE, FLORIDA**, a chartered municipal corporation with its principal place of business at 1000 City Center Circle, Port Orange, Florida 32129 (the "City") and **KIMLEY-HORN AND ASSOCIATES, INC.**, North Carolina corporation, registered to transact business in Florida, with its principal place of business at 421 Fayetteville Street, Suite 600, Raleigh, North Carolina 27601 ("Engineer"), and hereinafter collectively referred to as the "Parties," and is to that certain Master Contract relating to Professional Engineering Services for Public Works, Utilities and Environmental Services, as dated above, and any amendments thereto, hereinafter collectively referred to as the "Contract." The Parties, in exchange for the mutual covenants contained herein and in the Contract, agree as follows:

1. This Task Authorization expressly modifies the Contract and in the event of a conflict, the terms and conditions of this Task Authorization shall prevail.

2. In addition to all other terms and conditions contained in the Contract, Engineer shall provide services relating the **16-Inch Water Main Replacement Final Design and CMAR Coordination Assistance;** as more particularly described in the Scope of Servicesattached hereto and incorporated herein as Task Authorization Exhibit "1."

3. Engineer shall complete the services to be provided herein within **Three (3) years** of the date ofwritten notice by the City to the Engineer.

4. In return for the services identified above, the City agrees to compensate Engineer at the prices set forth in Exhibit "1" attached hereto and made a part hereof, subject to a limit not to exceed **$119,882.00**. All payments shall be governed by the Local Government Prompt Payment Act as Set forth in Sections 218.70 through 218.79, Florida Statutes, as amended.

5. *Truth-in-Negotiations*

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

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

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

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

Witnesses:

KIMLEY-HORN AND ASSOCIATES, INC.

_____ By: _____

Printed Name: _____ Jonathan D. Thigpen, Senior Vice President

_____ Date: _____

Printed Name: _____

CITY OF PORT ORANGE

By:_____
Scott Stiltner, Mayor

Date:_____

ATTEST:

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

Date:_____

Kimley»Horn

PROPOSAL FOR 16-INCH WATER MAIN REPLACEMENT FINAL DESIGN AND CMAR COORDINATION SERVICES

Describing a specific agreement between Kimley-Horn and Associates, Inc. (Kimley-Horn), and The City of Port Orange (the Client or the City) in accordance with the terms of the Master Agreement for Continuing Professional Services dated January 18, 2022, which is incorporated herein by reference.

Project Understanding

The City currently owns and operates a 16-inch water main which crosses the Halifax River approximately 0.7 miles south of Dunlawton Avenue from S. Atlantic Avenue and Emilia Drive to S. Ridgewood Avenue and Fleming Avenue. This project was completed to 60-percent design level. The City has contracted with a Construction Manager at Risk (CMAR), and desires to bring this project to final design. Services during construction will be provided under a separate task authorization.

Specific Scope of Basic Services:

Task 1: Water Main 90% and Final Design

Once the 60% plans have been reviewed and approved design plan production can be initiated. This design will include the following services:

1. 90% Design Plans preparation
2. 90% Technical Specifications. Front end documents can be included and shall be provided by the City for modifications specific to this project, such as the bid form, description of work, etc.
3. 90% Review meeting with the City and CMAR Contractor.
4. Revision of 90% review comments to update the design plans and specifications.
5. This task includes up to two (2) meetings including one progress meeting and a 90% design review meeting.

Task 2: Permitting

FDEP

Kimley-Horn will prepare support documentation for a General Environmental Resource Permit Application and a general construction permit for the modification of a collection/transmission system from FDEP. Once the application is submitted, Kimley-Horn will respond to one Request for Available Information (RAI) from FDEP. Any additional RAIs or meetings with FDEP will be considered additional services. All application fees shall be paid by the Client.

Federal (USACE)

Kimley-Horn will prepare either a Nationwide Permit 12 or a Regional General Permit 14 application for submittal to the USACE. The application will include site plan drawings indicating the limits of proposed on-site excavation and fill areas, limits of existing wetlands and surface waters delineated (if applicable), proposed impacts to existing wetlands and surface waters (if applicable), and typical sections illustrating the proposed on-site excavation/fill activities.

Kimley-Horn will coordinate with the USACE Section 408. Kimley-Horn will also coordinate with the USACE Real Estate Division to obtain a consent-to-easement.

It is assumed no wetland mitigation will be required from the USACE. Once the application is submitted, Kimley-Horn will respond to one RAI. Any additional RAIs or meetings with USACE will be considered additional services. All permit application fees shall be paid by the Client.

Kimley-Horn will also coordinate with the US Fish and Wildlife Service (USFWS) (during the USACE permitting process) regarding possible listed species impacts (i.e. West Indian manatee, sea turtles). If the USFWS requires detailed listed species surveys, then a separate scope and fee will be prepared. Kimley-Horn will also coordinate with the National Marine Fisheries Service (NMFS) (during the USACE permitting process) regarding possible Essential Fish Habitat (EFH) impacts. If the NMFS requires detailed listed species surveys, then a separate scope and fee will be prepared.

Task 3: Water Main CMAR Coordination

The City has selected a CMAR, in lieu of the traditional bid solicitation defined in the original scope of services. It is recommended to select a CMAR contractor at the completion of the 60% design phase. During the 90% design phase, the Project's phasing will be defined, and value engineering items will be identified in an effort to defer or reduce capital costs when feasible. The detailed design phase will focus on the development of construction documents including plans, specifications, and other documents supporting the establishment of a Guaranteed Maximum Price (GMP) to be negotiated by the City with the CMAR. Kimley-Horn will coordinate with the CMAR on the following CMAR scope items:

- Develop and update a detailed "open book" cost model based on current market conditions to confirm budgets and help guide design decisions.
- Develop a construction management plan and schedule in advance of construction with input from Kimley-Horn.
- Provide alternative system evaluation and constructability reviews in coordination with the City and Kimley-Horn.
- Develop long-lead procurement strategies and potentially initiate early procurement of long-lead items.
- Provide procurement services for selection of key subcontractors and suppliers.
- Support the CMAR in the development of construction estimates and GMPs for construction for City review and consideration.

The relationship between the CMAR and Kimley-Horn is intended to be collaborative, with both participating as advisors to the City during the Design Phase. It is the City's desire to incorporate a contractor's perspective and input to the project planning and design decisions, and to leverage the ability for early procurement and phased construction prior to full completion of design.

The following tasks are defined as the specific efforts to be performed and completed by Kimley-Horn during the design phase of the project:

Kimley»Horn

A. Cost Model and GMP Review and Validation

Coordinate with the CMAR and the City to provide input and information on equipment and other major capital cost items throughout the design phase and review and validate the cost model (90% and final design level) developed by the CMAR. Cost validation activities will include a review and verification of direct and indirect costs; CMAR fee and CMAR contingency; review supplier and subcontractor quotes and request supplemental quotes, as necessary; compare costs with other applicable projects; and perform review of risk analysis model and/or cost contingencies developed by the CMAR. Indirect costs included in the CMAR cost model will include applicable general conditions and general requirements, bonds, insurance and sales tax.

Using the cost models and GMPs as the basis for the total construction costs, Kimley-Horn will coordinate with the City regarding additional City administrative costs, engineering fees, construction administration and inspection fees, and, if applicable, City contingency to develop a Total Project Cost Estimate (TPCE).

B. Early Procurement Activities

Kimley-Horn will coordinate with the CMAR and the City to develop an equipment and materials procurement plan, including identification of items to be selected and/or procured early based on "best value" and/or low-bid strategies, and define the parameters associated with "best value" selection as applicable. Those items and design packages selected for early procurement will also identify the acceptable manufacturers and associated bid documents requirements.

Kimley-Horn will coordinate with the CMAR and City to develop multiple packages of the applicable front-end documents, technical specification and supporting design drawings for early procurement of long-lead equipment items with the specific acceptable manufacturers; coordinate with the CMAR as part of the bidding process and prepare addenda; And assist the City and the CMAR with review of the supplier proposals and bid packages and the subsequent selection process.

It is assumed that the CMAR will be responsible for the packaging of front-end documents, technical specifications, and applicable design drawings developed by Kimley-Horn; submittal of packages to applicable manufacturers or vendors; coordination of vendor proposals; pre-selection of equipment and appurtenances; delivery of detailed design criteria and documents of selected equipment to Kimley-Horn for further use and incorporation into detailed design documents; and coordination of delivery, storage, installation, startup, and payment of procured items. Kimley-Horn has assumed up to four early procurement packages will be developed.

C. General CMAR Coordination

General coordination with the CMAR during the design Phase will include:

- Coordination with the City regarding development of the CMAR construction and/or post-construction phase contract and applicable City front-end documents and Kimley-Horn's Division 1 specifications.
- Meeting with and soliciting input from the CMAR during design development as appropriate.
- Providing input to the construction management plan and schedule development.

- Evaluating alternative systems and materials proposed or suggested by the CMAR.
- Responding to constructability review comments.
- Attending subcontractor pre-selection meetings conducted by the CMAR as appropriate.

In addition, additional services for bidding, including the preparation of bid document sets, participating in a pre-bid conference, responding to bidder questions, preparing applicable addenda, attendance of the bid opening, assistance in evaluating bids, and participating in a pre-construction conference with the selected contractor will need to be handled under an amendment to this scope of work.

Schedule:

These services will be completed as expeditiously as possible and will be coordinated with the City and CMAR.

Deliverables:

Deliverables for this project include the following:

- 90% plans and specifications
- Final plans and specifications

Method of Compensation:

Kimley-Horn will perform these services for the total lump sum fee of $119,882.00 inclusive of expenses. Invoices will be billed on a percent complete basis per task. A breakdown of the fee by task is as follows:

Task	*Description*	*Lump Sum Fee*
1	90% and Final Design	$57,938
2	Permitting	$19,937
3	CMAR Coordination	$42,007
Total		**$119,882**

Other Special Terms:

Services provided under this agreement will be invoiced on a monthly basis. All invoices will include a description of services provided.

ACCEPTED:

CITY OF PORT ORANGE, FLORIDA	KIMLEY-HORN AND ASSOCIATES, INC.
BY: ***See Page 4 of Task Authorization No 24***	BY: _____ Joe Mecca, PE
TITLE: _____	TITLE: Sr. Vice President
DATE: _____	DATE: _____

Kimley»Horn

PROPOSAL FOR 16-INCH WATER MAIN REPLACEMENT FINAL DESIGN AND CMAR COORDINATION SERVICES

Describing a specific agreement between Kimley-Horn and Associates, Inc. (Kimley-Horn), and The City of Port Orange (the Client or the City) in accordance with the terms of the Master Agreement for Continuing Professional Services dated January 18, 2022, which is incorporated herein by reference.

Project Understanding

The City currently owns and operates a 16-inch water main which crosses the Halifax River approximately 0.7 miles south of Dunlawton Avenue from S. Atlantic Avenue and Emilia Drive to S. Ridgewood Avenue and Fleming Avenue. This project was completed to 60-percent design level. The City has contracted with a Construction Manager at Risk (CMAR), and desires to bring this project to final design. Services during construction will be provided under a separate task authorization.

Specific Scope of Basic Services:

Task 1: Water Main 90% and Final Design

Once the 60% plans have been reviewed and approved design plan production can be initiated. This design will include the following services:

1. 90% Design Plans preparation
2. 90% Technical Specifications. Front end documents can be included and shall be provided by the City for modifications specific to this project, such as the bid form, description of work, etc.
3. 90% Review meeting with the City and CMAR Contractor.
4. Revision of 90% review comments to update the design plans and specifications.
5. This task includes up to two (2) meetings including one progress meeting and a 90% design review meeting.

Task 2: Permitting

FDEP

Kimley-Horn will prepare support documentation for a General Environmental Resource Permit Application and a general construction permit for the modification of a collection/transmission system from FDEP. Once the application is submitted, Kimley-Horn will respond to one Request for Available Information (RAI) from FDEP. Any additional RAIs or meetings with FDEP will be considered additional services. All application fees shall be paid by the Client.

Federal (USACE)

Kimley-Horn will prepare either a Nationwide Permit 12 or a Regional General Permit 14 application for submittal to the USACE. The application will include site plan drawings indicating the limits of proposed on-site excavation and fill areas, limits of existing wetlands and surface waters delineated (if applicable), proposed impacts to existing wetlands and surface waters (if applicable), and typical sections illustrating the proposed on-site excavation/fill activities.

Kimley-Horn will coordinate with the USACE Section 408. Kimley-Horn will also coordinate with the USACE Real Estate Division to obtain a consent-to-easement.

It is assumed no wetland mitigation will be required from the USACE. Once the application is submitted, Kimley-Horn will respond to one RAI. Any additional RAIs or meetings with USACE will be considered additional services. All permit application fees shall be paid by the Client.

Kimley-Horn will also coordinate with the US Fish and Wildlife Service (USFWS) (during the USACE permitting process) regarding possible listed species impacts (i.e. West Indian manatee, sea turtles). If the USFWS requires detailed listed species surveys, then a separate scope and fee will be prepared. Kimley-Horn will also coordinate with the National Marine Fisheries Service (NMFS) (during the USACE permitting process) regarding possible Essential Fish Habitat (EFH) impacts. If the NMFS requires detailed listed species surveys, then a separate scope and fee will be prepared.

Task 3: Water Main CMAR Coordination

The City has selected a CMAR, in lieu of the traditional bid solicitation defined in the original scope of services. It is recommended to select a CMAR contractor at the completion of the 60% design phase. During the 90% design phase, the Project's phasing will be defined, and value engineering items will be identified in an effort to defer or reduce capital costs when feasible. The detailed design phase will focus on the development of construction documents including plans, specifications, and other documents supporting the establishment of a Guaranteed Maximum Price (GMP) to be negotiated by the City with the CMAR. Kimley-Horn will coordinate with the CMAR on the following CMAR scope items:

- Develop and update a detailed "open book" cost model based on current market conditions to confirm budgets and help guide design decisions.
- Develop a construction management plan and schedule in advance of construction with input from Kimley-Horn.
- Provide alternative system evaluation and constructability reviews in coordination with the City and Kimley-Horn.
- Develop long-lead procurement strategies and potentially initiate early procurement of long-lead items.
- Provide procurement services for selection of key subcontractors and suppliers.
- Support the CMAR in the development of construction estimates and GMPs for construction for City review and consideration.

The relationship between the CMAR and Kimley-Horn is intended to be collaborative, with both participating as advisors to the City during the Design Phase. It is the City's desire to incorporate a contractor's perspective and input to the project planning and design decisions, and to leverage the ability for early procurement and phased construction prior to full completion of design.

The following tasks are defined as the specific efforts to be performed and completed by Kimley-Horn during the design phase of the project:

Kimley»Horn

A. Cost Model and GMP Review and Validation

Coordinate with the CMAR and the City to provide input and information on equipment and other major capital cost items throughout the design phase and review and validate the cost model (90% and final design level) developed by the CMAR. Cost validation activities will include a review and verification of direct and indirect costs; CMAR fee and CMAR contingency; review supplier and subcontractor quotes and request supplemental quotes, as necessary; compare costs with other applicable projects; and perform review of risk analysis model and/or cost contingencies developed by the CMAR. Indirect costs included in the CMAR cost model will include applicable general conditions and general requirements, bonds, insurance and sales tax.

Using the cost models and GMPs as the basis for the total construction costs, Kimley-Horn will coordinate with the City regarding additional City administrative costs, engineering fees, construction administration and inspection fees, and, if applicable, City contingency to develop a Total Project Cost Estimate (TPCE).

B. Early Procurement Activities

Kimley-Horn will coordinate with the CMAR and the City to develop an equipment and materials procurement plan, including identification of items to be selected and/or procured early based on "best value" and/or low-bid strategies, and define the parameters associated with "best value" selection as applicable. Those items and design packages selected for early procurement will also identify the acceptable manufacturers and associated bid documents requirements.

Kimley-Horn will coordinate with the CMAR and City to develop multiple packages of the applicable front-end documents, technical specification and supporting design drawings for early procurement of long-lead equipment items with the specific acceptable manufacturers; coordinate with the CMAR as part of the bidding process and prepare addenda; And assist the City and the CMAR with review of the supplier proposals and bid packages and the subsequent selection process.

It is assumed that the CMAR will be responsible for the packaging of front-end documents, technical specifications, and applicable design drawings developed by Kimley-Horn; submittal of packages to applicable manufacturers or vendors; coordination of vendor proposals; pre-selection of equipment and appurtenances; delivery of detailed design criteria and documents of selected equipment to Kimley-Horn for further use and incorporation into detailed design documents; and coordination of delivery, storage, installation, startup, and payment of procured items. Kimley-Horn has assumed up to four early procurement packages will be developed.

C. General CMAR Coordination

General coordination with the CMAR during the design Phase will include:

- Coordination with the City regarding development of the CMAR construction and/or post-construction phase contract and applicable City front-end documents and Kimley-Horn's Division 1 specifications.
- Meeting with and soliciting input from the CMAR during design development as appropriate.
- Providing input to the construction management plan and schedule development.

- Evaluating alternative systems and materials proposed or suggested by the CMAR.
- Responding to constructability review comments.
- Attending subcontractor pre-selection meetings conducted by the CMAR as appropriate.

In addition, additional services for bidding, including the preparation of bid document sets, participating in a pre-bid conference, responding to bidder questions, preparing applicable addenda, attendance of the bid opening, assistance in evaluating bids, and participating in a pre-construction conference with the selected contractor will need to be handled under an amendment to this scope of work.

Schedule:

These services will be completed as expeditiously as possible and will be coordinated with the City and CMAR.

Deliverables:

Deliverables for this project include the following:

- 90% plans and specifications
- Final plans and specifications

Method of Compensation:

Kimley-Horn will perform these services for the total lump sum fee of $119,882.00 inclusive of expenses. Invoices will be billed on a percent complete basis per task. A breakdown of the fee by task is as follows:

Task	*Description*	*Lump Sum Fee*
1	90% and Final Design	$57,938
2	Permitting	$19,937
3	CMAR Coordination	$42,007
Total		**$119,882**

Other Special Terms:

Services provided under this agreement will be invoiced on a monthly basis. All invoices will include a description of services provided.

ACCEPTED:

CITY OF PORT ORANGE, FLORIDA	KIMLEY-HORN AND ASSOCIATES, INC.
BY:_____	BY: _____ Joe Mecca, PE
TITLE:_____	TITLE: Sr. Vice President
DATE:_____	DATE:_____

CITY OF PORT ORANGE

Agreement

RENEWAL FORM

*****THIS FORM IS VALID IF EXECUTED PRIOR TO THE ORIGINAL AGREEMENT/CONTRACT EXPIRATION DATE*****

Verify your records by providing the following information:

Name of Company/Organization: Kimley-Horn and Associates, Inc. ("Contractor")

Name of Contact Person: Jonathan Thigpen, Sr. Vice President

Mailing Address: 189 South Orange Avenue
Suite 100, Orlando, FL 32801

E-Mail Contact Address: Jonathan.thigpen@kimley-horn.com

Phone: (407) 898-1511 Fax: (561) 863-8175

☒ Standard Contract for Service CA No. 7763

☐ Piggyback Agreement CA No. _____

☐ Purchase Order No. _____

Renewal Term: From January 18, 2025 To: January 17, 2026

Contractor to Provide to City:

☐ ~~Updated Bond~~ N/A

☑ Insurance Certificate/City as additional insured and Waiver of Subrogation for WC

To be completed by the Contractor:

YES X Contractor desires to renew this Agreement for another term at the same price, requirements, specifications, and conditions as provided for above.

NO ____ Contractor does not desire to renew this Agreement for another term.

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

Contractor's Authorized Representative: _____ **Date:** 1/13/25
Signature

Please return to the City of Port Orange as follows:

Department: Engineering Department Telephone: (386) 506-5751

Contract: Julia Wiggins, Business Manager Fax: (386) 756-5370

E-Mai: jwiggins@port-orange.org

For City Use Only:

Department Completes the Following:

☒ Renewal Accepted by the Department

☐ Bond received by the Department ***OR*** ☒ Bond not applicable

☒ Insurance Certificate received by the Department ***OR*** ☐ Insurance waived by City Manager

City Manager: _____ **Date:** 1/14/2025

Original Signed Form Must Be Returned to the City Clerk *Form 13024*

CITY OF PORT ORANGE MASTER CONTRACT PROFESSIONAL ENGINEERING SERVICES FOR PUBLIC WORKS, UTILITIES AND ENVIRONMENTAL SERVICES

This Standard Contract for Services ("Contract") is entered into this 18 day of Jan, **2022**, by and between the **CITY OF PORT ORANGE**, a Florida municipal corporation, whose principal address is 1000 City Center Circle, Port Orange, Florida 32129 (the "City"), and **KIMLEY-HORN AND ASSOCIATES, INC.**, a North Carolina corporation, registered to transact business in Florida, whose principal address is 421 Fayetteville Street, Suite 600, Raleigh, North Carolina 27601 ("Engineer"). The City and Engineer are collectively referred to herein as the "Parties."

The City and the Engineer for Ten Dollars ($10.00) and other good and valuable consideration hereby covenant and agree as set forth below.

1. *Provision of Services*

(a) The Engineer hereby agrees to provide the following services to the City of Port Orange:

(i) Professional continuous utility engineering consulting services to complete a wide range of projects led by the City of Port Orange Public Works and Utilities Department in accordance with Consultants Competitive Negotiation Act, and as more specifically described in Request for Statement of Qualifications 21-03 ("RFSQ 21-03"). This Contract together with RFSQ 21-03, Addendum No. 1, Addendum No. 2, and Engineer's Proposal, all of which may be referred to as the "Contract" and all of which are made a part hereof by reference shall constitute the formal written Contract between the City and Engineer. For convenience, Section 3, Scope of Services, of RFSQ 21-03, and the Schedule of Hourly Billing Rates as submitted by Engineer in Engineer's Proposal are attached hereto as Exhibit "1." A complete copy of RFSQ 21-03 is available in the Office of the City Clerk. Engineer represents that they are familiar with the documents that make up the Contract, as referenced hereinabove.

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

Term: The term of this Contract shall commence on the date this Contract is signed by both of the Parties, and shall continue for a period of three (3) years, or until either party provides the other party written notice of its intent to terminate as provided in this Contract.

Renewals: Upon written agreement of the Parties and appropriation by City Council, this Contract may be renewed for up to two (2) additional one (1) year periods.

Manner and Place: The Engineer shall perform the services as outlined in each project assignment, in accordance with Standard Construction Details as required on all City owned facilities and properties (i.e. rights-of-way) and in a manner as required by all current federal, state, county, fire, building and land development codes, laws, ordinances and regulations, and with applicable permits and licenses per the City Code of Ordinances. Engineer shall not deliver goods or services without a fully executed task authorization and a written purchase order, signed by an authorized agent of the City of Port Orange.

Time and Essence: Engineer acknowledges that time is of the essence in the completion of the services contemplated by this contract, and shall complete all services within the timeline specified by this contract, and shall complete all services within the timeline specified in the project, and as reflected on the Notice to Proceed.

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

a. All Task Authorizations issued under this Contract shall terminate at the expiration of the term of the Task Authorization, unless amended in writing by the parties. If a Task Authorization issued before the expiration of this Contract cannot be completed until after the expiration of this Contract, then this Contract shall expire on the Completion of Services under said Task Authorization, including any Amendments thereto, and after all work or services under the Task Authorization have been approved and accepted by the City's Contract Administrator. The obligations entered herein by both parties under this Contract and said Task Authorizations shall remain in full force and effect until completion of all work or services performed under this Contract and/or the Task Authorization.

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

3. *City Obligations* The City reserves the right to utilize lump sum or hourly rate compensation, at the hourly rate compensation as set forth in Exhibit "1." Rates may be adjusted on the anniversary of the effective date of this Contract, upon mutual written agreement of the Parties. The City's obligation to pay Engineer under this Contract is limited to an amount not to exceed the appropriated budget per fiscal year. All payments shall be governed by the Local Government Prompt Payment Act as set forth in Sections 218.70 through 218.79, Florida Statutes, as amended. The Engineer shall be paid compensation for all services, labor and material required thereby, and for all expenditures as specified in each Task Authorization. The fee shall be negotiated for each Project Task Authorization to this Contract. The Engineer shall submit a monthly statement for professional services rendered and expenses incurred to date of the statement. The statements for lump sum shall be based upon Engineer's estimate of the proportion of the total services actually completed at the time of billing to the total services to be performed. Such estimates are to be prepared by the Engineer and accompanied by such supporting data as may be required by the Contract Administrator. Compensation for any authorized cost which is not set forth in the Contract shall not exceed the actual, documented out-of-pocket cost to the Engineer, plus fifteen percent (15%). The Contract and Task Authorization(s) do not include retainer fees, nor is there a minimum fee guaranteed during the Contract period.

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

5. *Liens* Engineer acknowledges that Engineer shall not be entitled to lien the City or other public property.

6. *Statement of Engineering Services* The Engineer shall:

(a) Provide all certifications ("Engineer of Record" function) surveys, calculations, drawings, and any other documents required for special permits and authorizations from various government bodies or agencies having jurisdiction over the project;

(b) Prepare a time scaled diagram showing the dates of completion of various design phases and scheduled completion of working drawings and specifications and submit for Contract Administrator's review and approval;

(c) Verify and evaluate technical proposals furnished by the construction Engineer if requested by the City and provide such amplifications and explanations that may be necessary to clarify the intent of the drawings and specifications.

(d) Furnish consultation and advice as requested by the City during the construction of project, including Construction Administration Services (unless otherwise stipulated in a specific amendment attached hereto and made a part thereof);

(e) Furnish all other engineering services including without limitation those specified hereinafter and those required for the completion of specific projects as described in amendments to this contract:

(i) *Site Visits/Special Permits* The Engineer shall visit the site and shall initiate and hold such conferences with representatives of the City and other agencies, boards or government bodies having jurisdiction over the area the project covers and take such other action as may be necessary to obtain permits and authorizations (except the construction permits) and other data upon which to develop the design and preliminary sketches showing the contemplated project.

(ii) *Preliminary Sketches and Opinion of Probable Construction Costs* The preliminary sketches shall include plans, elevations and sections development in such detail and with such descriptive specifications as will clearly indicate the scope of work, and make possible a reasonable opinion of the construction cost and satisfy the requirements of permitting and regulatory agencies having jurisdiction. An opinion of probable construction costs shall be prepared.

(iii) *Working Drawings and Specifications* After the preliminary sketches and opinion of probable construction costs have been approved, the Engineer shall proceed with the preparation of working drawings and specifications as required by the Contract Administrator for the construction of said project. Working drawings, specifications and estimates shall be delivered to the Contract Administrator in such sequence and at such times as required by the City such that the construction work can be initiated promptly, procurement of materials made without delay and continuous prosecution of the work promoted, all in strict accordance with the approved design schedule as provided in Paragraph 5 (b) above. Working drawings and specifications shall be revised as necessary and as required by the Contract Administrator. After working drawings and specifications have been approved by the Contract Administrator, the Engineer shall furnish such number of sets of prints of the approved working drawings and such number of sets of the approved specifications, as may be required by the Contract Administrator.

(iv) *Original Drawings - Final Plans* Upon approval of final plans the Engineer shall deliver to the City one set of original drawings, in such medium and on such materials, as may be required by the Contract Administrator, suitable for blueprinting, showing approved constructed requirements (not of "as-built" construction unless otherwise stipulated), provided, however, that should this contract be terminated by the City the Engineer shall deliver to the City one set of originals as they exist at the time of termination. Such plans as are delivered shall become and remain the property of the City.

(v) *Revision of Final Drawings and Specifications* The engineer shall without additional fee correct and revise the drawings, specifications, or other materials furnished under this contract, if the Contract Administrator finds that such revision is necessary to correct errors or deficiencies for which the Engineer is responsible.

(vi) *Bidding* The Engineer shall perform all necessary engineering services required in connection with the competitive bidding for construction of the project and the preparation of all documents required thereof, including preparation of documents for separate bid packages for multiple contractors if so required by Contract Administrator.

7. *Responsibility of the Engineer* The Engineer shall be responsible for the professional and technical accuracy and the coordination of all designs, drawings, and specifications and other work or materials furnished by the Engineer under this contract. The Engineer shall without additional cost or fee to the City, correct or revise any errors or deficiencies in his performance.

8. *Reuse of Documents* The City shall have unlimited rights, for the benefit of the City in all drawings, designs, specifications, notes and other engineer's work produced in the performance of this contract, or in contemplation thereof, and all as-built drawings produced after completion of the work, including the right to use same on any other City work without additional cost to the City. All documents including Drawings and Specifications prepared by Engineer pursuant to this Contract are instruments of service in respect of the Project. They are not intended or represented to be suitable for reuse by City or others for any other project. Reuse for another project without written verification or adaption by Engineer for the specific purpose intended will be at City's risk. Any such verification or adaption will entitle Engineer to further compensation at rates to be agreed upon by City and Engineer. A reproducible set of plans and specifications shall be delivered to and become the property of the City upon completion of the Project by the Engineer.

9. *Expert Witness* The Engineer shall serve as an expert witness for the City in any legal proceedings regarding this project if the City so requests. The expert witness fee for Engineer shall be negotiated at the time the Engineer is called as an expert.

10. *Modifications to Scope of Work/Change Orders*

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

(b) If any change under this clause causes an increase or decrease in Engineer's cost of, or time required for the performance of the work hereunder, Engineer shall receive an equitable adjustment and the contract

shall be modified in writing accordingly. Any change shall include all costs and damages related to or incidental to such change.

(c) Any claim by the Engineer for adjustment under this clause shall be asserted in writing within thirty (30) days from the date of receipt by the Engineer of the notification of change unless the Contract Administrator grants a further period of time before the date of final payment under the contract. The Engineer shall proceed with the prosecution of the work as changed. Except as provided in this Contract, the Engineer shall not be entitled to payment for a charge for any extra work or material.

11. *Subcontractors or Sub-Subcontractors*

(a) Any subcontractors and outside associates or consultants required by the Engineer in connection with the services covered by the Contract will be limited to such individuals or firms as are specifically identified in an amendment to this Contract. Any substitution in such subcontractors, associates, or consultants shall be subject to the prior approval of the Contract Administrator.

(b) Engineer shall save and hold the City harmless from any and all claims or actions by Engineer's Subcontractors or Sub-subcontractors for payment of monies such Subcontractor of Sub-subcontractor claims to be owed by Engineer for work performed under this Contract.

(c) Nothing in this Contract shall create any obligation on the part of the City to pay directly to any Subcontractors of Sub-subcontractors or claims of a Subcontractor or Sub-subcontractors for amounts owed by Engineer to Subcontractor or Sub-subcontractor for work performed under this Contract.

(d) Engineer shall be fully responsible for all negligent acts and omissions of it Subcontractors and Sub-subcontractors and of persons directly or indirectly employed by them and of persons of whose negligent acts any of them may be liable to the same extent that it is responsible for the negligent acts and omissions of persons directly employed by it. Nothing in the Contract documents shall create any contractual relationship between any subcontractor and the City or any obligation on the part of the City to pay or to see to the payment of any moneys due any subcontractor to the extent practicable, evidence of amounts paid to the Engineer on account of specific work done in accordance with the schedule of values.

(e) The Engineer shall require all subcontractors or sub-subcontractors or outside associates employed in connection with the performance of this Contract to comply fully with the terms and conditions of this Contract between the City and the Engineer.

12. Termination

(a) The performance of work under this Contract may be terminated by the City in accordance with this clause in whole, or from time to time in part, whenever the Contract Administrator shall determine that such termination is in the best interest of the City. Any such termination shall be effected by delivery to the Engineer of a Notice of Termination specifying the extent to which performance of work under the Contract is terminated, and the date upon which such termination becomes effective.

(b) After receipt of a Notice of Termination, and except as otherwise directed by the Contract Administrator, the Engineer shall:

(i) Stop work under the Contract on the date and to the extent specified in the Notice of Termination.

(ii) Place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of such portion of the work under the Contract as it is not terminated.

(iii) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination.

(iv) Assign to the City in the manner, at the times and to the extent directed by the Contract Administrator, all of the right, title, and interest of the Engineer under the orders and subcontracts so terminated, in which case the City shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

(v) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Contract Administrator, to the extent the City may require which approval or ratification shall be final for all the purposes of this clause.

(vi) Transfer title and deliver to the City in the manner, at the times, and to the extent, if any, directed by the Contract Administrator.

a. The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination; and

b. The completed or partially completed plans, drawings, information, and other property which, if the contract has been completed, would have been required to be furnished to the City.

(vii) Complete performance of such part of the work as shall not have been terminated by the Notice of Termination.

(c) After receipt of a Notice of Termination, the Engineer shall submit to the City's Contract Administrator his termination claim, in the form and with certification prescribed by the Contract Administrator. Such claim shall be submitted promptly but in no event later than thirty (30) days from the effective date of termination, unless one or more extensions in writing are granted by the Contract Administrator, upon request of the Engineer made in writing within such thirty (30) days period or authorized extension thereof. Upon failure of the Engineer to submit his termination claim within the time allowed, the Contract Administrator may determine on the basis of information available to him, the amount, if any, due to the Engineer by reason of the termination and shall thereupon pay to the Engineer the amount so determined.

(d) Subject to the provisions of Paragraph 11 (c), the Engineer and the Contract Administrator may agree upon the whole or any part of the amount or amounts to be paid the Engineer by reason of the total or partial termination of work pursuant to this clause, the total or partial termination of work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on work done; provided, that such agreed amount or amounts exclusive of settlement costs, shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. The Contract shall be amended accordingly and the Engineer shall be paid the agreed amount. Nothing in Paragraph 11 prescribing the amount to be paid to the Engineer, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid.

(e) In the event of the failure of the Engineer and the Contract Administrator to agree as provided in Paragraph 11 (d), upon the whole amount to be paid to the Engineer by reason of the termination of work pursuant to this subparagraph, the Contract Administrator shall pay to the Engineer the amounts determined by the Contract Administrator, but without duplication of any amounts agreed upon, as follows:

(i) For completed work and services accepted by the City, the price or prices specified in the contract for such work, less any payments previously made.

(ii) The total of:

a. The costs incurred in the performance of the work and service terminated, including initial costs and preparatory expenses allocable thereto, but exclusive of any costs attributable to the work and services paid or to be paid for under Paragraph 11 (e)(i) hereof;

b. The cost of settling and paying claims arising out of the termination of work or services under subcontracts or orders as provided in Paragraph 11 (b)(v) above, which are properly chargeable to the terminated portion of the contract exclusive of amounts paid or payable on account of work or services delivered or furnished by subcontractors prior to the effective date of termination, which amounts shall be included in the costs payable under Paragraph 11 (a) above; and

c. A sum, as profit on Paragraph 11 (a) above, determined by the Contract Administrator to be fair and reasonable, not to exceed 5% of the Task Authorization.

(iii) In the event the contract is terminated because of Engineer's default, the City may take over the work and services and complete the same by contract or otherwise, and the Engineer shall be liable to the City for any increased cost of the project.

13. *Termination for Non-Appropriation of Funds*

(a) If funds are not appropriated for any succeeding fiscal years subsequent to the one in which this contract is entered into, for the purpose of this Contract, then the City may terminate this Contract upon thirty (30) days prior written notice to the Engineer. Should termination be accomplished in accordance with this Section, the City shall be liable only for payments due through the date of termination. The City agrees that should it terminate in accordance with this Section, it shall not obtain services which are substantially equal to or similar to those for which this contract was entered into. This provision shall survive any termination of the Contract.

14. *Engineer's Records*. The design, permits and all other records prepared by the Engineer, assembled for the City, subcontracted for the City, and any other records related to the scope of work in the possession of the Engineer shall be retained by the Engineer for the requisite time set forth in Florida Administrative Code Rule 1 B-24 http://dos.myflorida.com/library-archives/records-management/. Engineer may dispose of the records in accordance with Florida law, upon receipt of a signed written release signed by the City Attorney. During the term of this Contract, as amended from time to time, Engineer agrees to indemnify the City for failure to comply with the requirements of this paragraph including costs of litigation and legal fees incurred through all appeals. City reserves the right to select and approve the defense attorney. The Engineer's obligations pursuant to this paragraph shall survive the termination of this Contract, and as amended from time to time.

15. *Examination of Records*

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

(b) The Engineer further agrees to include in any subcontract for more than $10,000 entered into as a result of this Contract, a provision to the effect that the subcontractor agrees that the City or any duly authorized representative shall, until the expiration of five (5) years after final payment under the subcontract, have access to

and the right to examine and copy any pertinent books, documents, papers and records of such Engineer involved in transactions related to such subcontract, or this Contract. The term subcontract as used herein shall exclude purchase orders for public utility services at rates established for uniform applicability to the general public.

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

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

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

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

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

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

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

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

17. *Insurance* Engineer shall maintain insurance, as required herein, during the life of this Contract. Engineer shall provide to the City, a certificate of insurance endorsing the City of Port Orange as an additional named insured. All insurance coverages of the Engineer shall be primary and non-contributory. All insurance coverages of the Engineer shall not seek contribution from any other insurance or self-insurance available to the City. For workers' compensation coverage, the Engineer's insurance certificate shall include the insurer's waiver of subrogation in lieu of endorsing the City as an additional insured for workers' compensation. The City shall not accept Workers' Compensation Exemptions Engineer may use leased employees if the Engineer ensures that all workers who access the jobsite are employees covered by the employee leasing company, and no non-employees are permitted to access the jobsite. Any Engineer using a leased employee shall complete the City's Leased Employee Affidavit Form Exhibit. Policies for Workers' Compensation may be issued by companies authorized as a group self-insurer by F.S. 440.572.

Policies other than Workers' Compensation shall be issued by insurers licensed and/or duly authorized under Florida Law to do business in the State of Florida and all insuring companies are required to have a minimum rating of "A-" in the "Best Key Rating Guide" published by A.M. Best & Company, Inc. Engineer shall not commence work under this Contract until the City has received a certificate or certificates of insurance with endorsement evidencing

the required insurance. Insurer shall provide the City written notice of cancellation, nonrenewal or any other changes in coverage no later than thirty (30) days prior to the effective date of the change and shall provide notice to the City no later than 10 days after non-payment. The Certificates of Insurance and required insurance policies shall contain provisions that thirty (30) days prior written notice shall be given to the City of any cancellation, intent not to renew, or reduction in the policies or coverages.

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

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

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

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

Standard Insurance Requirements			
	Insurance	**Standards**	**Additional Requirements**
☒	Workers' Compensation The Engineer shall maintain coverage for its employees with statutory workers' compensation limits, and no less than the limits indicated in the Schedule of Limits for Employers' Liability. Said coverage shall include a waiver of subrogation in favor of the City. **The City will not accept elective exemptions**. Any Engineer using an employee leasing company shall complete the Leased Employee Affidavit (Exhibit A).	Contract Amount — Limits Up to $10 million — Statutory/$500,000 $10 - $20 million — Statutory/$1,000,000 Contracts over $20 million To Be Determined by the City.	☐If Contract requires work on or about navigable waters, Longshoreman's and Harbor Workers' Coverage required. ☐If vessels involved, Jones Act coverage with limits of $500,000 required.

☒	Comprehensive General Liability (including Completed Operations and Contractual Liability	Limits:	Combined Single Limit Bodily Injury and Property damage $1,000,000 occurrence $1,000,000 aggregate	☐When work is on or under Railroad rights of way or properties, the Engineer shall take out and maintain during the life of the Contract, Railroad protective liability and property damage insurance in amounts as requested by the Railroad.
☒	Comprehensive Business, Automobile Liability to include all owned, hired and non-owned automobiles.	Limits:	Auto Liability Body Injury and Property Damage: $1,000,000 each occurrence $1,000,000 aggregate	
	Additional Insurance Requirements			
☐	Property Insurance Builders Risk. Additional Coverage:	Limits:	Buildings - Completed value of Contract. "All Risk" coverage on latest ISO for or its equivalent. Permission granted to occupy. Owner named as insured AIMA	If Agreement requires handling or installation of Owner's equipment, coverage should be furnished on "All Risk" form, including transit and Owner shall be named.
☒	Professional Liability	Limits:	Coverage - $1,000,000	
☐	Installation Floater (IT)	Limits:	Coverage - $ To be determined.	
☐	Engineer Pollution Liability	Limits:	Coverage - $1,000,000	
☒	Errors and Omissions	Limits:	Coverage - $1,000,000	
☐	Umbrella Policy	Limits:	Coverage – $ To be determined.	
☐	Payment and Performance Bond Required	Limits:	Coverage - Equal to amount of Contract.	
☐	**City Manager waives Payment and Performance Bond for work under $25,000.00.**			
☐	**Unless otherwise required by law, City Manager waives Insurance for FOB goods under $25,000.00.**			

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

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

20. *Liability for Loss or Damage*

(a) Engineer shall be liable for any loss of, or damage to, City property caused by the negligence, recklessness, or intended wrongful misconduct of Engineer, his/its agents, servants and employees and shall indemnify and save the City harmless against all actions, proceedings, claims, demands, costs, damages and expenses, including attorney's fees, by reason of any suit or action brought for any actual or alleged injury to or death

of any person or damage to property other than City property, to the extent caused by negligent performance of the Contract by Engineer, his/its agents, servants and employees. Engineer shall submit a full written report to the Finance Director within twenty-four (24) hours following the occurrence of such damage, loss or injury.

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

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

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

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

22. *E-Verify*. Engineer shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Engineer on or after the effective date of this Contract and thereafter during the remaining term of this Contract, including all subcontractors. Any subcontract entered into by Engineer with any subcontractor performing work under this Contract shall include the following language: "The Sub-Engineer shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Engineer on or after the effective date of this Contract and thereafter during the remaining term of the Contract." The Engineer covenants and agrees that if it is found in violation of this section of the Executive Order, such violation shall be a material breach of this Contract and Engineer shall indemnify, defend and hold harmless the City from any fines or penalties levied by a government agency, including the loss or repayment of grant funds by the City.

23. *Disputes* The City Manager, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to Engineer, shall decide disputes with respect to this Contract in the first instance. The decision shall be final and binding unless, within ten (10) days from the date of receipt of the decision of the City Manager, appeal is made to the City Council. The decision of the City Council shall be final and binding unless set aside by a court of competent jurisdiction as fraudulent, capricious, arbitrary, or so grossly erroneous as necessary to imply bad faith, or not to be supported by any evidence. Pending a final determination of a properly appealed decision of the City Council, Engineer shall proceed diligently with the performance of this Contract in accordance with that decision.

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

25. *Controlling Law* **THIS AGREEMENT CONTAINS IMPORTANT MATTERS AFFECTING LEGAL RIGHTS AND IS ACCEPTED AND ENTERED INTO IN FLORIDA AND ANY QUESTION REGARDING ITS VALIDITY, CONSTRUCTION, ENFORCEMENT, OR PERFORMANCE SHALL BE GOVERNED BY FLORIDA LAW. ANY**

LEGAL PROCEEDING ARISING FROM OR IN ANY WAY REGARDING THE AGREEMENT SHALL HAVE ITS VENUE LOCATED EXCLUSIVELY IN THE CIRCUIT COURT OF VOLUSIA COUNTY, FLORIDA, AND THE PARTIES HEREBY EXPRESSLY CONSENT AND SUBMIT THEMSELVES TO THE PERSONAL JURISDICTION AND VENUE OF THE COURT.

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

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

29. *Notice* For purposes of this agreement, notices shall be sent as follows:

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

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

Engineer:
~~Kimley-Horn and Associates, Inc.~~
Attention: Brian A. Good, ~~Director~~
~~421 Fayetteville Street~~
~~Suite 600~~
~~Raleigh, North Carolina 27601~~

Attention: Jonathan D. Thigpen, Senior Vice President
189 South Orange Avenue
Suite 1000
Orlando, Florida 32801
(407) 898-1511 – Telephone
(561) 863-8175 – Facsimile
~~Maybe.White@kimley-horn.com~~ jonathan.thigpen@kimley-horn.com

Any notice or other communication given under the Contract will be in writing and delivered by hand, sent by facsimile (provided acknowledgement of receipt thereof is delivered to the sender), sent by certified, registered mail, or sent by any nationally recognized overnight courier service to the addresses provided herein. The parties may,

from time to time and at any time, change their respective addresses and each will have the right to specify as its address any other address by at least 10 days written notice to the other party.

30. *Truth-in-Negotiations*

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

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

31. *Waiver of Breach and Materiality* Failure to enforce any provision of this Contract shall not be deemed a waiver of such provision or modification of this Contract. A waiver of any breach of a provision of this Contract shall not be deemed a waiver of any subsequent breach and shall not be construed as a modification of the terms of this Contract.

32. *Contract Construction*

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

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

[Remainder of this page intentionally left blank]

Witnesses:

Printed Name: Nicole McConnell

Printed Name: Tucker Hunter

KIMLEY-HORN AND ASSOCIATES, INC.

By: _____
Jonathan D. Thigpen, Senior Vice President

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

Date: January 7, 2022

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me by means of ✓ physical presence or ___ online notarization, this 7th day of January, 2022, by Jonathan D. Thigpen, as Senior Vice President of Kimley-Horn and Associates, Inc., a North Carolina corporation, registered to transact business in Florida. He is ✓ personally known or ___ produced _____ as identification.

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

SUSAN M. GREMONPREZ
Commission # GG 298833
Expires February 9, 2023
Bonded Thru Troy Fain Insurance 800-385-7019

Witnesses:

Printed Name: Jamie Miller

Printed Name: Matt Jones

CITY OF PORT ORANGE

By: _____
Donald O. Burnette, Mayor

Date: 1/18/2022

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of ✓ physical presence or ___ online notarization, this 18 day of Jan., 2022, by Donald O. Burnette, as Mayor of the City of Port Orange, a Florida municipal corporation, on behalf of the city. He is ✓ personally known or ____ produced _____ as identification.

MATTHEW J. JONES
Commission # GG 931831
Expires January 23, 2024
Bonded Thru Troy Fain Insurance 800-385-7019

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

Witnesses:

Printed Name: Jamie Miller

Printed Name: Matt Jones

ATTEST:

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

Date: 1/18/2022

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me, by means of ✓ physical presence or ___ online notarization, this 18 day of Jan., 2022, by Robin L. Fenwick, as City Clerk of the City of Port Orange, a Florida municipal corporation, on behalf of the city. She is ✓ personally known or ___ produced _____ as identification.

MATTHEW J. JONES
Commission # GG 931831
Expires January 23, 2024
Bonded Thru Troy Fain Insurance 800-385-7019

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

EXHIBIT "1"

Engineer's Schedule of Hourly Billing Rates and RFSQ 21-03 Section 3

Consisting of 2 Pages

KIMLEY HORN AND ASSOCIATES
SCHEDULE OF HOURLY BILLING RATES

Labor Position/Classification Level	Hourly Rate
Principal	$300.00
Senior Project Manager	$230.00
Project Manager	$190.00
Senior Project Engineer	$210.00
Project Engineer	$170.00
Analyst 3	$145.00
Analyst 2	$125.00
Analyst 1	$115.00
Senior Environmental Scientist	$185.00
Environmental Scientist	$130.00
GIS Analyst	$130.00
Grants Coordinator	$175.00
Sr CAD Designer	$185.00
CAD Designer	$150.00
CAD Technician	$110.00
Administrative	$95.00
Clerical	$75.00

Notes:
1. Billing rates listed in the table above are for the period from FY2022 through FY2024.
2. The salary multiplier billing rates include all payroll burden, overheads, and profit.
3. Subconsultants will be billed at 115% of actual cost
~~4. Standard project expenses will be billed as an allocation equivalent to 5.0% of the labor fee.~~

SECTION 3 – SCOPE OF SERVICES AND REQUIREMENTS

SCOPE OF SERVICES

The City of Port Orange is soliciting proposals from qualified firms for professional continuous engineering consulting services to complete a wide range of needs lead by the City of Port Orange Public Works & Utilities Department. The City will select a minimum of three, and up to five firms who can provide all, some, or one of the category service disciplines outlined in the scope of services. Firms do not have to be able to provide all of the services listed in the scope of services. For instance, if a firm only provides Environmental Services then they should state that in their initial Statement and provide all of the supporting data within the submittal to support the type of services provided. Individual firms are the focus of this RFSQ process, therefore the City will not accept Statements of Qualifications submitted with multiple firms (i.e., teams). The City is seeking the most highly qualified firms in the following category service disciplines;

- **Public Utilities (Water, Wastewater, & Reclaimed Water):**
  - Analysis, survey, design, permitting, bidding assistance, engineering services during construction, and State Revolving Funds (SRF) loan assistance for the Cities water, wastewater, and reuse systems. Including but not limited to the Cities wastewater collection and treatment systems, raw water wells, raw water transmission, water treatment, and reclaimed water storage and distribution systems
- **Public Works (Stormwater, Roadways, and Sidewalls/Trails):**
  - Analysis, survey, design, permitting, bidding assistance and engineering during construction for the Cities roadways and sidewalks
  - General stormwater needs as required by the Stormwater Utility Program. The list of services shall consist of, but not be limited to, the following:
  - National Pollutant Discharge Elimination System (NPDES) program assistance and implementation,
  - Total Maximum Daily Load (TMDL) program assistance and implementation including, but not limited to, the evaluation and establishment of estuarine TMDLS and NNC, developing ecosystem goals and targets based on the requirements of the environmental and biological indicators, hydrodynamic modeling, water quality statistical analysis, natural systems analysis and habitat analysis,
  - Watershed management planning including, but not limited to, initial hydrologic and hydraulic modeling of the watersheds in Port Orange, as well as pollutant loading modeling and updates to existing Stormwater Management Master Plans of the watersheds,
  - Engineering analysis/design and permitting of capital improvement projects, and
  - Other stormwater/environmental needs that may arise.
- **Environmental Services:**
  - Provide services related to wetlands mitigation bank management, gopher tortoise mitigation bank management, potable drinking water Consumptive Use Permit (CUP) permit monitoring, reporting, and compliance assistance, hydrologic services related to potable water wellfield management and development
  - Monitoring, sampling, and reporting services as required for permits issued and regulated by various local and State agencies such as Consumptive Use Permitting and other operational permits issued to the City by St. Johns River Water Management, U.S. Army Corps of Engineers, and the Florida Department of Environmental Protection for the operation of the Cities Wetlands Mitigation Bank, Gopher Tortoise Mitigation Bank each have very specific and differing water sampling, monitoring, and reporting procedures and requirements.
- **Grant Compliance Assistance:**
  - Provide Grant Compliance assistance for local, state, and federally administered grants, including but not limited to, HUD Community Development Block Grants, FEMA Hazard Mitigation Grant Program, FDEP Legislative Appropriation grants. Services will include tasks such as; Assistance with U.S. Department of Housing and Urban Development Environmental Review Record Development for projects funded with Community Development Block Grant Funds. Reviewing, monitoring, evaluating and acting upon documentation required for Construction Contract compliance.

[End of Scope of Services - Remainder of this page left intentionally blank]

EXHIBIT "2"

Task Authorization Template

Consisting of 4 Pages

TASK AUTHORIZATION NO. ___
Master Contract for Services dated _____
Between the City of Port Orange, Florida and Kimley-Horn and Associates, Inc.

THIS Task Authorization is entered into by and between the **CITY OF PORT ORANGE, FLORIDA**, a chartered municipal corporation with its principal place of business at 1000 City Center Circle, Port Orange, Florida 32129 (the "City") and **KIMLEY-HORN AND ASSOCIATES, INC.**, North Carolina corporation, registered to transact business in Florida, with its principal place of business at 421 Fayetteville Street, Suite 600, Raleigh, North Carolina 27601 ("Engineer"), and hereinafter collectivelyreferred to as the "Parties," and is to that certain Master Contract relating to Professional Engineering Services for Public Works, Utilities and Environmental Services, as dated above, and any amendments thereto, hereinafter collectively referred to as the "Contract." The Parties, in exchange for the mutual covenants contained herein and in the Contract, agree as follows:

1. This Task Authorization expressly modifies the Contract and in the event of a conflict, the terms and conditions of this Task Authorization shall prevail.

2. In addition to all other terms and conditions contained in the Contract, Engineer shall provide services relating to _____, as more particularly described in the Scope of Services attached hereto and incorporated herein as Task Authorization Exhibit "1."

3. Engineer shall complete the services to be provided herein within _____ days of the date of written notice by the City to the Engineer.

4. In return for the services identified above, the City agrees to compensate Engineer at the prices set forth in Exhibit "1" attached hereto and made a part hereof, subject to a limit not to exceed $_____. All payments shall be governed by the Local Government Prompt Payment Act as Set forth in Sections 218.70 through 218.79, Florida Statutes, as amended.

5. *Truth-in-Negotiations*

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

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

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

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

Witnesses:

KIMLEY-HORN AND ASSOCIATES, INC.

_____
Printed Name:_____

By:_____
Jonathan D. Thigpen, Senior Vice President

_____
Printed Name:_____

Date:_____

Witnesses:

CITY OF PORT ORANGE

_____

Printed Name:_____

By:_____
Donald Burnette, Mayor ***or***
Wayne Clark, City Manager

_____

Printed Name:_____

Date:_____

Witnesses:

ATTEST:

_____

Printed Name:_____

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

_____

Printed Name:_____

Date:_____

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 3/18/2024

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

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

PRODUCER Edgewood Partners Ins. Center/Greyling 3780 Mansell Rd. Suite 370 Alpharetta GA 30022	**CONTACT NAME:** Jerry Noyola **PHONE (A/C, No, Ext):** 7702207699 **FAX (A/C, No):** **E-MAIL ADDRESS:** greylingcerts@greyling.com
INSURED KIMLASS Kimley-Horn and Associates, Inc. 421 Fayetteville Street, Suite 600 Raleigh, NC 27601	**INSURER(S) AFFORDING COVERAGE** / **NAIC #** **INSURER A :** National Union Fire Ins Co of Pittsburg / 19445 **INSURER B :** Allied World Assurance Co (U.S.) Inc. / 19489 **INSURER C :** New Hampshire Insurance Company / 23841 **INSURER D :** Lloyd's of London / 85202 **INSURER E :** **INSURER F :**

COVERAGES **CERTIFICATE NUMBER:** 221548564 **REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X **COMMERCIAL GENERAL LIABILITY** CLAIMS-MADE X OCCUR X Contractual Liab GEN'L AGGREGATE LIMIT APPLIES PER: POLICY X PRO-JECT X LOC OTHER:			GL5268169	4/1/2024	4/1/2025	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 2,000,000 $ 1,000,000 $ 25,000 $ 2,000,000 $ 4,000,000 $ 4,000,000 $
A A	**AUTOMOBILE LIABILITY** X ANY AUTO OWNED AUTOS ONLY / SCHEDULED AUTOS X HIRED AUTOS ONLY / X NON-OWNED AUTOS ONLY			CA4489663 (AOS) CA2970071 (MA)	4/1/2024 4/1/2024	4/1/2025 4/1/2025	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ 2,000,000 $ $ $ $
B	X **UMBRELLA LIAB** X OCCUR X **EXCESS LIAB** CLAIMS-MADE DED X RETENTION $ 10,000			03127930	4/1/2024	4/1/2025	EACH OCCURRENCE AGGREGATE	$ 5,000,000 $ 5,000,000 $
C C	**WORKERS COMPENSATION AND EMPLOYERS' LIABILITY** Y / N ANYPROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? N **(Mandatory in NH)** If yes, describe under DESCRIPTION OF OPERATIONS below	N / A		WC015893685 (AOS) WC015893686 (CA)	4/1/2024 4/1/2024	4/1/2025 4/1/2025	X PER STATUTE / OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	 $ 2,000,000 $ 2,000,000 $ 2,000,000
D	Professional Liability			B0146LDUSA2404949	4/1/2024	4/1/2025	Per Claim Aggregate	$2,000,000 $2,000,000

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

Re: Comprehensive Plan Update; Kelley Klepper. The City of Port Orange is named as an Additional Insured with respects to General & Automobile Liability where required by written contract. Waiver of Subrogation applies to Workers Compensation where required by written contract & allowed by law.

CERTIFICATE HOLDER

City of Port Orange
1000 City Center Circle
Port Orange FL 32129-0000

CANCELLATION

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

AUTHORIZED REPRESENTATIVE

Gregg Bachelor

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HUMAN TRAFFICKING AFFIDAVIT
(SECTION 787.06, FLORIDA STATUTES)

STATE OF FLORIDA §
§
COUNTY OF VOLUSIA §

The undersigned ("Affiant"), on behalf of the entity listed below ("Entity"), after being duly sworn, hereby attests as follows:

1. My name is Hao Chau. I am over the age of Twenty-one years old. I am the Vice President (Title) of Kimley-Horn and Associates, Inc. (Business Name) a non-governmental entity which does business in the State of Florida, hereinafter called the "Entity."

2. I have personal knowledge of each and every statement of fact contained herein, and each and every statement of fact is true and correct.

3. Entity does not use coercion, as defined in Section 787.06, Florida Statutes, for labor or services.

4. The undersigned is an officer or representative of the entity and is authorized to execute this affidavit on behalf of the Entity.

5. Under penalties of perjury, I declare that I have read the foregoing Human Trafficking Affidavit and that the facts stated herein are true.

Further Affiant sayeth not.

Date: August 29, 2024

Signed: _____

Print Name: Hao Chau

Title: Vice President

SUBSCRIBED AND SWORN before me by means of [XX] physical presence or [__] online notarization on the 29th day of August, 2024 by Hao Chau as Vice President on behalf of Kimley-Horn and Associates, Inc. who is personally known to me or who has produced ~~a~~ DL CORP. as identification.

(Notary Seal)

Notary Public State of Florida
Kelly Burdett
My Commission HH 537969
Expires 6/12/2028

Kelly Burdett HH 537969
Notary Public, State of Florida 6/12/2028
Printed name, commission and expiration of commission term

SKB.7.8.2024
CA7985

CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 4/15/2025

SUBJECT: (C7d) Approval of Amendment and Renewal No. 1 to American Sports Officials, Inc. for Officials and Scorekeepers for Various Athletic Leagues

DEPARTMENT: Parks & Recreation

GOAL: 3 - Quality of Life

RECOMMENDED MOTION: Move to approve the Amendment and Renewal of the Contract with American Sports Officials, Inc. and authorize the Mayor and City Clerk to execute the same; and authorize the City Manager to approve future price adjustments in accordance with the provisions of Section 6 of ITB #23-05.

SUMMARY: This contract is for officials and scorekeepers for various athletic leagues. The original contract (CA8161) is up for renewal on June 19, 2025. The contract allows for three (3) optional one-year renewal periods. This is the first renewal.

The contractor is requesting an increase in the pricing for the renewal term, June 20, 2025 – June 19, 2026. Pursuant to Section 6 of ITB #23-05, Special Requirements/Instructions, a request for a cost adjustment will be considered for any upcoming renewal if timely submitted with proper documentation. In this instance, the contractor is requesting a price increase of less than 5%, which is within the allowable range pursuant to Section 6 of the ITB. Staff have reviewed the requested price increase and the supporting documentation and believe this pricing remains competitive. The new estimated total of the contract is $156,825.00 and is per appropriated budget.

In addition, the staff is requesting the Council authorize the City Manager to approve any future requests for price adjustments, in accordance with the provisions set forth in Section 6 of ITB #23-05.

PRESENTER: Susan Lovallo

ATTACHMENTS:

1.	American Sports Officials, Inc. Amendment and Renewal No 1 to Standard Contract for Services Dated June 20, 2023	American Sports Officials, Inc. Amendment and Renewal No 1 to Standard Contract for Services Dated June 20, 2023.pdf
2.	Revised Schedule of Unit Pricing	Revised Schedule of Unit Pricing.pdf

3.	ASO COI 2024-25	ASO COI 2024-25.pdf
4.	American Sports Officials 6.19.25	American Sports Officials 6.19.25.pdf

Jennifer Cox	Created/Initiated - 1/30/2025
Susan Lovallo	Approved - 1/30/2025
Jill Poolman	Approved - 2/3/2025
Matthew Jones	Approved - 2/12/2025
Linda Truitt	Approved - 2/12/2025
Matthew Jones	Approved - 4/2/2025
Wayne Clark	Approved - 4/3/2025
Amanda Bonin	Final Approval - 4/4/2025

AMENDMENT AND RENEWAL NO. 1

THIS AMENDMENT AND RENEWAL NO. 1 ("2025 Amendment and Renewal") is made and entered into the day and year set forth hereinafter by and between the **CITY OF PORT ORANGE, FLORIDA**, a Florida municipal corporation located at 1000 City Center Circle, Port Orange, Volusia County, Florida 32129-4144 (the "City"), and **AMERICAN SPORTS OFFICIALS, INC.** ("Contractor") a Florida corporation with its principal place of business at 1908 Sun Valley Street, Titusville, Florida 32780. The City and the Contractor are hereinafter collectively referred to as the "Parties."

WHEREAS, on the 20th day of June 2023, the City and Contractor entered into a Standard Contract for Services ("Contract"), with a term commencing on June 20, 2023 and continuing for a period of two (2) years, which may be renewed for up to three (3) additional one-year periods, upon City Manager approval, budget appropriation and written agreement of the Parties, unless either Party provides at least thirty (30) days notice to the other Party of their intent not to renew the Contract; and

WHEREAS, the Parties desire to utilize the first renewal option of the Contract, notwithstanding the date of execution, to commence on June 20, 2025 and continue until June 19, 2026; and

WHEREAS, the Parties desire to amend Exhibit "1" of the Contract to increase the unit pricing for the services as provided on the amended Exhibit "1" provided by the Contractor, effective June 20, 2025; and

WHEREAS, the Port Orange City Council has determined that the execution of this 2025 Amendment and Renewal is beneficial to the citizens of the City of Port Orange.

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

1. The foregoing recitals are true and correct and incorporated herein.

2. *Term.* The term of the Contract is hereby renewed, notwithstanding the date of execution shall commence on June 20, 2025, and continue until June 19, 2026.

3. *City Obligations*. Exhibit "1" of the Contract shall be deleted in its entirety and shall be replaced with the Contractor's Unit Pricing for the services as provided on the Amended Exhibit "1," attached hereto and made a part hereof by reference, which sets forth the revised pricing effective June 20, 2025.

4. *Counterparts*. This 2025 Amendment and Renewal 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 2025 Amendment and Renewal shall be deemed valid as if an original signature was delivered. No contract shall be formed between Contractor and the City until the City signs this 2025 Amendment and Renewal.

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

IN WITNESS WHEREOF, the Parties hereto have signed, sealed, and delivered this 2025 Amendment and Renewal on the day and year stated hereinafter.

Witnesses:

AMERICAN SPORTS OFFICIALS, INC.

By:_____
Royce M. Morrison, Jr. CEO

_____
Printed Name:_____

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

_____
Printed Name:_____ Date:_____

Please note that at this time the City does not accept electronic/digital signatures. A wet signature is required for this document.

CITY OF PORT ORANGE

By:_____
Scott Stiltner, Mayor

Date:_____

ATTEST:

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

Date:_____

EXHIBIT "1"

Contractor's REVISED Unit Pricing

Consisting of 5 Pages

REVISED SCHEDULE OF UNIT PRICING
ITB #23-05 Renewal #1 of 3 to CA8161

Officials and Scorekeepers for Recreation Sports Programs

NAME OF BUSINESS:	American Sports Officials, Inc.
CONTACT PERSON:	John Lavin
EMAIL ADDRESS:	John.Lavin@halifax.org
AUTHORIZED SIGNATURE:	

LOT #	DESCRIPTION	QTY (Games)	Number of Officials or Scorekeepers	Price per Official or Scorekeeper	Assign Fee	Total Price per Game	Total Cost Per League
	Youth Sports						
A	***BASEBALL - Official***						
	Under 8 Yrs Old (1 hr & 15 min Games)	77	1	$ 45.00	$ 10.00	$ 55.00	$ 4,235.00
	Under 10 Yrs Old (1 hr & 15 min Games)	35	2	$ 50.00	$ 10.00	$ 110.00	$ 3,850.00
	Under 12 Yrs Old (1 hr & 15 min Games)	35	2	$ 55.00	$ 10.00	$ 120.00	$ 4,200.00
	Under 15 Yrs Old (1 hr & 30 min Games)	21	2	$ 65.00	$ 10.00	$ 140.00	$ 2,940.00
	BASEBALL - Scorekeeper						
	Under 8 Yrs Old (1 hr & 15 min Games)	77	1	$ 25.00	$ 5.00	$ 30.00	$ 2,310.00
	Under 10 Yrs Old (1 hr & 15 min Games)	35	1	$ 25.00	$ 5.00	$ 30.00	$ 1,050.00
	Under 12 Yrs Old (1 hr & 15 min Games)	35	1	$ 25.00	$ 5.00	$ 30.00	$ 1,050.00
	Under 15 Yrs Old (1 hr & 30 min Games)	21	1	$ 25.00	$ 5.00	$ 30.00	$ 630.00
						TOTAL FOR YOUTH BASEBALL	**$ 20,265.00**

B	***SOFTBALL - Official***						
	Under 9 Yrs Old (1 hr & 15 min Games)	29	1	$ 50.00	$ 10.00	$ 60.00	$ 1,740.00
	Under 12 Yrs Old (1 hr & 15 min Games)	29	2	$ 55.00	$ 10.00	$ 120.00	$ 3,480.00
	Under 15 Yrs Old (1 hr & 15 min Games)	21	2	$ 65.00	$ 10.00	$ 140.00	$ 2,940.00
	SOFTBALL - Scorekeeper						
	Under 9 Yrs Old (1 hr & 15 min Games)	29	1	$ 25.00	$ 5.00	$ 30.00	$ 870.00
	Under 12 Yrs Old (1 hr & 15 min Games)	29	1	$ 25.00	$ 5.00	$ 30.00	$ 870.00
	Under 15 Yrs Old (1 hr & 15 min Games)	21	1	$ 25.00	$ 5.00	$ 30.00	$ 630.00
						TOTAL FOR YOUTH SOFTBALL	**$ 10,530.00**
C	***VOLLEYBALL - Official***						
	Under 9 Yrs Old (2 out of 3 Games)	21	1	$ 40.00	$ 10.00	$ 50.00	$ 1,050.00
	Under 12 Yrs Old (2 out of 3 Games)	21	1	$ 45.00	$ 10.00	$ 55.00	$ 1,155.00
	Under 14 Yrs Old (2 out of 3 Games)	21	1	$ 50.00	$ 10.00	$ 60.00	$ 1,260.00
	Under 16 Yrs Old (2 out of 3 Games)	21	1	$ 60.00	$ 10.00	$ 70.00	$ 1,470.00
	VOLLEYBALL - Scorekeeper						
	Under 9 Yrs Old (2 out of 3 Games)	21	1	$ 25.00	$ 5.00	$ 30.00	$ 630.00
	Under 12 Yrs Old (2 out of 3 Games)	21	1	$ 25.00	$ 5.00	$ 30.00	$ 630.00
	Under 14 Yrs Old (2 out of 3 Games)	21	1	$ 25.00	$ 5.00	$ 30.00	$ 630.00
	Under 16 Yrs Old (2 out of 3 Games)	21	1	$ 25.00	$ 5.00	$ 30.00	$ 630.00
						TOTAL FOR YOUTH VOLLEYBALL	**$ 7,455.00**

D	***BASKETBALL - Official***						
	Under 8 Yrs Old Co-Ed (4 - 8 min Quarters)	65	2	$ 40.00	$ 10.00	$ 90.00	$ 5,850.00
	Under 10 Yrs Old Boys (4 - 8 min Quarters)	65	2	$ 40.00	$ 10.00	$ 90.00	$ 5,850.00
	Under 10 Yrs Old Girls (4 - 8 min Quarters)	21	2	$ 40.00	$ 10.00	$ 90.00	$ 1,890.00
	Under 13 Yrs Old Boys (4 - 9 min Quarters)	65	2	$ 45.00	$ 10.00	$ 100.00	$ 6,500.00
	Under 13 Yrs Old Girls (4 - 9 min Quarters)	21	2	$ 45.00	$ 10.00	$ 100.00	$ 2,100.00
	Under 16 Yrs Old Boys (4 - 9 min Quarters)	32	2	$ 55.00	$ 10.00	$ 120.00	$ 3,840.00
	Under 16 Yrs Old Girls (4 - 9 min Quarters)	21	2	$ 55.00	$ 10.00	$ 120.00	$ 2,520.00
	BASKETBALL - Scorekeeper						
	Under 8 Yrs Old Co-Ed (4 - 8 min Quarters)	65	1	$ 25.00	$ 5.00	$ 30.00	$ 1,950.00
	Under 10 Yrs Old Boys (4 - 8 min Quarters)	65	1	$ 25.00	$ 5.00	$ 30.00	$ 1,950.00
	Under 10 Yrs Old Girls (4 - 8 min Quarters)	21	1	$ 25.00	$ 5.00	$ 30.00	$ 630.00
	Under 13 Yrs Old Boys (4 - 9 min Quarters)	65	1	$ 25.00	$ 5.00	$ 30.00	$ 1,950.00
	Under 13 Yrs Old Girls (4 - 9 min Quarters)	21	1	$ 25.00	$ 5.00	$ 30.00	$ 630.00
	Under 16 Yrs Old Boys (4 - 9 min Quarters)	32	1	$ 25.00	$ 5.00	$ 30.00	$ 960.00
	Under 16 Yrs Old Girls (4 - 9 min Quarters)	21	1	$ 25.00	$ 5.00	$ 30.00	$ 630.00
						TOTAL FOR YOUTH BASKETBALL	**$ 37,250.00**
E	***SOCCER - Official***						
	Under 8 Yrs Old Co-Ed (4 - 8 min Quarters)	65	2	$ 40.00	$ 10.00	$ 90.00	$ 5,850.00
	Under 10 Yrs Old Co-Ed (4 - 8 min Quarters)	65	2	$ 45.00	$ 10.00	$ 100.00	$ 6,500.00

E	Under 14 Yrs Old Boys (2 - 20 min Halves)	21	2	$ 50.00	$ 10.00	$ 110.00	$ 2,310.00
	Under 14 Yrs Old Girls (2 - 20 min Halves)	21	2	$ 50.00	$ 10.00	$ 110.00	$ 2,310.00
						TOTAL FOR YOUTH SOCCER	**$ 16,970.00**
F	***FLAG FOOTBALL - Official***						
	Under 8 Yrs Old Co-Ed (2 - 16 min Halves)	65	2	$ 40.00	$ 10.00	$ 90.00	$ 5,850.00
	Under 10 Yrs Old Co-Ed (2 - 20 min Halves)	65	2	$ 40.00	$ 10.00	$ 90.00	$ 5,850.00
	Under 13 Yrs Old Co-Ed (2 - 20 min Halves)	65	2	$ 40.00	$ 10.00	$ 90.00	$ 5,850.00
						TOTAL FOR YOUTH FLAG FOOTBALL	**$ 17,550.00**
	Adult Sports						
G	***SOFTBALL - Women's***						
	Official (1 hr & 15 min Games)	26	1	$ 35.00	$ 10.00	$ 45.00	$ 1,170.00
	Scorekeeper (1 hr & 15 min Games)	26	1	$ 25.00	$ 5.00	$ 30.00	$ 780.00
						TOTAL FOR ADULT SOFTBALL - WOMEN'S	**$ 1,950.00**
H	***SOFTBALL - Men's***						
	Official (1 hr & 15 min Games)	97	1	$ 45.00	$ 10.00	$ 55.00	$ 5,335.00
	Scorekeeper (1 hr & 15 min Games)	97	1	$ 45.00	$ 10.00	$ 55.00	$ 5,335.00
						TOTAL FOR ADULT SOFTBALL - MEN'S	**$ 10,670.00**
I	***SOFTBALL - Co-Ed***						
	Official (1 hr & 15 min Games)	74	1	$ 45.00	$ 10.00	$ 55.00	$ 4,070.00
	Scorekeeper (1 hr & 15 min Games)	74	1	$ 45.00	$ 10.00	$ 55.00	$ 4,070.00

						TOTAL FOR ADULT SOFTBALL - CO-ED	**$ 8,140.00**
J	***SOCCER - Co-Ed***						
	Official (2 - 25 min Halves)	48	2	$ 55.00	$ 10.00	$ 120.00	**$ 5,760.00**
						TOTAL FOR ADULT SOCCER - CO-ED	**$ 5,760.00**
K	***SOCCER - Women's***						
	Official (2 - 25 min Halves)	27	2	$ 55.00	$ 10.00	$ 120.00	**$ 3,240.00**
						TOTAL FOR ADULT SOCCER - WOMEN'S	**$ 3,240.00**
L	***KICKBALL - Co-Ed***						
	Official (1 hr & 15 min Games)	76	1	$ 45.00	$ 10.00	$ 55.00	**$ 4,180.00**
						TOTAL FOR ADULT KICKBALL - CO-ED	**$ 4,180.00**
M	***FLAG FOOTBALL - Co-Ed***						
	Official (2 - 20 min Halves)	65	2	$ 45.00	$ 10.00	$ 100.00	**$ 6,500.00**
						TOTAL FOR ADULT FLAG FOOTBALL - CO-ED	**$ 6,500.00**
N	***VOLLEYBALL - Co-Ed***						
	Official (2 out of 3 games)	21	1	$ 55.00	$ 10.00	$ 65.00	**$ 1,365.00**
						TOTAL FOR ADULT VOLLEYBALL - CO-ED	**$ 1,365.00**
						GRAND TOTAL FOR ALL GAMES	**$ 151,825.00**

REVISED SCHEDULE OF UNIT PRICING
ITB #23-05 Renewal #1 of 3 to CA8161

Officials and Scorekeepers for Recreation Sports Programs

NAME OF BUSINESS:	American Sports Officials, Inc.
CONTACT PERSON:	John Lavin
EMAIL ADDRESS:	John.Lavin@halifax.org
AUTHORIZED SIGNATURE:	John Lavin Digitally signed by John Lavin Date: 2025.01.15 14:32:08 -05'00'

LOT #	DESCRIPTION	QTY (Games)	Number of Officials or Scorekeepers	Price per Official or Scorekeeper	Assign Fee	Total Price per Game	Total Cost Per League
	Youth Sports						
A	***BASEBALL - Official***						
	Under 8 Yrs Old (1 hr & 15 min Games)	77	1	$ 45.00	$ 10.00	$ 55.00	$ 4,235.00
	Under 10 Yrs Old (1 hr & 15 min Games)	35	2	$ 50.00	$ 10.00	$ 110.00	$ 3,850.00
	Under 12 Yrs Old (1 hr & 15 min Games)	35	2	$ 55.00	$ 10.00	$ 120.00	$ 4,200.00
	Under 15 Yrs Old (1 hr & 30 min Games)	21	2	$ 65.00	$ 10.00	$ 140.00	$ 2,940.00
	BASEBALL - Scorekeeper						
	Under 8 Yrs Old (1 hr & 15 min Games)	77	1	$ 25.00	$ 5.00	$ 30.00	$ 2,310.00
	Under 10 Yrs Old (1 hr & 15 min Games)	35	1	$ 25.00	$ 5.00	$ 30.00	$ 1,050.00
	Under 12 Yrs Old (1 hr & 15 min Games)	35	1	$ 25.00	$ 5.00	$ 30.00	$ 1,050.00
	Under 15 Yrs Old (1 hr & 30 min Games)	21	1	$ 25.00	$ 5.00	$ 30.00	$ 630.00
						TOTAL FOR YOUTH BASEBALL	**$ 20,265.00**

B	***SOFTBALL - Official***						
	Under 9 Yrs Old (1 hr & 15 min Games)	29	1	$ 50.00	$ 10.00	$ 60.00	$ 1,740.00
	Under 12 Yrs Old (1 hr & 15 min Games)	29	2	$ 55.00	$ 10.00	$ 120.00	$ 3,480.00
	Under 15 Yrs Old (1 hr & 15 min Games)	21	2	$ 65.00	$ 10.00	$ 140.00	$ 2,940.00
	SOFTBALL - Scorekeeper						
	Under 9 Yrs Old (1 hr & 15 min Games)	29	1	$ 25.00	$ 5.00	$ 30.00	$ 870.00
	Under 12 Yrs Old (1 hr & 15 min Games)	29	1	$ 25.00	$ 5.00	$ 30.00	$ 870.00
	Under 15 Yrs Old (1 hr & 15 min Games)	21	1	$ 25.00	$ 5.00	$ 30.00	$ 630.00
						TOTAL FOR YOUTH SOFTBALL	**$ 10,530.00**
C	***VOLLEYBALL - Official***						
	Under 9 Yrs Old (2 out of 3 Games)	21	1	$ 40.00	$ 10.00	$ 50.00	$ 1,050.00
	Under 12 Yrs Old (2 out of 3 Games)	21	1	$ 45.00	$ 10.00	$ 55.00	$ 1,155.00
	Under 14 Yrs Old (2 out of 3 Games)	21	1	$ 50.00	$ 10.00	$ 60.00	$ 1,260.00
	Under 16 Yrs Old (2 out of 3 Games)	21	1	$ 60.00	$ 10.00	$ 70.00	$ 1,470.00
	VOLLEYBALL - Scorekeeper						
	Under 9 Yrs Old (2 out of 3 Games)	21	1	$ 25.00	$ 5.00	$ 30.00	$ 630.00
	Under 12 Yrs Old (2 out of 3 Games)	21	1	$ 25.00	$ 5.00	$ 30.00	$ 630.00
	Under 14 Yrs Old (2 out of 3 Games)	21	1	$ 25.00	$ 5.00	$ 30.00	$ 630.00
	Under 16 Yrs Old (2 out of 3 Games)	21	1	$ 25.00	$ 5.00	$ 30.00	$ 630.00
						TOTAL FOR YOUTH VOLLEYBALL	**$ 7,455.00**

D	***BASKETBALL - Official***						
	Under 8 Yrs Old Co-Ed (4 - 8 min Quarters)	65	2	$ 40.00	$ 10.00	$ 90.00	$ 5,850.00
	Under 10 Yrs Old Boys (4 - 8 min Quarters)	65	2	$ 40.00	$ 10.00	$ 90.00	$ 5,850.00
	Under 10 Yrs Old Girls (4 - 8 min Quarters)	21	2	$ 40.00	$ 10.00	$ 90.00	$ 1,890.00
	Under 13 Yrs Old Boys (4 - 9 min Quarters)	65	2	$ 45.00	$ 10.00	$ 100.00	$ 6,500.00
	Under 13 Yrs Old Girls (4 - 9 min Quarters)	21	2	$ 45.00	$ 10.00	$ 100.00	$ 2,100.00
	Under 16 Yrs Old Boys (4 - 9 min Quarters)	32	2	$ 55.00	$ 10.00	$ 120.00	$ 3,840.00
	Under 16 Yrs Old Girls (4 - 9 min Quarters)	21	2	$ 55.00	$ 10.00	$ 120.00	$ 2,520.00
	BASKETBALL - Scorekeeper						
	Under 8 Yrs Old Co-Ed (4 - 8 min Quarters)	65	1	$ 25.00	$ 5.00	$ 30.00	$ 1,950.00
	Under 10 Yrs Old Boys (4 - 8 min Quarters)	65	1	$ 25.00	$ 5.00	$ 30.00	$ 1,950.00
	Under 10 Yrs Old Girls (4 - 8 min Quarters)	21	1	$ 25.00	$ 5.00	$ 30.00	$ 630.00
	Under 13 Yrs Old Boys (4 - 9 min Quarters)	65	1	$ 25.00	$ 5.00	$ 30.00	$ 1,950.00
	Under 13 Yrs Old Girls (4 - 9 min Quarters)	21	1	$ 25.00	$ 5.00	$ 30.00	$ 630.00
	Under 16 Yrs Old Boys (4 - 9 min Quarters)	32	1	$ 25.00	$ 5.00	$ 30.00	$ 960.00
	Under 16 Yrs Old Girls (4 - 9 min Quarters)	21	1	$ 25.00	$ 5.00	$ 30.00	$ 630.00
						TOTAL FOR YOUTH BASKETBALL	**$ 37,250.00**
E	***SOCCER - Official***						
	Under 8 Yrs Old Co-Ed (4 - 8 min Quarters)	65	2	$ 40.00	$ 10.00	$ 90.00	$ 5,850.00
	Under 10 Yrs Old Co-Ed (4 - 8 min Quarters)	65	2	$ 45.00	$ 10.00	$ 100.00	$ 6,500.00

E	Under 14 Yrs Old Boys (2 - 20 min Halves)	21	2	$ 50.00	$ 10.00	$ 110.00	$ 2,310.00
	Under 14 Yrs Old Girls (2 - 20 min Halves)	21	2	$ 50.00	$ 10.00	$ 110.00	$ 2,310.00
						TOTAL FOR YOUTH SOCCER	**$ 16,970.00**
F	***FLAG FOOTBALL - Official***						
	Under 8 Yrs Old Co-Ed (2 - 16 min Halves)	65	2	$ 40.00	$ 10.00	$ 90.00	$ 5,850.00
	Under 10 Yrs Old Co-Ed (2 - 20 min Halves)	65	2	$ 40.00	$ 10.00	$ 90.00	$ 5,850.00
	Under 13 Yrs Old Co-Ed (2 - 20 min Halves)	65	2	$ 40.00	$ 10.00	$ 90.00	$ 5,850.00
						TOTAL FOR YOUTH FLAG FOOTBALL	**$ 17,550.00**
	Adult Sports						
G	***SOFTBALL - Women's***						
	Official (1 hr & 15 min Games)	26	1	$ 35.00	$ 10.00	$ 45.00	$ 1,170.00
	Scorekeeper (1 hr & 15 min Games)	26	1	$ 25.00	$ 5.00	$ 30.00	$ 780.00
						TOTAL FOR ADULT SOFTBALL - WOMEN'S	**$ 1,950.00**
H	***SOFTBALL - Men's***						
	Official (1 hr & 15 min Games)	97	1	$ 45.00	$ 10.00	$ 55.00	$ 5,335.00
	Scorekeeper (1 hr & 15 min Games)	97	1	$ 45.00	$ 10.00	$ 55.00	$ 5,335.00
						TOTAL FOR ADULT SOFTBALL - MEN'S	**$ 10,670.00**
I	***SOFTBALL - Co-Ed***						
	Official (1 hr & 15 min Games)	74	1	$ 45.00	$ 10.00	$ 55.00	$ 4,070.00
	Scorekeeper (1 hr & 15 min Games)	74	1	$ 45.00	$ 10.00	$ 55.00	$ 4,070.00

						TOTAL FOR ADULT SOFTBALL - CO-ED	**$ 8,140.00**
J	***SOCCER - Co-Ed***						
	Official (2 - 25 min Halves)	48	2	$ 55.00	$ 10.00	$ 120.00	**$ 5,760.00**
						TOTAL FOR ADULT SOCCER - CO-ED	**$ 5,760.00**
K	***SOCCER - Women's***						
	Official (2 - 25 min Halves)	27	2	$ 55.00	$ 10.00	$ 120.00	**$ 3,240.00**
						TOTAL FOR ADULT SOCCER - WOMEN'S	**$ 3,240.00**
L	***KICKBALL - Co-Ed***						
	Official (1 hr & 15 min Games)	76	1	$ 45.00	$ 10.00	$ 55.00	**$ 4,180.00**
						TOTAL FOR ADULT KICKBALL - CO-ED	**$ 4,180.00**
M	***FLAG FOOTBALL - Co-Ed***						
	Official (2 - 20 min Halves)	65	2	$ 45.00	$ 10.00	$ 100.00	**$ 6,500.00**
						TOTAL FOR ADULT FLAG FOOTBALL - CO-ED	**$ 6,500.00**
N	***VOLLEYBALL - Co-Ed***						
	Official (2 out of 3 games)	21	1	$ 55.00	$ 10.00	$ 65.00	**$ 1,365.00**
						TOTAL FOR ADULT VOLLEYBALL - CO-ED	**$ 1,365.00**
						GRAND TOTAL FOR ALL GAMES	**$ 151,825.00**

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 04/15/2024

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

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

PRODUCER Sun Insurance Services, Inc. 7680 Universal Blvd., Suite 198 Orlando FL 32819	**CONTACT NAME:** Scott Mauldin **PHONE (A/C, No, Ext):** (407) 781-1600 **FAX (A/C, No):** (321) 445-4667 **E-MAIL ADDRESS:** scott@suninsuranceservices.com
INSURED American Sports Officials Inc 1994 Spruce Creek Circle N Port Orange FL 32128	**INSURER(S) AFFORDING COVERAGE** — **NAIC #** **INSURER A :** MESA UNDERWRITERS SPECIALTY INSURANCE **INSURER B :** **INSURER C :** **INSURER D :** **INSURER E :** **INSURER F :**

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	[X] **COMMERCIAL GENERAL LIABILITY** [ ] CLAIMS-MADE [ ] OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: [X] POLICY [ ] PRO-JECT [ ] LOC [ ] OTHER:			MP000900900173306	03/14/2024	03/14/2025	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 1,000,000 $ 100,000 $ 5,000 $ 1,000,000 $ 2,000,000 $ 2,000,000
	AUTOMOBILE LIABILITY [ ] ANY AUTO [ ] OWNED AUTOS ONLY [ ] SCHEDULED AUTOS [ ] HIRED AUTOS ONLY [ ] NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ $ $ $
	[ ] **UMBRELLA LIAB** [ ] OCCUR [ ] **EXCESS LIAB** [ ] CLAIMS-MADE [ ] DED [ ] RETENTION $						EACH OCCURRENCE AGGREGATE	$ $
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y / N ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? [ ] **(Mandatory in NH)** If yes, describe under DESCRIPTION OF OPERATIONS below	N / A					[ ] PER STATUTE [ ] OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	 $ $ $

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

CERTIFICATE HOLDER

For Information Only

CANCELLATION

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

AUTHORIZED REPRESENTATIVE

Scott Mauldin

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CITY OF PORT ORANGE
STANDARD CONTRACT FOR SERVICES

This Standard Contract for Services ("Contract") is entered into this 20 day of June, **2023**, by and between the **CITY OF PORT ORANGE**, a Florida municipal corporation, whose principal address is 1000 City Center Circle, Port Orange, Florida 32129 (the "City"), and **AMERICAN SPORTS OFFICIALS, INC.** ("Contractor"), a Florida corporation, whose principal address is 1908 Sun Valley Street, Titusville, Florida 32780. The City and Contractor are collectively referred to herein as the "Parties."

1. *Provision of Services*

(a) The Contractor hereby agrees to provide Officials and Scorekeepers, and as more specifically described in Intent to Bid 23-05 ("ITB 23-05"). This Contract together with ITB 23-05, and Contractor's submittal, all of which may be referred to as the "Contract" and all of which are made a part hereof by reference shall constitute the formal written Contract between the City and Contractor. For convenience, Section 3 Scope of Work of ITB 23-01, and the Bid Tabulation as submitted by Contractor in Contractor's Submittal are attached hereto as Exhibit "1." A complete copy of ITB 23-05 is available in the Office of the City Clerk. Contractor represents that they are familiar with the documents that make up the Contract, as referenced hereinabove.

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

Term: This Contract shall become effective on the last date the Contract is signed by the Parties ("Effective Date"). The Contract shall commence upon execution of the Contract by the Parties, and shall continue for a period of two (2) years (the "Term").

Renewals: This Contract may be renewed for three (3) optional one-year periods, upon written agreement of the Parties, City Manager approval, and budget appropriation, unless either Party provides at least thirty (30) days notice to the other Party of their intent not to renew the Contract.

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

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

Authorization for Services: This Contract standing alone does not authorize the purchase of any goods or services or require the City to place any orders for goods or service. Authorization for the performance of services by the Contractor under this Contract shall be in the form of written Notice to Proceed and written Purchas Order issued and executed by the City and signed by the Contractor. The City reserves the right to contract with other parties for the goods and services contemplated by this Contract, as determined in the City's sole and absolute discretion.

2. *City Obligations*. In return for the services identified above, the City agrees to compensate Contractor at the prices set forth in Exhibit "1" attached hereto, subject to a limit not to exceed budget appropriation per fiscal year. All

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

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

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

5. *Termination for Convenience of the City*

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

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

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

(i) cease any further deliveries or work due under this Contract, on the date, and to the extent, which may be specified in the Notice;

(ii) place no further orders with any subcontractors except as may be necessary to perform that portion of this Contract not subject to the Notice;

(iii) terminate all subcontracts except those made with respect to contract performance not subject to the Notice;

(iv) settle all outstanding liabilities and claims which may arise out of such termination, with the ratification of the Finance Director of Port Orange; and

(v) use best efforts to mitigate any damages which may be sustained by the Contractor as a consequence of termination under this clause.

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

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

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

(i) With respect to all Contract performance prior to the effective date of Notice of Termination, the total of:

(1) the cost of work performed or supplies delivered;

(2) the cost of settling and paying any reasonable claims as provided in paragraph (c) (iv), above;

(3) a sum as profit on (a) determined by the Finance Director to be fair and reasonable.

(ii) The total sum to be paid under (i) above shall not exceed the contract price, as further reduced by the contract price of work or supplies not terminated.

(g) In the event that the Contractor is not satisfied with any payments which the Finance Director shall determine to be due under this clause, the Contractor may appeal any claim to the City Council in accordance with Paragraph 23 of this contract concerning disputes.

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

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

8. *Examination of Records*

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

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

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

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

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

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

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

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

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

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

10. *Termination for Non-Appropriation of Funds*

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

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

11. *Insurance*. Contractor shall maintain insurance, as required herein, during the life of this Contract. Contractor shall provide to the City, a certificate of insurance endorsing the City of Port Orange as an additional named insured. All insurance coverages of the Contractor shall be primary and non-contributory. All insurance coverages of the Contractor shall not seek contribution from any other insurance or self-insurance available to the City. Contractor may use leased employees if the Contractor ensures that all workers who access the jobsite are employees covered by the employee leasing company. Any Contractor using a leased employee shall complete the City's Leased Employee Affidavit, attached hereto as Exhibit "2." Any Contractor utilizing sub-contractors or independent contractors, shall ensure that said sub-contractor or independent contractor has completed and returned to the City, the City's Release and Waiver of Liability, attached hereto as Exhibit "2," prior to the sub-contractor or independent contractor commencing any work or services as provided by this Contract.

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

Contractor shall require and ensure each of its subcontractors to maintain, until the completion of the

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

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

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

Should at any time the Contractor, subcontractors, or independent contractors not maintain the insurance coverages required herein, or provide an executed release and waiver of liability, as provided in Exhibit "2," the City may terminate the Contract or at its sole discretion shall be authorized to purchase such coverages and charge the Contractor for such coverages purchased. The City shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverages purchased or the insurance company or companies used. The decision of the City to purchase such insurance coverages shall in no way be construed to be a waiver of any of its rights under the Contract.

Standard Insurance Requirements			
	Insurance	**Standards**	**Additional Requirements**
☐	Workers' Compensation The Contractor shall maintain coverage for its employees with statutory workers' compensation limits, and no less than the limits indicated in the Schedule of Limits for Employers' Liability. Said coverage shall include a waiver of subrogation in favor of the City. **The City will not accept elective exemptions.** Any contractor using an employee leasing company shall complete the Leased Employee Affidavit (Exhibit A).	Contract Amount — Limits Up to $10 million — Statutory/$500,000 $10 - $20 million — Statutory/$1,000,000 Contracts over $20 million To Be Determined by the City.	☐If Contract requires work on or about navigable waters, Longshoreman's and Harbor Workers' Coverage required. ☐If vessels involved, Jones Act coverage with limits of $500,000 required.
☒	Comprehensive General Liability (including Completed Operations and Contractual Liability	Limits: Combined Single Limit Bodily Injury and Property damage $1,000,000 occurrence $1,000,000 aggregate	☐When work is on or under Railroad rights of way or properties, the Contractor shall take out and maintain during the life of the Contract, Railroad protective liability and property damage insurance in amounts as requested by the Railroad.
☐	Comprehensive Business, Automobile Liability to include all owned, hired and non-owned automobiles.	Limits: Auto Liability Body Injury and Property Damage: $1,000,000 each occurrence $1,000,000 aggregate	

Additional Insurance Requirements				
☐	Property Insurance Builders Risk. Additional Coverage:	Limits:	Buildings - Completed value of Contract. "All Risk" coverage on latest ISO for or its equivalent. Permission granted to occupy. Owner named as insured AIMA	If Agreement requires handling or installation of Owner's equipment, coverage should be furnished on "All Risk" form, including transit and Owner shall be named.
☐	Professional Liability	Limits:	Coverage - $1,000,000	
☐	Installation Floater (IT)	Limits:	Coverage - $ To be determined.	
☐	Contractor Pollution Liability	Limits:	Coverage - $1,000,000	
☐	Errors and Omissions	Limits:	Coverage - $1,000,000	
☐	Umbrella Policy	Limits:	Coverage – $ To be determined.	
☐	Payment and Performance Bond Required	Limits:	Coverage - Equal to amount of Contract.	
☐	**City Manager waives Payment and Performance Bond for work under $25,000.00.**			
☒	**Unless otherwise required by law, City Manager waives Insurance for Comprehensive Business, Automobile Liability.**			

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

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

14. *Modifications or Changes to this Contract*

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

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

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

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

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

for tort. Nothing in this Contract shall inure to the benefit of any third party for the purpose of allowing any claim against the City which would otherwise be barred under the Doctrine of Sovereign Immunity or operation of law.

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

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

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

18. *Inspection*

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

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

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

19. *Liability for Loss or Damage*.

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

(b) To the fullest extent permitted by law, in addition to the express duty to indemnify City when there is any causal connection between Contractor's work and any injury, loss, damage, death or property damage, Contractor expressly undertakes a duty to defend City as a separate duty, independent of and broader than the duty to indemnify. The duty to defend agreed to by Contractor hereby expressly include all costs of litigation, attorney's fees, settlement costs and reasonable expenses in connection with the litigation, whether or not the claims made for loss, injury, damage or property damage are valid or groundless and regardless of whether the defense of City is maintained by the City or assumed by Contractor as long as the claims made could be causally connected to Contractor as reasonable determined by City.

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

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

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

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

21. *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.

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

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

24. *Controlling Law*. **THIS AGREEMENT CONTAINS IMPORTANT MATTERS AFFECTING LEGAL RIGHTS AND IS ACCEPTED AND ENTERED INTO IN FLORIDA AND ANY QUESTION REGARDING ITS VALIDITY, CONSTRUCTION, ENFORCEMENT, OR PERFORMANCE SHALL BE GOVERNED BY FLORIDA LAW. ANY LEGAL PROCEEDING ARISING FROM OR IN ANY WAY REGARDING THE AGREEMENT SHALL HAVE ITS VENUE LOCATED EXCLUSIVELY IN THE CIRCUIT COURT OF VOLUSIA COUNTY, FLORIDA, AND THE**

PARTIES HEREBY EXPRESSLY CONSENT AND SUBMIT THEMSELVES TO THE PERSONAL JURISDICTION AND VENUE OF THE COURT.

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

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

27. *Notice*. For purposes of this agreement, notices shall be sent as follows:

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

Copy to:
City of Port Orange
Attention: Susan Lovallo, Parks and Recreation Director
1000 City Center Circle
Port Orange, Florida 32129
(386) 506-5852

Contractor:
American Sports Officials, Inc.
Attention: Royce M. Morrison, Jr., CEO
1994 Spruce Creek Circle North
Port Orange, Florida 32128
(386) 682-9156 - Telephone
Jlavin12@att.net - E-Mail

1908 Sun Valley Street
Titusville, Florida 32780

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

28. *Contract Construction*

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

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

Witnesses:

Printed Name: JOHN LAVIN

Monica Wiech

Printed Name: Monica Wiech

AMERICAN SPORTS OFFICIALS, INC.

By: Royce Morrison

Royce M. Morrison, Jr, CEO

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

Date: 6/6/2023

CITY OF PORT ORANGE

By: _____
Donald O. Burnette, Mayor

Date: 6-20-2023

ATTEST:

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

Date: 6-20-2023

EXHIBIT "1"

Contractor's Quote, Section 3 Scope of Work

Consisting of 7 Pages

(ATTACHMENT 1) SCHEDULE OF UNIT PRICING

ITB #23-05

OFFICIALS AND SCOREKEEPERS

Completed (Attachment 1) Schedule of Unit Pricing MUST be included with Bid Submission

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

NAME OF BUSINESS:	American Sports Officials, Inc.
CONTACT PERSON:	John Lavin
EMAIL ADDRESS:	JLAVIN12@ATT.NET
AUTHORIZED SIGNATURE:	

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

Youth Sports Leagues

LOT #	DESCRIPTION	QTY (Games)	Number of Officials or Scorekeepers	Price Per Official or Scorekeeper	Price Per Game	Price Per League
A	***BASEBALL - Official***					
	Under 8 Yrs Old (1 hr & 15 min Games)	77	1	$ 45.00	$ 55.00	$ 4,235.00
	Under 10 Yrs Old (1 hr & 15 min Games)	35	2	$ 50.00	$ 110.00	$ 3,850.00
	Under 12 Yrs Old (1 hr & 15 min Games)	35	2	$ 55.00	$ 120.00	$ 4,200.00
	Under 15 Yrs Old (1 hr & 30 min Games)	21	2	$ 65.00	$ 140.00	$ 2,940.00
	BASEBALL - Scorekeeper					
	Under 8 Yrs Old (1 hr & 15 min Games)	77	1	$ 25.00	$ 30.00	$ 2,310.00
	Under 10 Yrs Old (1 hr & 15 min Games)	35	1	$ 25.00	$ 30.00	$ 1,050.00
	Under 12 Yrs Old (1 hr & 15 min Games)	35	1	$ 25.00	$ 30.00	$ 1,050.00
	Under 15 Yrs Old (1 hr & 30 min Games)	21	1	$ 25.00	$ 30.00	$ 630.00
					TOTAL FOR YOUTH BASEBALL:	$ 20,265.00
B	***SOFTBALL - Official***					
	Under 9 Yrs Old (1 hr & 15 min Games)	29	1	$ 50.00	$ 60.00	$ 1,740.00
	Under 12 Yrs Old (1 hr & 15 min Games)	29	2	$ 55.00	$ 120.00	$ 3,480.00
	Under 15 Yrs Old (1 hr & 15 min Games)	21	2	$ 65.00	$ 140.00	$ 2,940.00
	SOFTBALL - Scorekeeper					
	Under 9 Yrs Old (1 hr & 15 min Games)	29	1	$ 25.00	$ 30.00	$ 870.00
	Under 12 Yrs Old (1 hr & 15 min Games)	29	1	$ 25.00	$ 30.00	$ 870.00
	Under 15 Yrs Old (1 hr & 15 min Games)	21	1	$ 25.00	$ 30.00	$ 630.00
					TOTAL FOR YOUTH SOFTBALL:	$ 10,530.00

LOT #	DESCRIPTION	QTY (Games)	Number of Officials or Scorekeepers	Price Per Official or Scorekeeper	Price Per Game	Price Per League
C	***VOLLEYBALL - Official***					
	Under 9 Yrs Old (2 out of 3 Games)	21	1	$ 40.00	$ 50.00	$ 1,050.00
	Under 12 Yrs Old (2 out of 3 Games)	21	1	$ 45.00	$ 55.00	$ 1,155.00
	Under 14 Yrs Old (2 out of 3 Games)	21	1	$ 50.00	$ 60.00	$ 1,260.00
	Under 16 Yrs Old (2 out of 3 Games)	21	1	$ 60.00	$ 70.00	$ 1,470.00
	VOLLEYBALL - Scorekeeper					
	Under 9 Yrs Old (2 out of 3 Games)	21	1	$ 25.00	$ 30.00	$ 630.00
	Under 12 Yrs Old (2 out of 3 Games)	21	1	$ 25.00	$ 30.00	$ 630.00
	Under 14 Yrs Old (2 out of 3 Games)	21	1	$ 25.00	$ 30.00	$ 630.00

	Under 16 Yrs Old (2 out of 3 Games)	21	1	$ 25.00	$ 30.00	$ 630.00
					TOTAL FOR YOUTH VOLLEYBALL:	$ 7,455.00
D	*BASKETBALL - Official*					
	Under 8 Yrs Old Co-Ed (4 - 8 min Quarters)	65	2	$ 40.00	$ 90.00	$ 5,850.00
	Under 10 Yrs Old Boys (4 - 8 min Quarters)	65	2	$ 40.00	$ 90.00	$ 5,850.00
	Under 10 Yrs Old Girls (4 - 8 min Quarters)	21	2	$ 40.00	$ 90.00	$ 1,890.00
	Under 13 Yrs Old Boys (4 - 9 min Quarters)	65	2	$ 45.00	$ 100.00	$ 6,500.00
	Under 13 Yrs Old Girls (4 - 9 min Quarters)	21	2	$ 45.00	$ 100.00	$ 2,100.00
	Under 16 Yrs Old Boys (4 - 9 min Quarters)	32	2	$ 55.00	$ 120.00	$ 3,840.00
	Under 16 Yrs Old Girls (4 - 9 min Quarters)	21	2	$ 55.00	$ 120.00	$ 2,520.00
	BASKETBALL - Scorekeeper					
	Under 8 Yrs Old Co-Ed (4 - 8 min Quarters)	65	1	$ 25.00	$ 30.00	$ 1,950.00
	Under 10 Yrs Old Boys (4 - 8 min Quarters)	65	1	$ 25.00	$ 30.00	$ 1,950.00
	Under 10 Yrs Old Girls (4 - 8 min Quarters)	21	1	$ 25.00	$ 30.00	$ 630.00
	Under 13 Yrs Old Boys (4 - 9 min Quarters)	65	1	$ 25.00	$ 30.00	$ 1,950.00
	Under 13 Yrs Old Girls (4 - 9 min Quarters)	21	1	$ 25.00	$ 30.00	$ 630.00
	Under 16 Yrs Old Boys (4 - 9 min Quarters)	32	1	$ 25.00	$ 30.00	$ 960.00
	Under 16 Yrs Old Girls (4 - 9 min Quarters)	21	1	$ 25.00	$ 30.00	$ 630.00
					TOTAL FOR YOUTH BASKETBALL:	$ 37,250.00
E	*SOCCER - Official*					
	Under 8 Yrs Old Co-Ed (4 - 8 min Quarters)	65	2	$ 40.00	$ 90.00	$ 5,850.00
	Under 10 Yrs Old Co-Ed (4 - 8 min Quarters)	65	2	$ 45.00	$ 100.00	$ 6,500.00
	Under 14 Yrs Old Boys (2 - 20 min Halves)	21	2	$ 50.00	$ 110.00	$ 2,310.00
	Under 14 Yrs Old Girls (2 - 20 min Halves)	21	2	$ 50.00	$ 110.00	$ 2,310.00
					TOTAL FOR YOUTH SOCCER:	$ 16,970.00
F	*FLAG FOOTBALL - Official*					
	Under 8 Yrs Old Co-Ed (2 - 16 min Halves)	65	2	$ 40.00	$ 90.00	$ 5,850.00
	Under 10 Yrs Old Co-Ed (2 - 20 min Halves)	65	2	$ 40.00	$ 90.00	$ 5,850.00
	Under 13 Yrs Old Co-Ed (2 - 20 min Halves)	65	2	$ 40.00	$ 90.00	$ 5,850.00
					TOTAL FOR YOUTH FLAG FOOTBALL:	$ 17,550.00

LOT #	DESCRIPTION	QTY (Games)	Number of Officials or Scorekeepers	Price Per Official or Scorekeeper	Price Per Game	Price Per League
	Adult Sports Leagues					
	SOFTBALL - Women's					
G	Official (1 hr & 15 min Games)	26	1	$ 35.00	$ 45.00	$ 1,170.00
	Scorekeeper (1 hr & 15 min Games)	26	1	$ 25.00	$ 30.00	$ 780.00
					TOTAL FOR ADULT SOFTBALL - WOMEN'S:	$ 1,950.00
	SOFTBALL - Men's					
H	Official (1 hr & 15 min Games)	97	1	$ 35.00	$ 45.00	$ 4,365.00
	Scorekeeper (1 hr & 15 min Games)	97	1	$ 25.00	$ 30.00	$ 2,910.00
					TOTAL FOR ADULT SOFTBALL - MEN'S:	$ 7,275.00
	SOFTBALL - Co-Ed					
I	Official (1 hr & 15 min Games)	74	1	$ 35.00	$ 45.00	$ 3,330.00
	Scorekeeper (1 hr & 15 min Games)	74	1	$ 25.00	$ 30.00	$ 2,220.00

	TOTAL FOR ADULT SOFTBALL - CO-ED:					$ 5,550.00
	SOCCER - Co-Ed					
J	Official (2 - 25 min Halves)	48	2	$ 55.00	$ 120.00	$ 5,760.00
	TOTAL FOR ADULT SOCCER - CO-ED:					$ 5,760.00
	SOCCER - Women's					
K	Official (2 - 25 min Halves)	27	2	$ 55.00	$ 120.00	$ 3,240.00
	TOTAL FOR ADULT SOCCER - WOMEN'S:					$ 3,240.00
	KICKBALL - Co-Ed					
L	Official (1 hr & 15 min Games)	76	1	$ 40.00	$ 50.00	$ 3,800.00
	TOTAL FOR ADULT KICKBALL - CO-ED:					$ 3,800.00
	FLAG FOOTBALL - Co-Ed					
M	Official (2 - 20 min Halves)	65	2	$ 45.00	$ 100.00	$ 6,500.00
	TOTAL FOR ADULT FLAG FOOTBALL - CO-ED:					$ 6,500.00
	VOLLEYBALL - Co-Ed					
N	Official (2 out of 3 games)	21	1	$ 55.00	$ 65.00	$ 1,365.00
	TOTAL FOR ADULT VOLLEYBALL - CO-ED:					$ 1,365.00
	GRAND TOTAL FOR ALL LOTS:					$ 145,460.00

SECTION 3 – SCOPE OF WORK

A. Personnel

a. The Contractor is responsible for all Level one (1) background checks of all Officials or Scorekeepers in accordance with Section 435.03 of the Florida Statutes.

b. The City of Port Orange reserves the right to review all Level one (1) background checks upon request.

c. The City shall communicate its evaluation to the Contractor within Forty-Eight (48) hours which deems any Official or Scorekeeper unqualified to officiate in league games and/or tournaments. League Coordinator retains the right to refuse any Official or Scorekeeper for any reason at any time.

d. The Contractor provides the City of Port Orange with trained and qualified Officials and Scorekeepers for all regularly scheduled season games and tournaments and various internal sports programming.

e. The Contractor trains and evaluates all Officials and Scorekeepers for the various sports leagues. It is mandatory that all Officials maintain a professional demeanor and appearance, including the proper uniform and equipment, as well as physical condition required by governing official's associations.

f. It is the Contractor's responsibility to ensure that each Official and Scorekeeper provides his/her own transportation. Furthermore, it is the Contractor's responsibility to ensure all Official's wear the proper uniform and equipment. It is not the responsibility of the City of Port Orange to provide or pay for an Official's uniform or equipment.

g. The Contractor provides all payroll and payment services for each Official and Scorekeeper.

h. Officials and Scorekeepers are overseeing and officiating sports events on behalf of the City of Port Orange. As such, they are authorized and required to enforce all pertinent rules and bylaws established for various sports leagues, with no deviation. Officials Association Rules which may pertain are:

1. Babe Ruth League
2. National Collegiate Athletic Association (NCAA)
3. National Federation of State High School Association (NFHS)
4. Florida Youth Basketball Association (FYBA)
5. National Softball Association (NSA)

i. Local bylaws may be written by the Parks and Recreation Department which may supplement and, in some cases, modify the rules. The League Coordinator or any field representative reserves the authority to modify the rules for the good of the programs. Such modifications shall be in writing.

B. Pre-Season

a. The Contractor shall meet with the League Coordinator at least two (2) weeks prior to the start of each scheduled season to discuss rules, financial, and personnel changes regarding the programs.

b. The Contractor shall allow the City of Port Orange access to view the scheduling software they utilize.

c. The Contractor shall meet with all hired Officials and Scorekeepers to discuss league regulations and rules.

C. Game Day

a. Officials and Scorekeepers shall arrive at their assigned game sites a mandatory fifteen (15) minutes prior to the scheduled game, at which time the Officials and Scorekeepers will report for game supplies and information regarding schedule changes.

b. Game cancellations by the City may result in payment of Officials and Scorekeepers if games are cancelled within 90 minutes of official game start time.

c. Officials and Scorekeepers shall begin each contest at the scheduled game time.

d. Officials and Scorekeepers shall interpret and convey the playing rules and regulations as governed by the Recreation Division and governing associations.

e. Officials shall forfeit any game due to excessive unsportsmanlike conduct including, but not limited to, the use of profanity, fighting, and/or any incidents related to the use of drugs or alcohol.

f. If any coach, player, or spectator is ejected from a game, or there are protests or any other problems, all pertinent information shall be annotated on the game sheet/card by the Official(s). Ejections must include the name of the individual ejected. Protests may be made by any team representative at any time during the game. The Official(s) shall notify the Contractor in writing, the following day of any ejections, protests, and/or unusual circumstances. If the following day is a weekend or holiday, notification will be made on the first normal workday following the weekend or holiday. Additionally, the Contractor shall notify the League Coordinator within twenty-four (24) hours of said incident. Such notification shall include a written report from the actual game; with a detailed description of all the circumstances surrounding the incident which gave rise to the protest or ejection. Regarding protests, only the League Coordinator can make the final determination of whether the protest is valid based on the governing rules. The City Parks and Recreation Department shall make the final determination on protest; no further appeals can be made after the final decision.

D. Estimated Games, Contests and Tournaments

The U stands for under; for example, 10U means 10 and under.

Youth Sports:

Lot A - Baseball

8U 77 X 1 Official (One hour and 15-minute games)
10U 35 X 2 Officials (One hour and 15-minute games)
12U 35 X 2 Officials (One hour and 15-minute games)
15U 21 X 2 Officials (One hour and 30-minute games)

8U 77 X 1 Scorekeeper (One hour and 15-minute games)
10U 35 X 1 Scorekeeper (One hour and 15-minute games)
12U 35 X 1 Scorekeeper (One hour and 15-minute games)
15U 21 X 1 Scorekeeper (One hour and 30-minute games)

Lot B - Softball

9U 29 X 1 Official (One hour and 15-minute games)
12U 29 X 2 Officials (One hour and 15-minute games)
15U 21 X 2 Officials (One hour and 15-minute games)

9U 29 X 1 Scorekeeper (One hour and 15-minute games)
12U 29 X 1 Scorekeeper (One hour and 15-minute games)
15U 29 X 1 Scorekeeper (One hour and 15-minute games)

Lot C - Volleyball

9U	21 X 1 Official (2 out of 3 games)
12U	21 X 1 Official (2 out of 3 games)
14U	21 X 1 Official (2 out of 3 games)
16U	21 X 1 Official (2 out of 3 games)

9U	21 X 1 Scorekeeper (2 out of 3 games)
12U	21 X 1 Scorekeeper (2 out of 3 games)
14U	21 X 1 Scorekeeper (2 out of 3 games)
16U	21 X 1 Scorekeeper (2 out of 3 games)

Lot D - Basketball

8U co-ed	65 X 2 Officials (4 – 8-minute quarters)
10U boys	65 X 2 Officials (4 – 8-minute quarters)
10U girls	21 X 2 Officials (4 - 8-minute quarters)
13U boys	65 X 2 Officials (4 - 9-minute quarters)
13U girls	21 X 2 Officials (4 - 9-minute quarters)
16U boys	32 X 2 Officials (4 – 9-minute quarters)
16U girls	21 X 2 Officials (4 – 9-minute quarters)

8U co-ed	65 X 1 Scorekeeper (4 – 8-minute quarters)
10U boys	65 X 1 Scorekeeper (4 – 8-minute quarters)
10U girls	21 X 1 Scorekeeper (4 - 8-minute quarters)
13U Boys	65 X 1 Scorekeeper (4 - 9-minute quarters)
13U girls	21 X 1 Scorekeeper (4 - 9-minute quarters)
16U boys	32 X 1 Scorekeeper (4 – 9-minute quarters
16U girls	21 X 1 Scorekeeper (4 – 9-minute quarters)

Lot E - Soccer

U8 co-ed	65 X 2 Officials (4 – 8-minute quarters)
U10 co-ed	65 X 2 Officials (4 – 8-minute quarters)
U14 boys	21 X 2 Officials (2 – 20-minute halves)
U14 girls	21 X 2 Officials (2 – 20-minute halves)

Lot F - Flag Football

8U co-ed	65 X 2 Officials (2 – 16-minute halves)
10U co-ed	65 X 2 Officials (2 – 16-minute halves)
13U co-ed	65 X 2 Officials (2- 20-minute halves)

Adult Sports:

Lot G – Women's Softball
26 X 1 Official (One hour and 15-minute games)
26 X 1 Scorekeeper (One hour and 15-minute games)

Lot H -Men's softball
97 X 1 Official (One hour and 15-minute games)
97 X 1 Scorekeeper (One hour and 15-minute games)

Lot I - Co-ed softball
74 X 1 Official (One hour and 15-minute games)
74 X 1 Scorekeeper (One hour and 15-minute games)

Lot J - Co-ed Soccer
48 X 2 Official (2 – 25-minute halves)

Lot K – Women's Soccer
27 X 2 Official (2 - 25-minute halves)

Lot L - Co-ed Kickball
76 X 1 Official (One hour and 15-minute games)

Lot M - Co-ed Flag Football
65 X 2 Official (2 – 20 min halves)

Lot N – Coed Volleyball
21 X 1 Official (2 out of 3 games)

Please note: Games, Tournaments, and sports may be added and or subtracted during the contract year. Sufficient notice (at least 90 minutes prior to game time) will be given for any changes to Officials and scorekeepers.

END OF SECTION

EXHIBIT "2"

Leased Employee Affidavit and Release and Waiver of Liability

Consisting of 2 Pages

This certificate must be completed and returned by the Awarded Contractor, upon issuance of a Notice of Intent to Award by the Purchasing Division of the City of Port Orange.

LEASED EMPLOYEE AFFIDAVIT

EXHIBIT CONTRACT #_____

☐ I hereby certify that I do not utilize an employee leasing company or employ leased employees. I further agree to notify the City in the event these circumstances change.

OR

☐ I affirm that an employee leasing company provides my workers' compensation coverage. I further understand that my contract with the employee leasing company limits my workers' compensation coverage to enrolled worksite employees only. My leasing arrangement does not cover un-enrolled worksite employees, independent contractors, uninsured sub-contractors or casual labor exposure.

I hereby certify that 100% of my workers are covered as worksite employees with the employee leasing company. I certify that I do not hire any casual or uninsured labor outside the employee leasing agreement. I agree to notify the City in the event that I have any workers not covered by the employee leasing workers' compensation policy. In the event that I have any workers not subject to the employee leasing arrangement, I agree to obtain a separate workers' compensation policy to cover these workers. I further agree to provide the City with a certificate of insurance providing proof of workers' compensation coverage prior to these workers entering any City jobsite.

I further agree to notify the City if my employee leasing arrangement terminates with the employee leasing company and I understand that I am required to furnish proof of replacement workers' compensation coverage prior to the termination of the employee leasing arrangement.

I certify that I have workers' compensation coverage for all of my workers through the employee leasing arrangement specified below:

Name of Employee Leasing Company: _____

Workers' Compensation Carrier: _____

A.M. Best Rating of Carrier: _____

Inception Date of Leasing Arrangement: _____

I further agree to notify the City in the event that I switch employee leasing companies. I recognize that I have an obligation to supply an updated workers' compensation certificate to the City that documents the change of carrier.

I hereby attest that the information provided in this affidavit is accurate. In addition, I certify that I have read and understand the above statements regarding my responsibility under the workers' compensation coverage.

Name of Contractor: _____

Signature of Owner/Officer: _____

Title: _____ Date: _____

RELEASE AND WAIVER OF LIABILITY

I, _____, am an independent contractor ("Independent Contractor") who having entered into an agreement with _____, ("Contractor") to provide services to the Contractor in my capacity as an independent contractor and separate of the City, do hereby execute this Release and Waiver of Liability ("Release"), releasing the City of Port Orange, and each of its successors, assigns, elected officials, officers, employees, and agents (collectively referred to herein as the "City") from any and all liability, claim, or demands of whatever kind of nature, either in law or in equity, which arises or may hereafter arise from the services provided to the City by the Contractor in a contract dated _____ for provision of _____ ("Contract"), or occurring while I am engaged by the Contractor in my capacity as an independent contractor providing said services, as more fully set forth hereinbelow. Independent Contractor understands that he/she is responsible for his/her own insurance coverage in the event of personal injury or illness as a result of services provided to the City.

1. **Waiver and Release.** I, Independent Contractor, for myself and my heirs, executors, administrators and assigns, hereby release, waive, discharge, and hold harmless, City from any and all liability, claim, or demands of whatever kind of nature, either in law or in equity, which arises or may hereafter arise from the provision of services under the Contract, or occurring while I am engaged by the Contractor in my capacity as an independent contractor providing said services. I understand and acknowledge that this Release discharges the City from any liability or claim that I may have against the City with respect to bodily injury, personal injury, illness, death, property damage, or any other claim that may result from the provision of services under the Contract, or occurring while I am engaged by the Contractor in my capacity as an independent contractor, providing said services.
2. **Insurance.** Further, I understand that the City does not assume any responsibility for or obligation to provide me with financial or other assistance, including but not limited to medical, health, workers' compensation, or disability benefits or insurance. I expressly waive any such claim for compensation or liability on the part of the City beyond what may be offered freely in the event of injury or medical expense incurred by me.
3. **Medical Treatment.** I hereby release and discharge the City from any claim whatsoever which arises or may hereafter arise on account of any first-aid treatment or other medical services rendered in connection with an emergency during my tenure as an Independent Contractor providing services to the Contractor, as it relates to the Contract.
4. **Assumption of Risk.** I understand that the services I provide to the Contractor in furtherance of the Contract may include inherently dangerous activities. As an Independent Contractor, I hereby expressly assume the risk of injury or harm from these activities and release the City from any and all liability.
5. **Independent Contractor.** I am an independent contractor as I am an individual engaged in an independent trade, occupation, profession, or business, with no employees. I have been hired as an independent contractor by the Contractor who is providing services to the City of Port Orange. The actual work performed by me is not overseen or instructed by the City of Port Orange. I am compensated by the Contractor at a fixed or contract rate. The business operations of the City of Port Orange are separate and distinct from my services being provided as a result of my agreement with the Contractor.
6. **Other.** As an Independent Contractor, I expressly agree that this Release is intended to be as broad and inclusive as permitted by the laws of the State of Florida and that this Release shall be governed by and interpreted in accordance with the laws of the State of Florida. I agree that if any clause or provision of this Release is deemed invalid, the enforceability of the remaining provisions of this Release shall not be affected.

By signing below, I express my understanding and enter into this Release and Waiver of Liability willingly and voluntarily.

Independent Contractor:

_____ _____

(Signature) *(Printed Name)*

Date: _____

CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 4/15/2025

SUBJECT: (C7e) Approval of Change Order No. 1 to Task Authorization No. 7 with Kimley-Horn and Associates, Inc. under the Master Contract for Engineering & Environmental Services (RFSQ No. 21-03) related to the City-Wide Stormwater Master Plan Update

DEPARTMENT: Engineering

GOAL: 2 - Infrastructure

RECOMMENDED MOTION: Move to approve Change Order No. 1 to Task Authorization No. 7 with Kimley-Horn and Associates, Inc. under the Master Contract for Engineering & Environmental Services (RFSQ No. 21-03) and authorize the Mayor and City Clerk to execute all contract documents.

SUMMARY: The Engineering Department is requesting approval of Change Order No 1 to Task Authorization No. 7 for the City-Wide Stormwater Master Plan Update in the amount of $161,109. The revised amount for the project is $650,929.

On August 1, 2023, the City approved Task Authorization No. 7 for the City-Wide Stormwater Master Plan. The objectives of the proposed Stormwater Master Plan Update are to analyze existing flooding and water quality issues within the city, to propose potential solutions that can be considered for future Capital Improvement Plan (CIP) Projects, and to provide a list of Repair and Restoration (R&R) improvements to enhance flood protection, stormwater conveyance, and water quality with cost estimates. Prioritization of the CIP and R&R projects will be based on cost efficiency, flood reduction, and water quality improvement. Additionally, having a current Stormwater Master Plan is necessary to be eligible for most grant funding opportunities and will assist with prioritization of that funding.

Change Order No. 1 to Task Authorization No. 7 is for additional time for Kimley Horn to attend and prepare for additional Stormwater Master Plan Project meetings, conduct in-person meetings to prepare for the workshops with individual neighborhoods, assist in developing and implementing a Stormwater website, and integrate and analyze recent or proposed development areas into the existing conditions model for the Stormwater Master Plan. This change order also includes an additional 60 days to move the Final Completion date from April 30, 2025, to June 29, 2025, in order to complete the added scope.

PRESENTER: Junos Reed

ATTACHMENTS:

1.	Kimley-Horn and Associates, Inc. Task Authorization No 7 to Change Order 1	Kimley-Horn and Associates, Inc. Task Authorization No 7 to Change Order 1.pdf
2.	25.03.12 Port Orange Amendment #1	25.03.12 Port Orange Amendment #1.pdf
3.	Notice to Proceed - Kimley-Horn TA7	Notice to Proceed - Kimley-Horn TA7.pdf
4.	Kimley-Horn Contract CA7763	Kimley-Horn Contract CA7763.pdf
5.	Executed Kimley-Horn Renewal form 1-14-2025	Executed Kimley-Horn Renewal form 1-14-2025.pdf
6.	Kimley-Horn and Associates, Inc. ALL 4.1.2025	Kimley-Horn and Associates, Inc. ALL 4.1.2025.pdf

Julia Wiggins	Created/Initiated - 3/20/2025
Richard Colby	Approved - 3/20/2025
Junos Reed	Approved - 3/20/2025
Linda Truitt	Approved - 3/24/2025
Matthew Jones	Approved - 4/1/2025
Wayne Clark	Final Approval - 4/3/2025

CHANGE ORDER NO. 1
To Task Authorization 7, dated August 1, 2023
KIMLEY-HORN AND ASSOCIATES, INC. Contractor

Project: City-Wide Stormwater Master Plan Update

The following changes are hereby made to the Contract Documents:

CHANGE IN CONTRACT PRICE:	**CHANGE IN CONTRACT TIMES**:
Original Contract Price: $489,820.00	Original Contract Times: 18 months Notice to Proceed (NTP) Issued: October 30, 2023 Final Completion: April 30, 2025
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: $489,820.00	Contract Completion Date prior to this Change Order: April 30, 2025
Net Increase (decrease) of this Change Order: No. 1 $161,109.00	Changes in contract time requested this Change Order: No. 1 60 days
Contract Price with all approved Change Orders: $650,929.00	Contract Times with all approved Change Orders: Final Completion: June 29, 2025

CHANGES ORDERED:

I. GENERAL: This Change Order is necessary to cover changes in the work to be performed under the Task Authorization No 7; entered into by and between the parties on August 1, 2023.

II. REQUIRED CHANGES: Change Order is necessary to provide additional services with no change in scope of services, relating to the City-wide Stormwater Master Plan.

III. JUSTIFICATION: Services necessary for the completion of project relating to City-wide Stormwater Master Plan.

IV. PAYMENT: Payment for this Change Order shall be made in accordance with the terms Task Authorization No 7; subject to a limit not to exceed $161,109.00; a revised amount of $650,929.00. All payments shall be governed by the Local Government Prompt Payment Act as set forth in Florida Statutes Section 218.70 through 218.79, as amended.

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

Acknowledgments:

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

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

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

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

RECOMMENDED BY: **RICHARD COLBY** Department Project Manager	ACCEPTED BY: **JOHNATHAN D. THIGPEN** Kimley-Horn and Associates, Inc.
By:_____ Richard Colby, Construction Manager	By:_____ Johnathan D. Thigpen, Vice 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:_____
Junos Reed, City Engineer

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:_____

AMENDMENT #1 - CITY-WIDE STORMWATER MASTER PLAN UPDATE

Describing a specific agreement between Kimley-Horn and Associates, Inc. (Kimley-Horn), and The City of Port Orange (the Client or the City) in accordance with the terms of Task Authorization No. 7 – City-Wide Stormwater Master Plan Update dated August 14th, 2023.

Project Understanding

- The City of Port Orange ("City") has asked Kimley-Horn and Associates, Inc. ("Consultant") to incorporate areas of recent or proposed development ("Development Areas") into the existing conditions model created as part of the ongoing Stormwater Master Plan ("SMP") Update and to provide additional modeling analysis and preliminary results at select areas for conceptual development ("Conceptual Development Areas"). These additional services are to be provided as an amendment to the original SMP Update project authorized by Task Authorization No. 7. under the Master Contract for Professional Engineering Services for Public Utilities and Environmental Services CA7763 (RSFQ 22-03).
- The Development Areas of interest for incorporation into the existing condition model are limited to the following ten (10) developments within city limits:
    - Upham – Extra Space Storage
    - Zahn – Giuseppes
    - Zahn – Olsen
    - Parker Mynchenberg – Catfish Commons
    - Parker Mynchenberg – Eddin Medical
    - Parker Mynchenberg – Eddin Shopping Ctr
    - Parker Mynchenberg – Hawks Mill (Osprey Pointe)
    - Parker Mynchenberg – NewPort Lot 4 Conviva
    - Parker Mynchenberg – Stor-it
    - Oak Breeze Plaza
- The Conceptual Development Areas where additional analysis and preliminary modeling results are requested are limited to the following six (6) areas:
    - Jackson St./Nova Rd./Canal St Area
    - Gordon St. Area
    - Dubois Ave. Area
    - Pepper Hill Rd/Madeline Ave. Area
    - Renner Rd/Spruce Creek Area
    - 535 Orange Ave

Scope of Services

Kimley-Horn will perform the following scope of services.

Task 1 - Incorporating Development Areas and Additional Analysis for Conceptual Development Areas and Other City Projects

A. Initial Data Collection and Desktop Review for Development Areas
    a. The Consultant will coordinate with the City to identify and obtain available data concerning the development areas of interest. This data will include existing reports/studies, drainage plans and as-builts, topographic data, and Computer Assisted Design (CAD) drawings.

b. The Consultant will review the initial data gathered, as well as review the existing model area in Google Street View.

B. Existing Conditions Model Updates for Development Areas
   a. Kimley-Horn and Associates, Inc. will update the existing conditions 1D ICPR4 model created for the City of Port Orange under the existing agreement for Task Authorization No. 7 dated January 18, 2022. The Consultant will develop updated and refined basins, nodes, and links that correspond with the Development Areas developed based on the following approach:
      i. Basins will be adjusted to reflect the Development Areas. This includes refining existing basins and creating new basins to capture drainage areas. Basins will be delineated based on provided topographic data, plan sets, or CAD drawings.
      ii. Stage-storage relationships for nodes associated with the Development Areas will be developed using the proposed Digital Elevation Models (DEM) when applicable. Otherwise, stage-storage relationships will be developed using elevations referenced in the information provided by the City.
      iii. Pipes and control structures in each development area will be modeled based on the provided plan sets or CAD drawings.
      iv. Overland weirs will be created or revised based on proposed DEMs when applicable. Otherwise, overland weirs will be developed using elevations referenced in the information provided by the City.
      v. The Consultant will update the modeled land use to incorporate impervious and pervious areas within each Development Area.
   b. The Consultant will generate level-pool floodplains for the 10-year 24-hour, 25-year 24-hour, and 100-year 24-hour design storm events, as well as the calibration event chosen for the Port Orange model.

C. Additional Analysis for Conceptual Development Areas
   a. The Consultant will provide additional analysis and 100-year 24-hour, 25-year 24-hour, and 10-year 24-hour preliminary stage results for the Conceptual Development Areas listed in the Project Understanding.

D. Additional modeling and concept development for potential CIP project to consider alternative outfall for ongoing Dunlawton wastewater treatment plant improvement project.

Task 2 – Additional Staff Meetings

A. Kimley-Horn will attend seven (7) additional in-person meetings with City staff to review the stormwater master plan results and answer questions.

B. Kimley-Horn will attend two (2) additional virtual meetings with City staff to prepare and refine City workshop presentations

Task 3 – Additional Workshops

A. Kimley-Horn will conduct three (3) additional Stormwater Master Plan workshops at the conclusion of the project to present the results of the Stormwater Master Plan to individual neighborhoods and to answer resident questions.

B. Kimley-Horn will provide three (3) additional presentations tailored to the individual neighborhood workshop meetings.

C. Kimley-Horn will attend six (6) additional virtual preparation meetings for the individual neighborhood workshop meetings

D. Kimley-Horn will provide nine (9) flood animation videos for use in meetings with City staff and City workshop presentations.

E. Kimley-Horn will provide up to three (3) additional exhibits for use in meetings with City staff and City workshop presentations.

Task 4 – Stormwater Website

A. Stormwater Website

Kimley-Horn will create one (1) stormwater website for the City of Port Orange. The website can be used to present, and archive information related to the public engagement process and design of the project. The website is assumed to include project information (text, photos, graphics, logo and schedule), project design graphics and meeting materials. Kimley-Horn will produce written website content for up to 6 web pages on the website such as: Home (Landing Page), Project Areas, Maintenance, History, Canal Systems, and FAQs. The main webpages will include up to nine (9) subpages that will go into detail with additional information.

- **HOME**: Overview of the Storm Water Master Plan
- **PROJECT AREAS**: Listing of nine (9) major project areas identified in the Stormwater Master Plan
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- **MAINTENANCE**: Storm Water Maintenance process and updates
- **CANAL SYSTEMS**: Nova Road Canal System and B19 Canal System
- **HISTORY**: 25 Year Stormwater Projects, Developer and Builder, Types of storm water infrastructure located in the City of Port Orange, 50 Year Rainfall / Storm impact History
- **FAQs**

Kimley-Horn assumes the city will make available the City of Port Orange branding guidelines for use in selecting fonts, colors, and graphics. No project-specific branding will be developed but can be performed as an Additional Service. A simple typographic lockup of the project name will be created for use on the website header. A color scheme will be developed in accordance with the brand guidelines provided, and guidance by the City. Kimley-Horn will work with the City to establish website presentation guidelines, information requirements, and establish a process of updating and maintaining the site for the duration of the project. It is assumed that the website will require updates initially (more frequently to get the site populated and keep it up-to-date and less frequently as the project development process progresses), then updates through design.

The project website will be in general conformance to the current ADA guidelines for websites and the content will be made accessible to screen readers when possible. New

documents and content available to the public via the website will be designed to meet ADA standards (i.e., color contrast, alternative text, font size/legibility). ADA compliance of existing City materials will be considered an additional service.

The website will be built using a Content Management System (CMS) interface such as WordPress. It will feature responsive functionality (for tablets and mobile devices), incorporate social media links and/or content, and will be designed to match provided City branding.

Kimley-Horn will attempt to reserve a website domain name according to the City's preference, but makes no guarantee that such name will be available.

The process for the creation of the project website is assumed to be as follows:

- Conduct one (1) virtual meeting with city staff to discuss website goals and needs
- Design the flow and content of the website (such as wireframes or sample visuals)
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- Revise the website with up to three (3) rounds of comments from the City
- Host website for up to one (1) year

*Kimley-Horn can continue hosting the website after one year for a $350/yr annual hosting fee (subject to escalation).

B. Monthly website maintenance, on-going website improvement, and adding additional website content after the initial website set up is not included in this scope of services, but can be done by Kimley-Horn at our then current hourly rate schedule.

Fee

Kimley-Horn will perform the services in Tasks 1-4 for the total lump sum fee below. Individual task amounts are informational only.

Task No.	Task Name	Fee
1	Incorporating Development Areas and Additional Analysis	$56,553
2	Additional Staff Meetings	$33,568
3	Additional Workshops	$38,988
4	Stormwater Website	$32,000
	Total	$161,109

Lump sum fees will be invoiced monthly based upon the overall percentage of services performed.

Other Special Terms:

Services provided under this agreement will be invoiced on a monthly basis. All invoices will include a description of services provided.

ACCEPTED:

CITY OF PORT ORANGE, FLORIDA

BY: See Page 4 of Change Order No 1 to Task Authorization No. 7

TITLE:

DATE:

KIMLEY-HORN AND ASSOCIATES, INC.

BY: Hao T. Chau, PE

TITLE: Vice President

DATE: 03/12/2025

KIMLEY-HORN AND ASSOCIATES, INC.

BY: Victor Gallo, P.E.

TITLE: Project Manager

DATE: 03/12/2025

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	Total	$161,109

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Other Special Terms:

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ACCEPTED:

CITY OF PORT ORANGE, FLORIDA

BY:_____

TITLE:_____

DATE:_____

KIMLEY-HORN AND ASSOCIATES, INC.



BY: Hao T. Chau, PE

TITLE: Vice President

DATE: 03/12/2025

KIMLEY-HORN AND ASSOCIATES, INC.



BY: Victor Gallo, P.E.

TITLE: Project Manager

DATE: 03/12/2025

CITY OF PORT ORANGE
NOTICE TO PROCEED

Issued By: Junos Reed, City Engineer
Engineering Department
1395 Dunlawton Avenue
Port Orange, FL 32129
Ph:(386) 506-5751
jwiggins@port-orange.org

Issued To: Kimley-Horn & Assoc, Inc
189 S Orange Avenue
Orlando, FL 32801

PROJECT TITLE: **Task Authorization No 7 – City-Wide Stormwater Master Plan**
Prj SW173 (PO-003136)

This **Notice to Proceed** issued to your company is for the above referenced project and in accordance with Task Authorization No 7, under the Master Contract for Services CA7763 (240102), and all terms and conditions of the agreement between the City of Port Orange and **Kimley-Horn & Associates, Inc.** The **effective date** of this **Notice to Proceed** is October 30, 2023 with a **Final Completion** by April 30, 2025.

Please sign below acknowledging and agreeing to the contents of this Notice to Proceed and return a copy of this form to Julia Wiggins, Engineering Business Manager via email jwiggins@port-orange.org.

Project Manager: Junos Reed, City Engineer

All future correspondence or requests for changes to the contract must be addressed to City Engineer

---

ISSUED BY:

Owner: City of Port Orange

This 30 day of October, 2023.

By: _____
Junos Reed

Title: City Engineer

ACCEPTANCE NOTICE:

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

Company: Kimley-Horn & Associates, Inc.

This 30 day of OCTOBER, 2023

By: _____
Authorized Signer

Title: VICE PRESIDENT

CITY OF PORT ORANGE MASTER CONTRACT PROFESSIONAL ENGINEERING SERVICES FOR PUBLIC WORKS, UTILITIES AND ENVIRONMENTAL SERVICES

This Standard Contract for Services ("Contract") is entered into this 18 day of Jan, **2022**, by and between the **CITY OF PORT ORANGE**, a Florida municipal corporation, whose principal address is 1000 City Center Circle, Port Orange, Florida 32129 (the "City"), and **KIMLEY-HORN AND ASSOCIATES, INC.**, a North Carolina corporation, registered to transact business in Florida, whose principal address is 421 Fayetteville Street, Suite 600, Raleigh, North Carolina 27601 ("Engineer"). The City and Engineer are collectively referred to herein as the "Parties."

The City and the Engineer for Ten Dollars ($10.00) and other good and valuable consideration hereby covenant and agree as set forth below.

1. *Provision of Services*

(a) The Engineer hereby agrees to provide the following services to the City of Port Orange:

(i) Professional continuous utility engineering consulting services to complete a wide range of projects led by the City of Port Orange Public Works and Utilities Department in accordance with Consultants Competitive Negotiation Act, and as more specifically described in Request for Statement of Qualifications 21-03 ("RFSQ 21-03"). This Contract together with RFSQ 21-03, Addendum No. 1, Addendum No. 2, and Engineer's Proposal, all of which may be referred to as the "Contract" and all of which are made a part hereof by reference shall constitute the formal written Contract between the City and Engineer. For convenience, Section 3, Scope of Services, of RFSQ 21-03, and the Schedule of Hourly Billing Rates as submitted by Engineer in Engineer's Proposal are attached hereto as Exhibit "1." A complete copy of RFSQ 21-03 is available in the Office of the City Clerk. Engineer represents that they are familiar with the documents that make up the Contract, as referenced hereinabove.

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

Term: The term of this Contract shall commence on the date this Contract is signed by both of the Parties, and shall continue for a period of three (3) years, or until either party provides the other party written notice of its intent to terminate as provided in this Contract.

Renewals: Upon written agreement of the Parties and appropriation by City Council, this Contract may be renewed for up to two (2) additional one (1) year periods.

Manner and Place: The Engineer shall perform the services as outlined in each project assignment, in accordance with Standard Construction Details as required on all City owned facilities and properties (i.e. rights-of-way) and in a manner as required by all current federal, state, county, fire, building and land development codes, laws, ordinances and regulations, and with applicable permits and licenses per the City Code of Ordinances. Engineer shall not deliver goods or services without a fully executed task authorization and a written purchase order, signed by an authorized agent of the City of Port Orange.

Time and Essence: Engineer acknowledges that time is of the essence in the completion of the services contemplated by this contract, and shall complete all services within the timeline specified by this contract, and shall complete all services within the timeline specified in the project, and as reflected on the Notice to Proceed.

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

a. All Task Authorizations issued under this Contract shall terminate at the expiration of the term of the Task Authorization, unless amended in writing by the parties. If a Task Authorization issued before the expiration of this Contract cannot be completed until after the expiration of this Contract, then this Contract shall expire on the Completion of Services under said Task Authorization, including any Amendments thereto, and after all work or services under the Task Authorization have been approved and accepted by the City's Contract Administrator. The obligations entered herein by both parties under this Contract and said Task Authorizations shall remain in full force and effect until completion of all work or services performed under this Contract and/or the Task Authorization.

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

3. *City Obligations* The City reserves the right to utilize lump sum or hourly rate compensation, at the hourly rate compensation as set forth in Exhibit "1." Rates may be adjusted on the anniversary of the effective date of this Contract, upon mutual written agreement of the Parties. The City's obligation to pay Engineer under this Contract is limited to an amount not to exceed the appropriated budget per fiscal year. All payments shall be governed by the Local Government Prompt Payment Act as set forth in Sections 218.70 through 218.79, Florida Statutes, as amended. The Engineer shall be paid compensation for all services, labor and material required thereby, and for all expenditures as specified in each Task Authorization. The fee shall be negotiated for each Project Task Authorization to this Contract. The Engineer shall submit a monthly statement for professional services rendered and expenses incurred to date of the statement. The statements for lump sum shall be based upon Engineer's estimate of the proportion of the total services actually completed at the time of billing to the total services to be performed. Such estimates are to be prepared by the Engineer and accompanied by such supporting data as may be required by the Contract Administrator. Compensation for any authorized cost which is not set forth in the Contract shall not exceed the actual, documented out-of-pocket cost to the Engineer, plus fifteen percent (15%). The Contract and Task Authorization(s) do not include retainer fees, nor is there a minimum fee guaranteed during the Contract period.

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

5. *Liens* Engineer acknowledges that Engineer shall not be entitled to lien the City or other public property.

6. *Statement of Engineering Services* The Engineer shall:

(a) Provide all certifications ("Engineer of Record" function) surveys, calculations, drawings, and any other documents required for special permits and authorizations from various government bodies or agencies having jurisdiction over the project;

(b) Prepare a time scaled diagram showing the dates of completion of various design phases and scheduled completion of working drawings and specifications and submit for Contract Administrator's review and approval;

(c) Verify and evaluate technical proposals furnished by the construction Engineer if requested by the City and provide such amplifications and explanations that may be necessary to clarify the intent of the drawings and specifications.

(d) Furnish consultation and advice as requested by the City during the construction of project, including Construction Administration Services (unless otherwise stipulated in a specific amendment attached hereto and made a part thereof);

(e) Furnish all other engineering services including without limitation those specified hereinafter and those required for the completion of specific projects as described in amendments to this contract:

(i) *Site Visits/Special Permits* The Engineer shall visit the site and shall initiate and hold such conferences with representatives of the City and other agencies, boards or government bodies having jurisdiction over the area the project covers and take such other action as may be necessary to obtain permits and authorizations (except the construction permits) and other data upon which to develop the design and preliminary sketches showing the contemplated project.

(ii) *Preliminary Sketches and Opinion of Probable Construction Costs* The preliminary sketches shall include plans, elevations and sections development in such detail and with such descriptive specifications as will clearly indicate the scope of work, and make possible a reasonable opinion of the construction cost and satisfy the requirements of permitting and regulatory agencies having jurisdiction. An opinion of probable construction costs shall be prepared.

(iii) *Working Drawings and Specifications* After the preliminary sketches and opinion of probable construction costs have been approved, the Engineer shall proceed with the preparation of working drawings and specifications as required by the Contract Administrator for the construction of said project. Working drawings, specifications and estimates shall be delivered to the Contract Administrator in such sequence and at such times as required by the City such that the construction work can be initiated promptly, procurement of materials made without delay and continuous prosecution of the work promoted, all in strict accordance with the approved design schedule as provided in Paragraph 5 (b) above. Working drawings and specifications shall be revised as necessary and as required by the Contract Administrator. After working drawings and specifications have been approved by the Contract Administrator, the Engineer shall furnish such number of sets of prints of the approved working drawings and such number of sets of the approved specifications, as may be required by the Contract Administrator.

(iv) *Original Drawings - Final Plans* Upon approval of final plans the Engineer shall deliver to the City one set of original drawings, in such medium and on such materials, as may be required by the Contract Administrator, suitable for blueprinting, showing approved constructed requirements (not of "as-built" construction unless otherwise stipulated), provided, however, that should this contract be terminated by the City the Engineer shall deliver to the City one set of originals as they exist at the time of termination. Such plans as are delivered shall become and remain the property of the City.

(v) *Revision of Final Drawings and Specifications* The engineer shall without additional fee correct and revise the drawings, specifications, or other materials furnished under this contract, if the Contract Administrator finds that such revision is necessary to correct errors or deficiencies for which the Engineer is responsible.

(vi) *Bidding* The Engineer shall perform all necessary engineering services required in connection with the competitive bidding for construction of the project and the preparation of all documents required thereof, including preparation of documents for separate bid packages for multiple contractors if so required by Contract Administrator.

7. *Responsibility of the Engineer* The Engineer shall be responsible for the professional and technical accuracy and the coordination of all designs, drawings, and specifications and other work or materials furnished by the Engineer under this contract. The Engineer shall without additional cost or fee to the City, correct or revise any errors or deficiencies in his performance.

8. *Reuse of Documents* The City shall have unlimited rights, for the benefit of the City in all drawings, designs, specifications, notes and other engineer's work produced in the performance of this contract, or in contemplation thereof, and all as-built drawings produced after completion of the work, including the right to use same on any other City work without additional cost to the City. All documents including Drawings and Specifications prepared by Engineer pursuant to this Contract are instruments of service in respect of the Project. They are not intended or represented to be suitable for reuse by City or others for any other project. Reuse for another project without written verification or adaption by Engineer for the specific purpose intended will be at City's risk. Any such verification or adaption will entitle Engineer to further compensation at rates to be agreed upon by City and Engineer. A reproducible set of plans and specifications shall be delivered to and become the property of the City upon completion of the Project by the Engineer.

9. *Expert Witness* The Engineer shall serve as an expert witness for the City in any legal proceedings regarding this project if the City so requests. The expert witness fee for Engineer shall be negotiated at the time the Engineer is called as an expert.

10. *Modifications to Scope of Work/Change Orders*

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

(b) If any change under this clause causes an increase or decrease in Engineer's cost of, or time required for the performance of the work hereunder, Engineer shall receive an equitable adjustment and the contract

shall be modified in writing accordingly. Any change shall include all costs and damages related to or incidental to such change.

(c) Any claim by the Engineer for adjustment under this clause shall be asserted in writing within thirty (30) days from the date of receipt by the Engineer of the notification of change unless the Contract Administrator grants a further period of time before the date of final payment under the contract. The Engineer shall proceed with the prosecution of the work as changed. Except as provided in this Contract, the Engineer shall not be entitled to payment for a charge for any extra work or material.

11. *Subcontractors or Sub-Subcontractors*

(a) Any subcontractors and outside associates or consultants required by the Engineer in connection with the services covered by the Contract will be limited to such individuals or firms as are specifically identified in an amendment to this Contract. Any substitution in such subcontractors, associates, or consultants shall be subject to the prior approval of the Contract Administrator.

(b) Engineer shall save and hold the City harmless from any and all claims or actions by Engineer's Subcontractors or Sub-subcontractors for payment of monies such Subcontractor of Sub-subcontractor claims to be owed by Engineer for work performed under this Contract.

(c) Nothing in this Contract shall create any obligation on the part of the City to pay directly to any Subcontractors of Sub-subcontractors or claims of a Subcontractor or Sub-subcontractors for amounts owed by Engineer to Subcontractor or Sub-subcontractor for work performed under this Contract.

(d) Engineer shall be fully responsible for all negligent acts and omissions of it Subcontractors and Sub-subcontractors and of persons directly or indirectly employed by them and of persons of whose negligent acts any of them may be liable to the same extent that it is responsible for the negligent acts and omissions of persons directly employed by it. Nothing in the Contract documents shall create any contractual relationship between any subcontractor and the City or any obligation on the part of the City to pay or to see to the payment of any moneys due any subcontractor to the extent practicable, evidence of amounts paid to the Engineer on account of specific work done in accordance with the schedule of values.

(e) The Engineer shall require all subcontractors or sub-subcontractors or outside associates employed in connection with the performance of this Contract to comply fully with the terms and conditions of this Contract between the City and the Engineer.

12. Termination

(a) The performance of work under this Contract may be terminated by the City in accordance with this clause in whole, or from time to time in part, whenever the Contract Administrator shall determine that such termination is in the best interest of the City. Any such termination shall be effected by delivery to the Engineer of a Notice of Termination specifying the extent to which performance of work under the Contract is terminated, and the date upon which such termination becomes effective.

(b) After receipt of a Notice of Termination, and except as otherwise directed by the Contract Administrator, the Engineer shall:

(i) Stop work under the Contract on the date and to the extent specified in the Notice of Termination.

(ii) Place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of such portion of the work under the Contract as it is not terminated.

(iii) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination.

(iv) Assign to the City in the manner, at the times and to the extent directed by the Contract Administrator, all of the right, title, and interest of the Engineer under the orders and subcontracts so terminated, in which case the City shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

(v) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Contract Administrator, to the extent the City may require which approval or ratification shall be final for all the purposes of this clause.

(vi) Transfer title and deliver to the City in the manner, at the times, and to the extent, if any, directed by the Contract Administrator.

a. The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination; and

b. The completed or partially completed plans, drawings, information, and other property which, if the contract has been completed, would have been required to be furnished to the City.

(vii) Complete performance of such part of the work as shall not have been terminated by the Notice of Termination.

(c) After receipt of a Notice of Termination, the Engineer shall submit to the City's Contract Administrator his termination claim, in the form and with certification prescribed by the Contract Administrator. Such claim shall be submitted promptly but in no event later than thirty (30) days from the effective date of termination, unless one or more extensions in writing are granted by the Contract Administrator, upon request of the Engineer made in writing within such thirty (30) days period or authorized extension thereof. Upon failure of the Engineer to submit his termination claim within the time allowed, the Contract Administrator may determine on the basis of information available to him, the amount, if any, due to the Engineer by reason of the termination and shall thereupon pay to the Engineer the amount so determined.

(d) Subject to the provisions of Paragraph 11 (c), the Engineer and the Contract Administrator may agree upon the whole or any part of the amount or amounts to be paid the Engineer by reason of the total or partial termination of work pursuant to this clause, the total or partial termination of work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on work done; provided, that such agreed amount or amounts exclusive of settlement costs, shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. The Contract shall be amended accordingly and the Engineer shall be paid the agreed amount. Nothing in Paragraph 11 prescribing the amount to be paid to the Engineer, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid.

(e) In the event of the failure of the Engineer and the Contract Administrator to agree as provided in Paragraph 11 (d), upon the whole amount to be paid to the Engineer by reason of the termination of work pursuant to this subparagraph, the Contract Administrator shall pay to the Engineer the amounts determined by the Contract Administrator, but without duplication of any amounts agreed upon, as follows:

(i) For completed work and services accepted by the City, the price or prices specified in the contract for such work, less any payments previously made.

(ii) The total of:

a. The costs incurred in the performance of the work and service terminated, including initial costs and preparatory expenses allocable thereto, but exclusive of any costs attributable to the work and services paid or to be paid for under Paragraph 11 (e)(i) hereof;

b. The cost of settling and paying claims arising out of the termination of work or services under subcontracts or orders as provided in Paragraph 11 (b)(v) above, which are properly chargeable to the terminated portion of the contract exclusive of amounts paid or payable on account of work or services delivered or furnished by subcontractors prior to the effective date of termination, which amounts shall be included in the costs payable under Paragraph 11 (a) above; and

c. A sum, as profit on Paragraph 11 (a) above, determined by the Contract Administrator to be fair and reasonable, not to exceed 5% of the Task Authorization.

(iii) In the event the contract is terminated because of Engineer's default, the City may take over the work and services and complete the same by contract or otherwise, and the Engineer shall be liable to the City for any increased cost of the project.

13. *Termination for Non-Appropriation of Funds*

(a) If funds are not appropriated for any succeeding fiscal years subsequent to the one in which this contract is entered into, for the purpose of this Contract, then the City may terminate this Contract upon thirty (30) days prior written notice to the Engineer. Should termination be accomplished in accordance with this Section, the City shall be liable only for payments due through the date of termination. The City agrees that should it terminate in accordance with this Section, it shall not obtain services which are substantially equal to or similar to those for which this contract was entered into. This provision shall survive any termination of the Contract.

14. *Engineer's Records*. The design, permits and all other records prepared by the Engineer, assembled for the City, subcontracted for the City, and any other records related to the scope of work in the possession of the Engineer shall be retained by the Engineer for the requisite time set forth in Florida Administrative Code Rule 1 B-24 http://dos.myflorida.com/library-archives/records-management/. Engineer may dispose of the records in accordance with Florida law, upon receipt of a signed written release signed by the City Attorney. During the term of this Contract, as amended from time to time, Engineer agrees to indemnify the City for failure to comply with the requirements of this paragraph including costs of litigation and legal fees incurred through all appeals. City reserves the right to select and approve the defense attorney. The Engineer's obligations pursuant to this paragraph shall survive the termination of this Contract, and as amended from time to time.

15. *Examination of Records*

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

(b) The Engineer further agrees to include in any subcontract for more than $10,000 entered into as a result of this Contract, a provision to the effect that the subcontractor agrees that the City or any duly authorized representative shall, until the expiration of five (5) years after final payment under the subcontract, have access to

and the right to examine and copy any pertinent books, documents, papers and records of such Engineer involved in transactions related to such subcontract, or this Contract. The term subcontract as used herein shall exclude purchase orders for public utility services at rates established for uniform applicability to the general public.

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

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

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

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

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

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

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

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

17. *Insurance* Engineer shall maintain insurance, as required herein, during the life of this Contract. Engineer shall provide to the City, a certificate of insurance endorsing the City of Port Orange as an additional named insured. All insurance coverages of the Engineer shall be primary and non-contributory. All insurance coverages of the Engineer shall not seek contribution from any other insurance or self-insurance available to the City. For workers' compensation coverage, the Engineer's insurance certificate shall include the insurer's waiver of subrogation in lieu of endorsing the City as an additional insured for workers' compensation. The City shall not accept Workers' Compensation Exemptions Engineer may use leased employees if the Engineer ensures that all workers who access the jobsite are employees covered by the employee leasing company, and no non-employees are permitted to access the jobsite. Any Engineer using a leased employee shall complete the City's Leased Employee Affidavit Form Exhibit. Policies for Workers' Compensation may be issued by companies authorized as a group self-insurer by F.S. 440.572.

Policies other than Workers' Compensation shall be issued by insurers licensed and/or duly authorized under Florida Law to do business in the State of Florida and all insuring companies are required to have a minimum rating of "A-" in the "Best Key Rating Guide" published by A.M. Best & Company, Inc. Engineer shall not commence work under this Contract until the City has received a certificate or certificates of insurance with endorsement evidencing

the required insurance. Insurer shall provide the City written notice of cancellation, nonrenewal or any other changes in coverage no later than thirty (30) days prior to the effective date of the change and shall provide notice to the City no later than 10 days after non-payment. The Certificates of Insurance and required insurance policies shall contain provisions that thirty (30) days prior written notice shall be given to the City of any cancellation, intent not to renew, or reduction in the policies or coverages.

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

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

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

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

Standard Insurance Requirements			
	Insurance	**Standards**	**Additional Requirements**
☒	Workers' Compensation The Engineer shall maintain coverage for its employees with statutory workers' compensation limits, and no less than the limits indicated in the Schedule of Limits for Employers' Liability. Said coverage shall include a waiver of subrogation in favor of the City. **The City will not accept elective exemptions**. Any Engineer using an employee leasing company shall complete the Leased Employee Affidavit (Exhibit A).	Contract Amount — Limits Up to $10 million — Statutory/$500,000 $10 - $20 million — Statutory/$1,000,000 Contracts over $20 million To Be Determined by the City.	☐If Contract requires work on or about navigable waters, Longshoreman's and Harbor Workers' Coverage required. ☐If vessels involved, Jones Act coverage with limits of $500,000 required.

☒	Comprehensive General Liability (including Completed Operations and Contractual Liability	Limits:	Combined Single Limit Bodily Injury and Property damage $1,000,000 occurrence $1,000,000 aggregate	☐When work is on or under Railroad rights of way or properties, the Engineer shall take out and maintain during the life of the Contract, Railroad protective liability and property damage insurance in amounts as requested by the Railroad.
☒	Comprehensive Business, Automobile Liability to include all owned, hired and non-owned automobiles.	Limits:	Auto Liability Body Injury and Property Damage: $1,000,000 each occurrence $1,000,000 aggregate	
	Additional Insurance Requirements			
☐	Property Insurance Builders Risk. Additional Coverage:	Limits:	Buildings - Completed value of Contract. "All Risk" coverage on latest ISO for or its equivalent. Permission granted to occupy. Owner named as insured AIMA	If Agreement requires handling or installation of Owner's equipment, coverage should be furnished on "All Risk" form, including transit and Owner shall be named.
☒	Professional Liability	Limits:	Coverage - $1,000,000	
☐	Installation Floater (IT)	Limits:	Coverage - $ To be determined.	
☐	Engineer Pollution Liability	Limits:	Coverage - $1,000,000	
☒	Errors and Omissions	Limits:	Coverage - $1,000,000	
☐	Umbrella Policy	Limits:	Coverage – $ To be determined.	
☐	Payment and Performance Bond Required	Limits:	Coverage - Equal to amount of Contract.	
☐	**City Manager waives Payment and Performance Bond for work under $25,000.00.**			
☐	**Unless otherwise required by law, City Manager waives Insurance for FOB goods under $25,000.00.**			

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

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

20. *Liability for Loss or Damage*

(a) Engineer shall be liable for any loss of, or damage to, City property caused by the negligence, recklessness, or intended wrongful misconduct of Engineer, his/its agents, servants and employees and shall indemnify and save the City harmless against all actions, proceedings, claims, demands, costs, damages and expenses, including attorney's fees, by reason of any suit or action brought for any actual or alleged injury to or death

of any person or damage to property other than City property, to the extent caused by negligent performance of the Contract by Engineer, his/its agents, servants and employees. Engineer shall submit a full written report to the Finance Director within twenty-four (24) hours following the occurrence of such damage, loss or injury.

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

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

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

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

22. *E-Verify*. Engineer shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Engineer on or after the effective date of this Contract and thereafter during the remaining term of this Contract, including all subcontractors. Any subcontract entered into by Engineer with any subcontractor performing work under this Contract shall include the following language: "The Sub-Engineer shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Engineer on or after the effective date of this Contract and thereafter during the remaining term of the Contract." The Engineer covenants and agrees that if it is found in violation of this section of the Executive Order, such violation shall be a material breach of this Contract and Engineer shall indemnify, defend and hold harmless the City from any fines or penalties levied by a government agency, including the loss or repayment of grant funds by the City.

23. *Disputes* The City Manager, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to Engineer, shall decide disputes with respect to this Contract in the first instance. The decision shall be final and binding unless, within ten (10) days from the date of receipt of the decision of the City Manager, appeal is made to the City Council. The decision of the City Council shall be final and binding unless set aside by a court of competent jurisdiction as fraudulent, capricious, arbitrary, or so grossly erroneous as necessary to imply bad faith, or not to be supported by any evidence. Pending a final determination of a properly appealed decision of the City Council, Engineer shall proceed diligently with the performance of this Contract in accordance with that decision.

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

25. *Controlling Law* **THIS AGREEMENT CONTAINS IMPORTANT MATTERS AFFECTING LEGAL RIGHTS AND IS ACCEPTED AND ENTERED INTO IN FLORIDA AND ANY QUESTION REGARDING ITS VALIDITY, CONSTRUCTION, ENFORCEMENT, OR PERFORMANCE SHALL BE GOVERNED BY FLORIDA LAW. ANY**

LEGAL PROCEEDING ARISING FROM OR IN ANY WAY REGARDING THE AGREEMENT SHALL HAVE ITS VENUE LOCATED EXCLUSIVELY IN THE CIRCUIT COURT OF VOLUSIA COUNTY, FLORIDA, AND THE PARTIES HEREBY EXPRESSLY CONSENT AND SUBMIT THEMSELVES TO THE PERSONAL JURISDICTION AND VENUE OF THE COURT.

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

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

29. *Notice* For purposes of this agreement, notices shall be sent as follows:

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

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

Engineer:
~~Kimley-Horn and Associates, Inc.~~
Attention: Brian A. Good, ~~Director~~
~~421 Fayetteville Street~~
~~Suite 600~~
~~Raleigh, North Carolina 27601~~

Attention: Jonathan D. Thigpen, Senior Vice President
189 South Orange Avenue
Suite 1000
Orlando, Florida 32801
(407) 898-1511 – Telephone
(561) 863-8175 – Facsimile
~~Maybe.White@kimley-horn.com~~ jonathan.thigpen@kimley-horn.com

Any notice or other communication given under the Contract will be in writing and delivered by hand, sent by facsimile (provided acknowledgement of receipt thereof is delivered to the sender), sent by certified, registered mail, or sent by any nationally recognized overnight courier service to the addresses provided herein. The parties may,

from time to time and at any time, change their respective addresses and each will have the right to specify as its address any other address by at least 10 days written notice to the other party.

30. *Truth-in-Negotiations*

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

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

31. *Waiver of Breach and Materiality* Failure to enforce any provision of this Contract shall not be deemed a waiver of such provision or modification of this Contract. A waiver of any breach of a provision of this Contract shall not be deemed a waiver of any subsequent breach and shall not be construed as a modification of the terms of this Contract.

32. *Contract Construction*

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

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

[Remainder of this page intentionally left blank]

Witnesses:

Printed Name: Nicole McConnell

Printed Name: Tucker Hunter

KIMLEY-HORN AND ASSOCIATES, INC.

By: _____
Jonathan D. Thigpen, Senior Vice President

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

Date: January 7, 2022

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me by means of ✓ physical presence or ___ online notarization, this 7th day of January, 2022, by Jonathan D. Thigpen, as Senior Vice President of Kimley-Horn and Associates, Inc., a North Carolina corporation, registered to transact business in Florida. He is ✓ personally known or ___ produced _____ as identification.

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

SUSAN M. GREMONPREZ
Commission # GG 298833
Expires February 9, 2023
Bonded Thru Troy Fain Insurance 800-385-7019

Witnesses:

Printed Name: Jamie Miller

Printed Name: Matt Jones

CITY OF PORT ORANGE

By: _____
Donald O. Burnette, Mayor

Date: 1/18/2022

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of ✓ physical presence or ___ online notarization, this 18 day of Jan., 2022, by Donald O. Burnette, as Mayor of the City of Port Orange, a Florida municipal corporation, on behalf of the city. He is ✓ personally known or ____ produced _____ as identification.

MATTHEW J. JONES
Commission # GG 931831
Expires January 23, 2024
Bonded Thru Troy Fain Insurance 800-385-7019

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

Witnesses:

Printed Name: Jamie Miller

Printed Name: Matt Jones

ATTEST:

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

Date: 1/18/2022

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me, by means of ✓ physical presence or ___ online notarization, this 18 day of Jan., 2022, by Robin L. Fenwick, as City Clerk of the City of Port Orange, a Florida municipal corporation, on behalf of the city. She is ✓ personally known or ___ produced _____ as identification.

MATTHEW J. JONES
Commission # GG 931831
Expires January 23, 2024
Bonded Thru Troy Fain Insurance 800-385-7019

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

EXHIBIT "1"

Engineer's Schedule of Hourly Billing Rates and RFSQ 21-03 Section 3

Consisting of 2 Pages

KIMLEY HORN AND ASSOCIATES
SCHEDULE OF HOURLY BILLING RATES

Labor Position/Classification Level	Hourly Rate
Principal	$300.00
Senior Project Manager	$230.00
Project Manager	$190.00
Senior Project Engineer	$210.00
Project Engineer	$170.00
Analyst 3	$145.00
Analyst 2	$125.00
Analyst 1	$115.00
Senior Environmental Scientist	$185.00
Environmental Scientist	$130.00
GIS Analyst	$130.00
Grants Coordinator	$175.00
Sr CAD Designer	$185.00
CAD Designer	$150.00
CAD Technician	$110.00
Administrative	$95.00
Clerical	$75.00

Notes:
1. Billing rates listed in the table above are for the period from FY2022 through FY2024.
2. The salary multiplier billing rates include all payroll burden, overheads, and profit.
3. Subconsultants will be billed at 115% of actual cost
~~4. Standard project expenses will be billed as an allocation equivalent to 5.0% of the labor fee.~~

SECTION 3 – SCOPE OF SERVICES AND REQUIREMENTS

SCOPE OF SERVICES

The City of Port Orange is soliciting proposals from qualified firms for professional continuous engineering consulting services to complete a wide range of needs lead by the City of Port Orange Public Works & Utilities Department. The City will select a minimum of three, and up to five firms who can provide all, some, or one of the category service disciplines outlined in the scope of services. Firms do not have to be able to provide all of the services listed in the scope of services. For instance, if a firm only provides Environmental Services then they should state that in their initial Statement and provide all of the supporting data within the submittal to support the type of services provided. Individual firms are the focus of this RFSQ process, therefore the City will not accept Statements of Qualifications submitted with multiple firms (i.e., teams). The City is seeking the most highly qualified firms in the following category service disciplines;

- **Public Utilities (Water, Wastewater, & Reclaimed Water):**
  - Analysis, survey, design, permitting, bidding assistance, engineering services during construction, and State Revolving Funds (SRF) loan assistance for the Cities water, wastewater, and reuse systems. Including but not limited to the Cities wastewater collection and treatment systems, raw water wells, raw water transmission, water treatment, and reclaimed water storage and distribution systems
- **Public Works (Stormwater, Roadways, and Sidewalls/Trails):**
  - Analysis, survey, design, permitting, bidding assistance and engineering during construction for the Cities roadways and sidewalks
  - General stormwater needs as required by the Stormwater Utility Program. The list of services shall consist of, but not be limited to, the following:
  - National Pollutant Discharge Elimination System (NPDES) program assistance and implementation,
  - Total Maximum Daily Load (TMDL) program assistance and implementation including, but not limited to, the evaluation and establishment of estuarine TMDLS and NNC, developing ecosystem goals and targets based on the requirements of the environmental and biological indicators, hydrodynamic modeling, water quality statistical analysis, natural systems analysis and habitat analysis,
  - Watershed management planning including, but not limited to, initial hydrologic and hydraulic modeling of the watersheds in Port Orange, as well as pollutant loading modeling and updates to existing Stormwater Management Master Plans of the watersheds,
  - Engineering analysis/design and permitting of capital improvement projects, and
  - Other stormwater/environmental needs that may arise.
- **Environmental Services:**
  - Provide services related to wetlands mitigation bank management, gopher tortoise mitigation bank management, potable drinking water Consumptive Use Permit (CUP) permit monitoring, reporting, and compliance assistance, hydrologic services related to potable water wellfield management and development
  - Monitoring, sampling, and reporting services as required for permits issued and regulated by various local and State agencies such as Consumptive Use Permitting and other operational permits issued to the City by St. Johns River Water Management, U.S. Army Corps of Engineers, and the Florida Department of Environmental Protection for the operation of the Cities Wetlands Mitigation Bank, Gopher Tortoise Mitigation Bank each have very specific and differing water sampling, monitoring, and reporting procedures and requirements.
- **Grant Compliance Assistance:**
  - Provide Grant Compliance assistance for local, state, and federally administered grants, including but not limited to, HUD Community Development Block Grants, FEMA Hazard Mitigation Grant Program, FDEP Legislative Appropriation grants. Services will include tasks such as; Assistance with U.S. Department of Housing and Urban Development Environmental Review Record Development for projects funded with Community Development Block Grant Funds. Reviewing, monitoring, evaluating and acting upon documentation required for Construction Contract compliance.

[End of Scope of Services - Remainder of this page left intentionally blank]

EXHIBIT "2"

Task Authorization Template

Consisting of 4 Pages

TASK AUTHORIZATION NO. ___
Master Contract for Services dated _____
Between the City of Port Orange, Florida and Kimley-Horn and Associates, Inc.

THIS Task Authorization is entered into by and between the **CITY OF PORT ORANGE, FLORIDA**, a chartered municipal corporation with its principal place of business at 1000 City Center Circle, Port Orange, Florida 32129 (the "City") and **KIMLEY-HORN AND ASSOCIATES, INC.**, North Carolina corporation, registered to transact business in Florida, with its principal place of business at 421 Fayetteville Street, Suite 600, Raleigh, North Carolina 27601 ("Engineer"), and hereinafter collectivelyreferred to as the "Parties," and is to that certain Master Contract relating to Professional Engineering Services for Public Works, Utilities and Environmental Services, as dated above, and any amendments thereto, hereinafter collectively referred to as the "Contract." The Parties, in exchange for the mutual covenants contained herein and in the Contract, agree as follows:

1. This Task Authorization expressly modifies the Contract and in the event of a conflict, the terms and conditions of this Task Authorization shall prevail.

2. In addition to all other terms and conditions contained in the Contract, Engineer shall provide services relating to _____, as more particularly described in the Scope of Services attached hereto and incorporated herein as Task Authorization Exhibit "1."

3. Engineer shall complete the services to be provided herein within _____ days of the date of written notice by the City to the Engineer.

4. In return for the services identified above, the City agrees to compensate Engineer at the prices set forth in Exhibit "1" attached hereto and made a part hereof, subject to a limit not to exceed $_____. All payments shall be governed by the Local Government Prompt Payment Act as Set forth in Sections 218.70 through 218.79, Florida Statutes, as amended.

5. *Truth-in-Negotiations*

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

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

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

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

Witnesses:

KIMLEY-HORN AND ASSOCIATES, INC.

_____
Printed Name:_____

By:_____
Jonathan D. Thigpen, Senior Vice President

_____
Printed Name:_____

Date:_____

Witnesses:

CITY OF PORT ORANGE

_____

Printed Name:_____

By:_____
Donald Burnette, Mayor ***or***
Wayne Clark, City Manager

_____

Printed Name:_____

Date:_____

Witnesses:

ATTEST:

_____

Printed Name:_____

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

_____

Printed Name:_____

Date:_____

CITY OF PORT ORANGE

Agreement

RENEWAL FORM

*****THIS FORM IS VALID IF EXECUTED PRIOR TO THE ORIGINAL AGREEMENT/CONTRACT EXPIRATION DATE*****

Verify your records by providing the following information:

Name of Company/Organization: Kimley-Horn and Associates, Inc. ("Contractor")

Name of Contact Person: Jonathan Thigpen, Sr. Vice President

Mailing Address: 189 South Orange Avenue
Suite 100, Orlando, FL 32801

E-Mail Contact Address: Jonathan.thigpen@kimley-horn.com

Phone: (407) 898-1511 Fax: (561) 863-8175

☒ Standard Contract for Service CA No. 7763

☐ Piggyback Agreement CA No. _____

☐ Purchase Order No. _____

Renewal Term: From January 18, 2025 To: January 17, 2026

Contractor to Provide to City:

☐ ~~Updated Bond~~ N/A

☑ Insurance Certificate/City as additional insured and Waiver of Subrogation for WC

To be completed by the Contractor:

YES X Contractor desires to renew this Agreement for another term at the same price, requirements, specifications, and conditions as provided for above.

NO ____ Contractor does not desire to renew this Agreement for another term.

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

Contractor's Authorized Representative: _____ **Date:** 1/13/25
Signature

Please return to the City of Port Orange as follows:

Department: Engineering Department Telephone: (386) 506-5751

Contract: Julia Wiggins, Business Manager Fax: (386) 756-5370

E-Mai: jwiggins@port-orange.org

For City Use Only:

Department Completes the Following:

☒ Renewal Accepted by the Department

☐ Bond received by the Department ***OR*** ☒ Bond not applicable

☒ Insurance Certificate received by the Department ***OR*** ☐ Insurance waived by City Manager

City Manager: _____ **Date:** 1/14/2025

Original Signed Form Must Be Returned to the City Clerk *Form 13024*

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 3/18/2024

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

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

PRODUCER Edgewood Partners Ins. Center/Greyling 3780 Mansell Rd. Suite 370 Alpharetta GA 30022	**CONTACT NAME:** Jerry Noyola **PHONE (A/C, No, Ext):** 7702207699 **FAX (A/C, No):** **E-MAIL ADDRESS:** greylingcerts@greyling.com
INSURED KIMLASS Kimley-Horn and Associates, Inc. 421 Fayetteville Street, Suite 600 Raleigh, NC 27601	**INSURER(S) AFFORDING COVERAGE** / **NAIC #** **INSURER A :** National Union Fire Ins Co of Pittsburg 19445 **INSURER B :** Allied World Assurance Co (U.S.) Inc. 19489 **INSURER C :** New Hampshire Insurance Company 23841 **INSURER D :** Lloyd's of London 85202 **INSURER E :** **INSURER F :**

COVERAGES **CERTIFICATE NUMBER:** 221548564 **REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X **COMMERCIAL GENERAL LIABILITY** [ ] CLAIMS-MADE [X] OCCUR X Contractual Liab GEN'L AGGREGATE LIMIT APPLIES PER: [ ] POLICY [X] PRO-JECT [X] LOC [ ] OTHER:			GL5268169	4/1/2024	4/1/2025	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 2,000,000 $ 1,000,000 $ 25,000 $ 2,000,000 $ 4,000,000 $ 4,000,000
A A	**AUTOMOBILE LIABILITY** X ANY AUTO [ ] OWNED AUTOS ONLY [ ] SCHEDULED AUTOS X HIRED AUTOS ONLY X NON-OWNED AUTOS ONLY			CA4489663 (AOS) CA2970071 (MA)	4/1/2024 4/1/2024	4/1/2025 4/1/2025	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ 2,000,000 $ $ $
B	X **UMBRELLA LIAB** X OCCUR X **EXCESS LIAB** [ ] CLAIMS-MADE [ ] DED X RETENTION $ 10,000			03127930	4/1/2024	4/1/2025	EACH OCCURRENCE AGGREGATE	$ 5,000,000 $ 5,000,000
C C	**WORKERS COMPENSATION AND EMPLOYERS' LIABILITY** Y / N ANYPROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? N **(Mandatory in NH)** If yes, describe under DESCRIPTION OF OPERATIONS below	N / A		WC015893685 (AOS) WC015893686 (CA)	4/1/2024 4/1/2024	4/1/2025 4/1/2025	X PER STATUTE [ ] OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	 $ 2,000,000 $ 2,000,000 $ 2,000,000
D	Professional Liability			B0146LDUSA2404949	4/1/2024	4/1/2025	Per Claim Aggregate	$2,000,000 $2,000,000

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

Re: Comprehensive Plan Update; Kelley Klepper. The City of Port Orange is named as an Additional Insured with respects to General & Automobile Liability where required by written contract. Waiver of Subrogation applies to Workers Compensation where required by written contract & allowed by law.

CERTIFICATE HOLDER

City of Port Orange
1000 City Center Circle
Port Orange FL 32129-0000

CANCELLATION

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

AUTHORIZED REPRESENTATIVE

Gregg Bachelor

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CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 4/15/2025

SUBJECT: (C7f) Approval to Award a Contract to Ring Power for the rental of a back-up generator at 520 Monroe Street

DEPARTMENT: Public Works

GOAL: 1 - Public Safety, 2 - Infrastructure

RECOMMENDED MOTION: Move to Approve a Contract with Ring Power Corporation for the rental of a temporary generator at 520 Monroe Street; authorize the city manager and city attorney to review and approve final terms and conditions of the contract prior to execution; and authorize the Mayor and City Clerk to execute all necessary documents.

SUMMARY: The Virginia Monroe Stormwater Improvements project was completed in 2021. This project included the construction of two stormwater pump stations, one being located at 520 Monroe Street. When the pump stations were constructed, back-up generators were not included as part of the project. The Engineering Department is currently in the design phase of a project that will include the installation of permanent back-up generators at this location, as well as at 410 Monroe Place. The rental generator will be used during hurricane season until the project is completed, and the permanent generator is installed.

Three quotes were requested for monthly back-up generator rental at 520 Monroe Street, and Ring Power provided the lowest price.

The rental contract for the generator will not exceed $33,120 and the rental term will begin May 1, 2025, terminating on December 1, 2025. The cost of the equipment rental will be charged to the appropriated budget in Public Works - Stormwater.

PRESENTER: Thomas DiEulio

ATTACHMENTS:

1.	Ring Power Corporation - Backup Generator Addendum No. 1 - 520 Monroe Street	Ring Power Corporation - Backup Generator Addendum No. 1 - 520 Monroe Street.pdf
2.	Ring Power Quote - 520 Monroe St	Ring Power Quote - 520 Monroe St .pdf
3.	United Rental Quote 244863165 - 520 Monroe St	United Rental Quote 244863165 - 520 Monroe St.pdf

4.	Cummins Quote#238593 - 520 Monroe St	Cummins Quote#238593 - 520 Monroe St.pdf
5.	520 Monroe St Contract Information	520 Monroe St Contract Information.pdf

Denyce Frey	Created/Initiated - 3/24/2025
Thomas DiEulio	Approved - 3/26/2025
Linda Truitt	Approved - 3/31/2025
Matthew Jones	Approved - 4/3/2025
Wayne Clark	Final Approval - 4/3/2025

ADDENDUM NO. 1
to Ring Power Corporation Rental Quote Q05708
dated _____, 2025

This Addendum No. 1 ("Addendum") is entered into on the day and year set forth hereinafter by and between the **CITY OF PORT ORANGE**, a Florida municipal corporation whose principal address is 1000 City Center Circle, Port Orange, Florida 32129 (the "City") and **RING POWER CORPORATION** ("Contractor"), a Florida corporation, whose principal address is 500 World Commerce Parkway, Saint Augustine, Florida 32092, collectively "the Parties." The Parties have agreed as follows:

1. This Addendum No. 1 supplements the Rental Quote ("Base Contract") for the rental of a 300 KW temporary backup generator for the Storm Water Pump Station located at 520 Monroe Street, and as more specifically described in the Base Contract, dated as indicated above, between Ring Power Corporation and the City of Port Orange. The Base Contract, and this Addendum, attached hereto as Exhibit No. 1, are made a part hereof by reference and shall constitute the formal written Contract between the City and Contractor.

2. *Term*: The term of this Addendum No. 1 shall on May 1, 2025 and continue until December 1, 2025 ("Term").

3. *City Obligations*. In return for the services identified in the Base Contract, the City agrees to compensate Contractor at the rates set forth in the Base Contract subject to a limit not to exceed Thirty-Three Thousand One Hundred Twenty and 00/100 Dollars ($33,120.00). All payments shall be governed by the Local Government Prompt Payment Act as set forth in Sections 218.70 through 218.79, Florida Statutes, as amended.

4. *Contract Administration*. Tom DiEulio, Public Works Director, shall perform contract administration of this Contract. For notice provisions, see the paragraph below entitled "Notice."

5. *Examination of Records*

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

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

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

arbitration, litigation or claims shall have been finally disposed of.

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

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

(b) Provide the public with access to public records on the same terms and conditions that the City would provide the records and at a cost that does not exceed the cost provided in Section 119, Florida Statutes, or as otherwise provided by law.

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

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

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

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

7. *Insurance*. Contractor shall maintain insurance, as required herein, during the life of this Contract. Contractor shall provide to the City, a certificate of insurance endorsing the City of Port Orange as an additional named insured. All insurance coverages of the Contractor shall be primary and non-contributory. All insurance coverages of the Contractor shall not seek contribution from any other insurance or self-insurance available to the City. For workers' compensation coverage, the Contractor's insurance certificate shall include the insurer's waiver of subrogation in lieu of endorsing the City as an additional insured for workers' compensation. The City shall not accept Workers' Compensation Exemptions Contractor may use leased employees if the Contractor ensures that all workers who access the jobsite are employees covered by the employee leasing company, and no non-employees are permitted to access the jobsite. Any Contractor using a leased employee shall complete the City's Leased Employee Affidavit Form Exhibit. Policies for Workers' Compensation may be issued by companies authorized as a group self-insurer by F.S. 440.572.

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

payment. The Certificates of Insurance and required insurance policies shall contain provisions that thirty (30) days prior written notice shall be given to the City of any cancellation, intent not to renew, or reduction in the policies or coverages.

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

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

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

Standard Insurance Requirements			
	Insurance	**Standards**	**Additional Requirements**
☒	Workers' Compensation The Contractor shall maintain coverage for its employees with statutory workers' compensation limits, and no less than the limits indicated in the Schedule of Limits for Employers' Liability. Said coverage shall include a waiver of subrogation in favor of the City. **The City will not accept elective exemptions**. Any contractor using an employee leasing company shall complete the Leased Employee Affidavit Form Exhibit.	Contract Amount Limits Up to $10 million Statutory/$500,000 $10 - $20 million Statutory/$1,000,000 Contracts over $20 million To Be Determined by the City.	☐ If Contract requires work on or about navigable waters, Longshoreman's and Harbor Workers' Coverage required. ☐ If vessels involved, Jones Act coverage with limits of $500,000 required.

☒	Comprehensive General Liability (including Completed Operations and Contractual Liability	Limits:	Combined Single Limit Bodily Injury and Property damage $1,000,000 occurrence $1,000,000 aggregate	☐When work is on or under Railroad rights of way or properties, the Contractor shall take out and maintain during the life of the Contract, Railroad protective liability and property damage insurance in amounts as requested by the Railroad.
☒	Comprehensive Business, Automobile Liability to include all owned, hired and non-owned automobiles.	Limits:	Auto Liability Body Injury and Property Damage: $1,000,000 each occurrence $1,000,000 aggregate	
	Additional Insurance Requirements			
☐	Property Insurance Builders Risk. Additional Coverage:	Limits:	Buildings - Completed value of Contract. "All Risk" coverage on latest ISO for or its equivalent. Permission granted to occupy. Owner named as insured AIMA	If Agreement requires handling or installation of Owner's equipment, coverage should be furnished on "All Risk" form, including transit and Owner shall be named.
☐	Professional Liability	Limits:	Coverage - $1,000,000	
☐	Installation Floater (IT)	Limits:	Coverage - $ To be determined.	
☐	Contractor Pollution Liability	Limits:	Coverage - $1,000,000	
☐	Errors and Omissions	Limits:	Coverage - $1,000,000	
☐	Umbrella Policy	Limits:	Coverage – $ To be determined.	
☐	Payment and Performance Bond Required	Limits:	Coverage - Equal to amount of Contract.	
☐	**City Manager waives Payment and Performance Bond for work under $25,000.00.**			
☐	**Unless otherwise required by law, City Manager waives Insurance for FOB goods under $25,000.00.**			

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

9. *Notice.* For purposes of this agreement, notices shall be sent as follows:

City:	City of Port Orange Attention: City Manager 1000 City Center Circle Port Orange, Florida 32129 (386) 506-5501
Copy to:	City of Port Orange Attention: Tom DiEulio, Public Works Director 1000 City Center Circle Port Orange, Florida 32129 (386) 506-5752
Contractor:	Ring Power Corporation Attention: Randal L. Ringhaver, Director 500 World Commerce Parkway Saint Augustine, Florida 32092 E-Mail: Mike.Lugo@RingPower.com

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

10. *Liability*. Notwithstanding anything to the contrary contained herein, the City shall bear the liability for any damage caused to leased equipment, as a result of the City's negligence. The City agrees to maintain insurance for the duration of the rental period of such type and in such an amount sufficient to pay for any damages to the leased equipment caused by the City up to the full amount of the replacement cost of the leased equipment.

11. *Integration*. This Addendum No. 1 shall supersede all previous communications, representations, or agreements, written or verbal, between the parties hereto. In the event of a conflict between the Base Contract, and this Addendum, this Addendum shall control.

12. *Contract Construction*. This Addendum 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 Addendum shall be deemed valid as if an original signature was delivered. No contract shall be formed between Contractor and the City until the City signs this Addendum.

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

[remainder of page intentionally left blank]

Witnesses:

_____

Printed Name: _____

_____

Printed Name: _____

RING POWER CORPORATION

By: _____

Name/Title: _____

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

Date: _____

Please note that at this time the City does not accept electronic/digital signatures. A wet signature is required for this document.

CITY OF PORT ORANGE

By: _____
Wayne Clark, City Manager

Date: _____

Attest:

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

Date: _____

Rental Quote
Quote Q05708

Power Systems Division
9901 RINGHAVER DRIVE, ORLANDO, FL 32824
ORLANDO PSD 407 855 6195

Date Out: **03/01/2025 Sat**
Est. Date In: **03/28/2025 Fri**
Delivery Date: **03/01/2025 Sat**

Customer: **005589**
Bill to: **CITY OF PORT ORANGE**
1000 CITY CENTER CIRCLE
PORT ORANGE FL 32129

Jobsite: **LIFT STATION**
Contact: **DARREN MELANSON**
Phone: **386-290-8777**
520 MONROE ST
520 MONROE ST
PORT ORANGE, FL, 32129
SMALL TRUCK NEEDED TO PLACE GEN
LANDOLL WILL NOT WORK

Order By: **DARRAN MELANSON**
Sales Rep: **GREG BAKER FITZGERALD - RENT**
PO #: **TO FOLLOW**

QTY	DESCRIPTION		DAY	WEEK	4WEEK	
Rental Items						
1.	300KW GENERATOR SET	Single Shift	$447	$1,341	$4,022	$4,022
	Voltage: 277/480v, 3 phase					
	Frequency: 60 HZ					
	HRS ALLOWED: 8/40/176					
	QUOTED AS 250KW					
Miscellaneous Items						
1	ENV FEE			2.00 %		80.44
1	DELIVERY			150.00 each		150.00
1	PICK UP			150.00 each		150.00

..... THANK YOU FOR YOUR BUSINESS!.....
THIS QUOTE IS SET AT 1ST SHIFT RATES / 8HRS PER DAY & 40HRS PER WEEK & 176HRS PER MONTH
CUSTOMER IS RESPONSIBLE FOR PROVIDING DIESEL FUEL AND DEF FLUID (IF NECESSARY)
SETUP TECHNICIANS ARE AN ADDITIONAL COST

Total: 4,402.64

QUOTE

AGREEMENT AND ACKNOWLEDGEMENT

~~BY EXECUTION OF THIS RENTAL AGREEMENT, LESSEE ACKNOWLEDGES THAT THE EQUIPMENT DESCRIBED HEREIN IS RENTED TO AND IN ACCORDANCE WITH THE TERMS, CONDITIONS, AND PROVISIONS SET FORTH ABOVE (PAGE ONE) AND ON THE TERMS AND CONDITIONS OF THIS AGREEMENT (PAGE TWO) AND LESSEE REPRESENTS THAT LESSEE HAS READ AND AGREES TO ALL TERMS, CONDITIONS AND PROVISIONS OF THIS AGREEMENT.~~

LESSEE SIGNATURE X See Page 7 of Addendum No. 1 **DATE** _____

PRINT NAME _____

TITLE _____

SUBJECT TO ACCEPTANCE AT JACKSONVILLE, FLORIDA
ACCEPTED: RING POWER CORPORATION

BY (LESSOR) Greg Baker-fitzgerald

DATE 1/29/2025

ORIGINAL **Terms and Conditions continued on the backside of this Rental Agreement**

Responsibilities

- The customer is responsible for installation, removal, and maintenance of all equipment.

Notes:

- Rentals are 1 week minimum, Daily rate applies after first week.
  3 Days = 1 Week
  3 Weeks = 1 Month

Shift Hours:

- RATES ARE BASED ON SINGLE SHIFT OPERATIONS UNLESS OTHERWISE STATED
  SINGLE SHIFT = 8 HRS / DAY, 40 HRS / WEEK, 176 HRS / 4 WEEKS
  DOUBLE SHIFT = 16 HRS / DAY, 80 HRS / WEEK, 352 HRS / 4 WEEKS
  TRIPLE SHIFT = UNLIMITED USAGE
- DOUBLE SHIFT IS 1.5 X SINGLE RATE
  TRIPLE SHIFT IS 2 X SINGLE RATE

Responsibilities

- The customer is responsible for refueling the generator prior to return - Ring Power charges $12.00/gallon if required to refuel upon return.

Notes:

- All emergency and Storm related rentals will be charged at the Unlimited Usage rate and will carry a minimum charge as outlined on the schedule below:
  35-400 kW (1) week minimum charge at the unlimited rental rate
  401- 2000 kW (2) week minimum charge at the unlimited rental rate

Responsibilities

- The customer is responsible for providing a fork-lift for unloading and loading equipment if needed.
- The customer is responsible for any required permits.
- The customer is responsible for providing onsite diesel fuel unless otherwise noted in quotation.

Notes:

- The pricing set forth in this quote is valid for thirty (30) days, after which this quote expires.
- This quote is not a guarantee, without a contract in place rental generator availability is subject to change without prior notice.
- Freight/transportation charges are not included in rental rate unless otherwise noted in quotation.
- Monthly rentals are billed on a 4 consecutive week / 28 day billing cycle.

Insurance:

- Ring Power requires the customer to provide certificate of insurance showing PROPERTY DAMAGE coverage for rented/leased equipment for the replacement value of the equipment.
  ~~Ring Power needs to be added as additional insured and loss payee, as well named as certificate holder.~~
  ~~If customer elects not to provide property damage coverage there will be an additional monthly charge of 14% for our Fire, Theft, and Vandalism Waiver.~~
- ~~Ring Power needs to be added as additional insured and loss payee, as well named as certificate holder.~~
- Ring Power requires customer to provide certificate of insurance showing GENERAL LIABILITY coverage for a minimum of $1,000,000 prior to the delivery of equipment.

QUOTE

TERMS AND CONDITIONS

RING POWER CORPORATION (and its affiliates), a Florida corporation, Lessor, and Lessee, enter into the following Lease Agreement (the "Agreement").

1 . RENTAL: Lessor rents to Lessee machinery, equipment and other personal property referred to as "Equipment." This agreement is for rental only and nothing herein contained shall be construed as conveying to the Lessee any right, title or interest in or to the Equipment, except the right of possession and use as a Lessee. The rental of the Equipment shall not be construed as an offer to sell the Equipment. It is understood and agreed that rentals paid will not apply toward a subsequent purchase of the Equipment unless an agreement in writing is made by Lessor and Lessee prior to delivery of the Equipment. ~~Lessee agrees to indemnify, protect, and hold harmless the Lessor, its agents, successors and assigns against all losses, damages, injuries, claims, demands, and expenses, including legal expenses, of whatever nature, including property damage, personal injury, or strict liability arising out of the use, transportation, condition, or operation of any Equipment. The terms and conditions of this Agreement are incorporated into all other leases executed by Lessee.~~

2. ACCEPTANCE AND RETURN OF EQUIPMENT: The Equipment is the property of Lessor, and is in good repair and mechanical condition. Acceptance of delivery constitutes acknowledgment by the Lessee that the Equipment is in good repair and mechanical condition. If the Equipment is not in proper working order when received, Lessee shall notify Lessor of any claimed deficiency in writing by certified mail within twenty-four (24) hours of delivery of the Equipment or be deemed to have waived any such claim. Risk of loss to the Equipment shall pass to the Lessee when the Equipment leaves the Lessor's yard. In the event the Equipment is damaged during the term of this Lease, the Lessee shall at its own expense maintain the Equipment in good working order and condition. The Lessee is responsible for all repairs on the Equipment. Lessee shall return Equipment in the same condition as received, ordinary wear and tear excepted, to the rental location on the day specified or sooner if demanded by Lessor.

3. CHARGES: ~~Lessee shall promptly pay no later than thirty (30) days from the date of the invoice at the Lessor's Address set forth in the Agreement all rental and other charges, including but not limited to time, mileage, service, repairs, minimum delivery, pick-up and fuel. Acceptable forms of payment include: EFT, wire, credit card, company check, certified check, money order, cash.~~ If payment is made with a credit card the lessee asserts that a signature authorizing the sale is not specifically required to constitute the sale. The daily, weekly and monthly rental shall entitle Lessee to a maximum of one-shift use (8 hours per day, 40 hours per week, 176 per month. Double-shift use will incur a charge of one-and-a-half (1-1/2%) times the hourly rate and triple-shift use will incur a charge of two (2) times the hourly rate. Rentals are F.O.B. at Lessor's Rental Office. Shipping charges from such location to destination and return all transportation loading, unloading, assembling and dismantling costs shall be paid by Lessee and the Lessee further agrees that it is the Lessee's responsibility to provide competent and adequate labor and auxiliary equipment, including rigging, for purposes of assembly and/or disassembly of the Equipment. Lessee shall remain liable for rent under this agreement, and rent shall continue to be charged, for damaged Equipment until the Equipment is repaired to the same condition as received by Lessee. In the event of the loss or destruction of the Equipment or any of its accessories for any reason, or the failure to return the same for any reason, Lessee shall promptly pay Lessor the fair market value at the time of the loss plus all past due rent. ~~No credit shall be given for non-working days and the Lessee shall not be entitled to abatement, reduction of or set off against rent for any reason whatsoever.~~

4. USE OF EQUIPMENT: Equipment shall be used solely in Lessee's business and kept only at its place of business or job site (except that Equipment may be moved in the normal course of Lessee's business), and shall not be removed without prior written consent of Lessor. At no time shall the Equipment ever be used in or near salt water. In any event, the Equipment shall not be removed from the continental United States. Lessee shall notify Lessor, prior to moving Equipment from its place of business or the job site as set forth in this Agreement, of the location and project to which the Equipment is relocated and the date(s) the Equipment is removed or placed on any job site. Lessee shall promptly respond to all requests by Lessor concerning the job site (including, but not limited to, the identity of the property owner, general contractor, surety, if any, and legal description of premises).

5. SERVICE: Lessee shall perform and pay for all services, adjustments, and lubrication of Equipment including but not limited to: checking of Equipment before each shift; and supplying fuel, oil and water; and checking cooling system (engine only); and, checking tire pressures and battery fluid and charge levels at least weekly; repair and replacement of all friction materials, clutches, brakes and under carriage components, drive sprockets, crawler chains, idlers, pins, pads, rub rails, rollers and bushings.

~~**6. LIABILITY:** Lessor shall not be liable to Lessee for any loss or liability of any kind, including without limitation consequential or indirect damages of any kind whatsoever under this Agreement. LESSEE IS RESPONSIBLE FOR MAKING ARRANGEMENTS FOR THE RETURN OF THE EQUIPMENT. THIS AGREEMENT DOES NOT TERMINATE UNTIL THE EQUIPMENT IS RECEIVED IN GOOD CONDITION AT LESSOR'S RENTAL OFFICE.~~

7. INSURANCE: Lessee shall at Lessee's expense, during the term hereof, maintain in force a policy of general liability with a limit of at least $1,000,000 with bodily injury and death liability limits of at least $1,000,000 for each person in each accident on a primary and not excess or contributory basis against its liability for damages sustained by any person or persons including but not limited to employees of Lessee, as a result of the maintenance, use, operation, storage, erection, dismantling, servicing or transportation of such Equipment. Also at Lessee's expense, Lessee shall insure the equipment for its full replacement value under a standard physical damage ALL RISKS POLICY with an insurance company acceptable and approved by Ring Power. ~~Lessee shall furnish Lessor a certificate of such insurance naming Ring Power as an additional insured, which may not be canceled or materially modified except on thirty (30) days prior written notice to Lessor.~~ Lessee agrees to abide by the provisions of said policy and to make a written report to Lessor and the insurer within forty-eight (48) hours of Lessee's knowledge of any accident or occurrence involving such Equipment. Lessee's agents and employees shall cooperate fully with Lessor and Lessee's insurer in the investigation, prosecution and/or defense of any claim or suit and shall do nothing to impair or invalidate any applicable insurance coverage. Lessee's insurance shall also insure except as may be otherwise provided herein, against all risks of direct physical loss or damage to the Equipment, while in transit or otherwise within the United States of America and Canada~~, and shall also include general average and salvage charges on Equipment while waterborne~~.

8. COMPLIANCE WITH LAW: Lessee shall, at its expense, comply with all state, federal and local laws and regulations affecting Equipment and its use, erection, design and transportation, including licensing and building code requirements ~~and shall defend, indemnify and hold Lessor harmless from all loss, liability and expense, including Lessor's reasonable attorney's fees, resulting from actual or asserted violations of any such laws~~.

9. VENUE AND CHOICE OF LAW: This Agreement shall be controlled by the laws of Florida. The Lessee specifically agrees to personal jurisdiction in the State of Florida and agrees that venue for all actions related to the Agreement or actions related to the Equipment of any kind will be brought in a state court of competent jurisdiction in Jacksonville, Duval County, Florida or St. Augustine, St. Johns County, Florida.

10. DEFAULT: An event of default shall occur if: (a) Lessee fails to pay rent and such failure continues for a period of five (5) days; (b) Lessee shall fail to perform or observe any conditions in the Agreement for ten (10) days after written notice; (c) Lessee ceases doing business as a going concern, makes an assignment for the benefit of creditors; or (d) Lessee has abandoned the Equipment or attempts to remove, sell, transfer, or encumber the Equipment.

11. REMEDIES: All delinquent rent shall bear interest at the highest lawful rate in the State of Florida. In the event of default or breach of this Agreement by Lessee, or if Lessor for any reason deems itself insecure, Lessor, at its option, shall be entitled to any one or more of the following remedies: Lessor may, (a) enter premises where Equipment is located and render same inoperative or remove Equipment with or without process of law and without notice or liability to Lessee; (b) terminate this Agreement without prejudice to any remedies or claims which Lessor might otherwise have; (c) collect from Lessee for arrears of rent and expenses of retaking; (d) accelerate the remaining rental payments to be due and payable immediately, which shall be construed as liquidated damages and not as a penalty; (e) collect from Lessee the fair market value of the Equipment, for loss of use or for any loss or damage to the Equipment; and (f) collect from Lessee the cost to repair or refurbish the Equipment. Upon the occurrence of any event of default, Lessee agrees to pay all costs of collection and expenses, which may be incurred by Lessor, including reasonable attorney's fees, to enforce any right provided in the Agreement.

12. DISCLAIMER OF WARRANTIES: LESSOR MAKES NO WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO ALL EQUIPMENT. LESSEE TAKES AND RENTS EQUIPMENT "AS IS" AND WITH ALL FAULTS OR DEFECTS.

13. NOTICES: Any notice to be given or mailed by certified mail, return receipt requested, with postage prepaid, at the respective addresses set forth in the Agreement.

14. SPECIAL PROVISIONS:

a.) LESSEE'S GENERAL RESPONSIBILITY: Under this Agreement the Lessee renting the Equipment is responsible to Lessor for any loss or damage to the Equipment and/or its return in the same condition in which received, ordinary wear and tear excepted.

~~b.) SUBROGATION: In the event of any loss or damage to the Equipment, Lessor shall have the right of subrogation with respect to any right of the Lessee to recover against any person, firm or corporation. Lessee shall cooperate.~~

c.) FIRE, THEFT AND VANDALISM WAIVER ("FTV")**: At Ring Power's option, FTV may be offered. If offered and accepted by Lessee, the "Fire, Theft and Vandalism Waiver" option ("FTV") is not insurance. The FTV option may be accepted by the Lessee only at the commencement of the rental term by Lessee initiating the "ACCEPTS FTV" addendum on the rental invoice and by Lessee paying the additional charges specified therein. The FTV option is not available for over the road vehicles, Cranes, Machines in Mowing and Mulching Applications. If the Lessee accepts the FTV option and the Lessee fulfills all terms, conditions and provisions of this Agreement including making of all payments required, time being of the essence, then Lessor agrees to waive the Lessee's liability to Lessor for loss or damage to the equipment due to the specific perils relating to Fire, Theft and Vandalism exceeding the larger of the following applicable amounts: (a) $500 per item of equipment; or (b) triple the monthly rental charge in effect on the date of this agreement, per item of equipment, without regard to the rental period of this agreement. **Opting for FTV does not waive your obligation under the Agreement to provide General Liability Coverage. *****Opting for FTV does not waive your obligation under the Agreement to provide General Liability Coverage.***

d.) When demonstrator units are included in this Agreement, they shall be deemed to be Rentals pursuant to the terms of this Agreement.

e.) The Lessee and Lessor agree that the prevailing party shall be entitled to a reasonable attorney's fee for any dispute regarding this Agreement.

f.) This Agreement may be executed in multiple counterparts. Facsimile signatures of each party s authorized representative shall be deemed to be binding upon such party.

g.) THE LESSEE SPECIFICALLY AGREES TO WAIVE ALL RIGHTS TO A JURY TRIAL IN THE STATE OF FLORIDA.

h.) AUTHORIZED OPERATORS. CUSTOMER shall only permit individuals to operate a piece of Equipment if that individual possesses the necessary experience, training, certification and/or licensure to safely do so. CUSTOMER releases, holds harmless and will indemnify Ring Power Corporation, its subsidiaries and affiliated companies, their officers, agents and employees against any and all loss, liability, expense, including reasonable attorneys' fees, damages including, but not limited to, property damage, personal injury, or strict liability, resulting from, or allegedly resulting from, an operator's lack of such experience, training, certification and/or licensure.

i.) SAFETY EQUIPMENT. CUSTOMER will require any and all operators of Equipment to wear or use proper safety equipment, including but not limited to any harnesses or personal protective equipment, that a reasonable operator would use while operating such Equipment, or as recommended and/or required by the operator's manual for the Equipment. ~~CUSTOMER will release, hold harmless and indemnify Lessor, its subsidiaries and affiliated companies, their officers, agents and employees against any and all loss, liability, expense, including reasonable attorneys' fees, damages including, but not limited to, property damage, personal injury, or strict liability, resulting from, or allegedly resulting from, an operator's failure to wear or use such safety equipment.~~

Initials: See Page 7 of Addendum No. 1

Ring Power CAT

Power Systems Division

9901 RINGHAVER DRIVE, ORLANDO, FL 32824
ORLANDO PSD 407 855 6195

Rental Quote

Quote Q05708

Date Out: **03/01/2025 Sat**
Est. Date In: **03/28/2025 Fri**
Delivery Date: **03/01/2025 Sat**

Customer: **005589**

Bill to: **CITY OF PORT ORANGE**
1000 CITY CENTER CIRCLE
PORT ORANGE FL 32129

Jobsite: **LIFT STATION**
Contact: **DARREN MELANSON**
Phone: **386-290-8777**
520 MONROE ST
520 MONROE ST
PORT ORANGE, FL, 32129
SMALL TRUCK NEEDED TO PLACE GEN
LANDOLL WILL NOT WORK

Sales Rep: **GREG BAKER FITZGERALD - RENT**

Order By: **DARRAN MELANSON**

PO #: **TO FOLLOW**

QTY	DESCRIPTION		DAY	WEEK	4WEEK	
Rental Items						
1.	300KW GENERATOR SET	Single Shift	$447	$1,341	$4,022	$4,022
	Voltage: 277/480v, 3 phase					
	Frequency: 60 HZ					
	HRS ALLOWED: 8/40/176					
	QUOTED AS 250KW					

Miscellaneous Items

1	ENV FEE	2.00	%	80.44
1	DELIVERY	150.00	each	150.00
1	PICK UP	150.00	each	150.00

..... THANK YOU FOR YOUR BUSINESS!.....
THIS QUOTE IS SET AT 1ST SHIFT RATES / 8HRS PER DAY & 40HRS PER WEEK & 176HRS PER MONTH
CUSTOMER IS RESPONSIBLE FOR PROVIDING DIESEL FUEL AND DEF FLUID (IF NECESSARY)
SETUP TECHNICIANS ARE AN ADDITIONAL COST

Total: 4,402.64

QUOTE

AGREEMENT AND ACKNOWLEDGEMENT

BY EXECUTION OF THIS RENTAL AGREEMENT, LESSEE ACKNOWLEDGES THAT THE EQUIPMENT DESCRIBED HEREIN IS RENTED TO AND IN ACCORDANCE WITH THE TERMS, CONDITIONS, AND PROVISIONS SET FORTH ABOVE (PAGE ONE) AND ON THE TERMS AND CONDITIONS OF THIS AGREEMENT (PAGE TWO) AND LESSEE REPRESENTS THAT LESSEE HAS READ AND AGREES TO ALL TERMS, CONDITIONS AND PROVISIONS OF THIS AGREEMENT.

LESSEE SIGNATURE X _____ **DATE** _____

PRINT NAME _____

TITLE _____

SUBJECT TO ACCEPTANCE AT JACKSONVILLE, FLORIDA
ACCEPTED: RING POWER CORPORATION

BY (LESSOR) Greg Baker-fitzgerald

DATE 1/29/2025

ORIGINAL

Terms and Conditions continued on the backside of this Rental Agreement

Responsibilities

- The customer is responsible for installation, removal, and maintenance of all equipment.

Notes:

- Rentals are 1 week minimum, Daily rate applies after first week.
  3 Days = 1 Week
  3 Weeks = 1 Month

Shift Hours:

- RATES ARE BASED ON SINGLE SHIFT OPERATIONS UNLESS OTHERWISE STATED
  SINGLE SHIFT = 8 HRS / DAY, 40 HRS / WEEK, 176 HRS / 4 WEEKS
  DOUBLE SHIFT = 16 HRS / DAY, 80 HRS / WEEK, 352 HRS / 4 WEEKS
  TRIPLE SHIFT = UNLIMITED USAGE
- DOUBLE SHIFT IS 1.5 X SINGLE RATE
  TRIPLE SHIFT IS 2 X SINGLE RATE

Responsibilities

- The customer is responsible for refueling the generator prior to return - Ring Power charges $12.00/gallon if required to refuel upon return.

Notes:

- All emergency and Storm related rentals will be charged at the Unlimited Usage rate and will carry a minimum charge as outlined on the schedule below:
  35-400 kW (1) week minimum charge at the unlimited rental rate
  401- 2000 kW (2) week minimum charge at the unlimited rental rate

Responsibilities

- The customer is responsible for providing a fork-lift for unloading and loading equipment if needed.
- The customer is responsible for any required permits.
- The customer is responsible for providing onsite diesel fuel unless otherwise noted in quotation.

Notes:

- The pricing set forth in this quote is valid for thirty (30) days, after which this quote expires.
- This quote is not a guarantee, without a contract in place rental generator availability is subject to change without prior notice.
- Freight/transportation charges are not included in rental rate unless otherwise noted in quotation.
- Monthly rentals are billed on a 4 consecutive week / 28 day billing cycle.

Insurance:

- Ring Power requires the customer to provide certificate of insurance showing PROPERTY DAMAGE coverage for rented/leased equipment for the replacement value of the equipment.
  Ring Power needs to be added as additional insured and loss payee, as well named as certificate holder.
  If customer elects not to provide property damage coverage there will be an additional monthly charge of 14% for our Fire, Theft, and Vandalism Waiver.
- Ring Power needs to be added as additional insured and loss payee, as well named as certificate holder.
- Ring Power requires customer to provide certificate of insurance showing GENERAL LIABILITY coverage for a minimum of $1,000,000 prior to the delivery of equipment.

QUOTE

TERMS AND CONDITIONS

RING POWER CORPORATION (and its affiliates), a Florida corporation, Lessor, and Lessee, enter into the following Lease Agreement (the "Agreement").

1 . RENTAL: Lessor rents to Lessee machinery, equipment and other personal property referred to as "Equipment." This agreement is for rental only and nothing herein contained shall be construed as conveying to the Lessee any right, title or interest in or to the Equipment, except the right of possession and use as a Lessee. The rental of the Equipment shall not be construed as an offer to sell the Equipment. It is understood and agreed that rentals paid will not apply toward a subsequent purchase of the Equipment unless an agreement in writing is made by Lessor and Lessee prior to delivery of the Equipment. Lessee agrees to indemnify, protect, and hold harmless the Lessor, its agents, successors and assigns against all losses, damages, injuries, claims, demands, and expenses, including legal expenses, of whatever nature, including property damage, personal injury, or strict liability arising out of the use, transportation, condition, or operation of any Equipment. The terms and conditions of this Agreement are incorporated into all other leases executed by Lessee.

2. ACCEPTANCE AND RETURN OF EQUIPMENT: The Equipment is the property of Lessor, and is in good repair and mechanical condition. Acceptance of delivery constitutes acknowledgment by the Lessee that the Equipment is in good repair and mechanical condition. If the Equipment is not in proper working order when received, Lessee shall notify Lessor of any claimed deficiency in writing by certified mail within twenty-four (24) hours of delivery of the Equipment or be deemed to have waived any such claim. Risk of loss to the Equipment shall pass to the Lessee when the Equipment leaves the Lessor's yard. In the event the Equipment is damaged during the term of this Lease, the Lessee shall at its own expense maintain the Equipment in good working order and condition. The Lessee is responsible for all repairs on the Equipment. Lessee shall return Equipment in the same condition as received, ordinary wear and tear excepted, to the rental location on the day specified or sooner if demanded by Lessor.

3. CHARGES: Lessee shall promptly pay no later than thirty (30) days from the date of the invoice at the Lessor's Address set forth in the Agreement all rental and other charges, including but not limited to time, mileage, service, repairs, minimum delivery, pick-up and fuel. Acceptable forms of payment include: EFT, wire, credit card, company check, certified check, money order, cash. If payment is made with a credit card the lessee asserts that a signature authorizing the sale is not specifically required to constitute the sale. The daily, weekly and monthly rental shall entitle Lessee to a maximum of one-shift use (8 hours per day, 40 hours per week, 176 per month. Double-shift use will incur a charge of one-and-a-half (1-1/2%) times the hourly rate and triple-shift use will incur a charge of two (2) times the hourly rate. Rentals are F.O.B. at Lessor's Rental Office. Shipping charges from such location to destination and return all transportation loading, unloading, assembling and dismantling costs shall be paid by Lessee and the Lessee further agrees that it is the Lessee's responsibility to provide competent and adequate labor and auxiliary equipment, including rigging, for purposes of assembly and/or disassembly of the Equipment. Lessee shall remain liable for rent under this agreement, and rent shall continue to be charged, for damaged Equipment until the Equipment is repaired to the same condition as received by Lessee. In the event of the loss or destruction of the Equipment or any of its accessories for any reason, or the failure to return the same for any reason, Lessee shall promptly pay Lessor the fair market value at the time of the loss plus all past due rent. No credit shall be given for non-working days and the Lessee shall not be entitled to abatement, reduction of or set off against rent for any reason whatsoever.

4. USE OF EQUIPMENT: Equipment shall be used solely in Lessee's business and kept only at its place of business or job site (except that Equipment may be moved in the normal course of Lessee's business), and shall not be removed without prior written consent of Lessor. At no time shall the Equipment ever be used in or near salt water. In any event, the Equipment shall not be removed from the continental United States. Lessee shall notify Lessor, prior to moving Equipment from its place of business or the job site as set forth in this Agreement, of the location and project to which the Equipment is relocated and the date(s) the Equipment is removed or placed on any job site. Lessee shall promptly respond to all requests by Lessor concerning the job site (including, but not limited to, the identity of the property owner, general contractor, surety, if any, and legal description of premises).

5. SERVICE: Lessee shall perform and pay for all services, adjustments, and lubrication of Equipment including but not limited to: checking of Equipment before each shift; and supplying fuel, oil and water; and checking cooling system (engine only); and, checking tire pressures and battery fluid and charge levels at least weekly; repair and replacement of all friction materials, clutches, brakes and under carriage components, drive sprockets, crawler chains, idlers, pins, pads, rub rails, rollers and bushings.

6. LIABILITY: Lessor shall not be liable to Lessee for any loss or liability of any kind, including without limitation consequential or indirect damages of any kind whatsoever under this Agreement. LESSEE IS RESPONSIBLE FOR MAKING ARRANGEMENTS FOR THE RETURN OF THE EQUIPMENT. THIS AGREEMENT DOES NOT TERMINATE UNTIL THE EQUIPMENT IS RECEIVED IN GOOD CONDITION AT LESSOR'S RENTAL OFFICE.

7. INSURANCE: Lessee shall at Lessee's expense, during the term hereof, maintain in force a policy of general liability with a limit of at least $1,000,000 with bodily injury and death liability limits of at least $1,000,000 for each person in each accident on a primary and not excess or contributory basis against its liability for damages sustained by any person or persons including but not limited to employees of Lessee, as a result of the maintenance, use, operation, storage, erection, dismantling, servicing or transportation of such Equipment. Also at Lessee's expense, Lessee shall insure the equipment for its full replacement value under a standard physical damage ALL RISKS POLICY with an insurance company acceptable and approved by Ring Power. Lessee shall furnish Lessor a certificate of such insurance naming Ring Power as an additional insured, which may not be canceled or materially modified except on thirty (30) days prior written notice to Lessor. Lessee agrees to abide by the provisions of said policy and to make a written report to Lessor and the insurer within forty-eight (48) hours of Lessee's knowledge of any accident or occurrence involving such Equipment. Lessee's agents and employees shall cooperate fully with Lessor and Lessee's insurer in the investigation, prosecution and/or defense of any claim or suit and shall do nothing to impair or invalidate any applicable insurance coverage. Lessee's insurance shall also insure except as may be otherwise provided herein, against all risks of direct physical loss or damage to the Equipment, while in transit or otherwise within the United States of America and Canada, and shall also include general average and salvage charges on Equipment while waterborne.

8. COMPLIANCE WITH LAW: Lessee shall, at its expense, comply with all state, federal and local laws and regulations affecting Equipment and its use, erection, design and transportation, including licensing and building code requirements and shall defend, indemnify and hold Lessor harmless from all loss, liability and expense, including Lessor's reasonable attorney's fees, resulting from actual or asserted violations of any such laws.

9. VENUE AND CHOICE OF LAW: This Agreement shall be controlled by the laws of Florida. The Lessee specifically agrees to personal jurisdiction in the State of Florida and agrees that venue for all actions related to the Agreement or actions related to the Equipment of any kind will be brought in a state court of competent jurisdiction in Jacksonville, Duval County, Florida or St. Augustine, St. Johns County, Florida.

10. DEFAULT: An event of default shall occur if: (a) Lessee fails to pay rent and such failure continues for a period of five (5) days; (b) Lessee shall fail to perform or observe any conditions in the Agreement for ten (10) days after written notice; (c) Lessee ceases doing business as a going concern, makes an assignment for the benefit of creditors; or (d) Lessee has abandoned the Equipment or attempts to remove, sell, transfer, or encumber the Equipment.

11. REMEDIES: All delinquent rent shall bear interest at the highest lawful rate in the State of Florida. In the event of default or breach of this Agreement by Lessee, or if Lessor for any reason deems itself insecure, Lessor, at its option, shall be entitled to any one or more of the following remedies: Lessor may, (a) enter premises where Equipment is located and render same inoperative or remove Equipment with or without process of law and without notice or liability to Lessee; (b) terminate this Agreement without prejudice to any remedies or claims which Lessor might otherwise have; (c) collect from Lessee for arrears of rent and expenses of retaking; (d) accelerate the remaining rental payments to be due and payable immediately, which shall be construed as liquidated damages and not as a penalty; (e) collect from Lessee the fair market value of the Equipment, for loss of use or for any loss or damage to the Equipment; and (f) collect from Lessee the cost to repair or refurbish the Equipment. Upon the occurrence of any event of default, Lessee agrees to pay all costs of collection and expenses, which may be incurred by Lessor, including reasonable attorney's fees, to enforce any right provided in the Agreement.

12. DISCLAIMER OF WARRANTIES: LESSOR MAKES NO WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO ALL EQUIPMENT. LESSEE TAKES AND RENTS EQUIPMENT "AS IS" AND WITH ALL FAULTS OR DEFECTS.

13. NOTICES: Any notice to be given or mailed by certified mail, return receipt requested, with postage prepaid, at the respective addresses set forth in the Agreement.

14. SPECIAL PROVISIONS:

a.) LESSEE'S GENERAL RESPONSIBILITY: Under this Agreement the Lessee renting the Equipment is responsible to Lessor for any loss or damage to the Equipment and/or its return in the same condition in which received, ordinary wear and tear excepted.

b.) SUBROGATION: In the event of any loss or damage to the Equipment, Lessor shall have the right of subrogation with respect to any right of the Lessee to recover against any person, firm or corporation. Lessee shall cooperate.

c.) FIRE, THEFT AND VANDALISM WAIVER ("FTV")**: At Ring Power's option, FTV may be offered. If offered and accepted by Lessee, the "Fire, Theft and Vandalism Waiver" option ("FTV") is not insurance. The FTV option may be accepted by the Lessee only at the commencement of the rental term by Lessee initiating the "ACCEPTS FTV" addendum on the rental invoice and by Lessee paying the additional charges specified therein. The FTV option is not available for over the road vehicles, Cranes, Machines in Mowing and Mulching Applications. If the Lessee accepts the FTV option and the Lessee fulfills all terms, conditions and provisions of this Agreement including making of all payments required, time being of the essence, then Lessor agrees to waive the Lessee's liability to Lessor for loss or damage to the equipment due to the specific perils relating to Fire, Theft and Vandalism exceeding the larger of the following applicable amounts: (a) $500 per item of equipment; or (b) triple the monthly rental charge in effect on the date of this agreement, per item of equipment, without regard to the rental period of this agreement. **Opting for FTV does not waive your obligation under the Agreement to provide General Liability Coverage. ***Opting for FTV does not waive your obligation under the Agreement to provide General Liability Coverage.***

d.) When demonstrator units are included in this Agreement, they shall be deemed to be Rentals pursuant to the terms of this Agreement.

e.) The Lessee and Lessor agree that the prevailing party shall be entitled to a reasonable attorney's fee for any dispute regarding this Agreement.

f.) This Agreement may be executed in multiple counterparts. Facsimile signatures of each party s authorized representative shall be deemed to be binding upon such party.

g.) THE LESSEE SPECIFICALLY AGREES TO WAIVE ALL RIGHTS TO A JURY TRIAL IN THE STATE OF FLORIDA.

h.) AUTHORIZED OPERATORS. CUSTOMER shall only permit individuals to operate a piece of Equipment if that individual possesses the necessary experience, training, certification and/or licensure to safely do so. CUSTOMER releases, holds harmless and will indemnify Ring Power Corporation, its subsidiaries and affiliated companies, their officers, agents and employees against any and all loss, liability, expense, including reasonable attorneys' fees, damages including, but not limited to, property damage, personal injury, or strict liability, resulting from, or allegedly resulting from, an operator's lack of such experience, training, certification and/or licensure.

i.) SAFETY EQUIPMENT. CUSTOMER will require any and all operators of Equipment to wear or use proper safety equipment, including but not limited to any harnesses or personal protective equipment, that a reasonable operator would use while operating such Equipment, or as recommended and/or required by the operator's manual for the Equipment. CUSTOMER will release, hold harmless and indemnify Lessor, its subsidiaries and affiliated companies, their officers, agents and employees against any and all loss, liability, expense, including reasonable attorneys' fees, damages including, but not limited to, property damage, personal injury, or strict liability, resulting from, or allegedly resulting from, an operator's failure to wear or use such safety equipment.

Initials: _____

United Rentals
POWER & HVAC

BRANCH G35
9375 BOGGY CREEK RD
ORLANDO FL 32824-8373
407-854-6061
407-857-8308 FAX

RENTAL QUOTE

244863165

Customer #	: 2629647
Quote Date	: 02/25/25
Estimated Out	: 03/01/25 12:00 PM
Estimated In	: 03/29/25 12:00 PM
UR Job Loc	: 520 MONROE ST, PORT
UR Job #	: 29
Customer Job ID:	
P.O. #	: TBD
Ordered By	: DARRAN M
Written By	: TRAVIS GOODMAN
Salesperson	: TRAVIS GOODMAN

Job Site

MONROE STREET
520 MONROE ST
PORT ORANGE FL 32127

Office: 386-506-5500

CITY OF PORT ORANGE
1000 CITY CENTER CIR
PORT ORANGE FL 32129-4144

This is not an invoice
Please do not pay from this document

RENTAL ITEMS:

Qty	Equipment	Description	Minimum	Day	Week	4 Week	Estimated Amt.
1	2403313	GENERATOR 300-349 KVA TIER 4		1,168.00	2,050.00	5,651.00	5,651.00

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*********************************************************************
* RATES ARE BASED ON SINGLE SHIFT OPERATIONS UNLESS OTHERWISE STATED *
*     SINGLE SHIFT = 8 HRS / DAY, 40 HRS / WEEK, 160 HRS / 4 WEEKS   *
*    DOUBLE SHIFT = 16 HRS / DAY, 80 HRS / WEEK, 320 HRS / 4 WEEKS   *
*                   TRIPLE SHIFT = UNLIMITED USAGE                  *
*               DOUBLE SHIFT = 1.5 X SINGLE SHIFT RATE              *
*                TRIPLE SHIFT = 2 X SINGLE SHIFT RATE               *
*********************************************************************
* GENERATOR WILL BE DELIVERED FULL OF FUEL AND DIESEL EXHAUST FLUID  *
* "DEF" (IF REQUIRED). CUSTOMER IS RESPONSIBLE TO RETURN IN THE SAME *
* MANNER. FUEL AND DEF SERVIE IS AVAILABLE THROUGH UR.               *
* ENSURE PROPER OPERATION                                    .       *
*         IF NOT RETURNED FULL A REFUELING CHARGE WILL APPLY.        *
*********************************************************************
```

Rental Subtotal: 5,651.00

SALES/MISCELLANEOUS ITEMS:

Qty	Item	Price	Unit of Measure	Extended Amt.
1	DELIVERY CHARGE	437.230	EACH	437.23
1	PICKUP CHARGE	437.230	EACH	437.23

Sales/Misc Subtotal: 874.46

Agreement Subtotal: 6,525.46
Estimated Total: 6,525.46

COMMENTS/NOTES:

CONTACT: DARRAN M

This proposal may be withdrawn if not accepted within 30 days. The above referenced Rental Protection Plan, environmental, and tax charges are estimates and are subject to change.

NOTICE: This is not a rental agreement. The rental of equipment and any items listed above is subject to availability and subject to the terms and conditions of the Rental and Service Agreement, which are available at https://www.unitedrentals.com/legal/rental-service-terms-US and which are incorporated herein by reference. A COPY OF THE RENTAL AND SERVICE AGREEMENT TERMS ARE AVAILABLE IN PAPER FORM UPON REQUEST.

Cummins Sales and Service

Payment terms are 30 days from invoice date unless otherwise agreed upon in writing. Remit to:
Cummins Sales and Service
PO Box 772639
Detroit, MI 48277-2639

ORLANDO FL BRANCH
4820 ORANGE BLOSSOM TRAIL
MV#95745
ORLANDO, FL 32810-
(407)298-2080

INVOICE NO

ESTIMATE

TO PAY ONLINE LOGON TO
customerpayment.cummins.com

BILL TO

CITY OF PORT ORANGE
ACCOUNTS PAYABLE
PO BOX 291759
PORT ORANGE. FL 32129-1759

OWNER

CITY OF PORT ORANGE
MONROE ST
520 MONROE ST
PORT ORANGE, FL 32127-
DARRAN MELANSON - 386 290-8777

***** CHARGE *****

DATE	CUSTOMER ORDER NO.	DATE IN SERVICE	ENGINE MODEL	PUMP NO.	EQUIPMENT MAKE
25-FEB-2025					
CUSTOMER NO.	**SHIP VIA**	**FAIL DATE**	**ENGINE SERIAL NO.**	**CPL NO.**	**EQUIPMENT MODEL**
362430					
REF. NO.	**SALESPERSON**	**PARTS DISP.**	**MILEAGE/HOURS**	**PUMP CODE**	**UNIT NO.**
238593					

QUANTITY ORDERED	BACK ORDERED	QUANTITY SHIPPED	PART NUMBER	DESCRIPTION	PRODUCT CODE	UNIT PRICE	AMOUNT

COMPLAINT

PROVIDE 250KW RENTAL GENERATOR FOR
THE PERIOD OF 4 WEEKS STARTING MARCH 1ST

LOCATION
MONROE ST
520 MONROE ST
PORT ORANGE FL 32127

RENTAL FEE $5,143.11
SHIPPING TO $669.00
SHIPPING FROM $669.00

CAUSE CUSTOMER REQUEST

CORRECTION CUSTOMER IS RESPONSIBLE FOR CONNECT AND DISCONNECT

TOWABLE GENERATOR WILL BE DELIVERED FULL OF FUEL AND DIESEL
EXHAUST FLUID "DEF" (IF REQUIRED).
CONTAINERIZED UNITES WILL BE DELIVERED WITH LESS THAN 200 GALLONS.
ON-BOARD FUEL CAPACITY IS 1,000 GALLONS. .
CUSTOMER IS RESPONSIBLE FOR FUEL DURING THE RENTAL PERIOD.
CUSTOMER IS RESPONSIBLE TO RETURN IN THE SAME MANNER AS DELIVERED.
FUEL AND DEF SERVICE IS AVAILABLE THROUGH UR.
IT IS THE CUSTOMER RESPONSIBILITY TO VERIFY ALL FLUIDS EACH DAY TO ENSURE PROPER OPERATION.

COVERAGE CUSTOMER BILLABLE

REMARK THANK YOU FOR YOUR BUSINESS

SRO EMAILED TO DARRAN MELANSON

1	FIELD SERVICE	FIELD SERVICE	**10,906.57**

Completion date : 26-Feb-2025 12:48PM. Estimate expires : 27-Mar-2025 11:48AM.

Billing Inquiries? Call (877)480-6970

THERE ARE ADDITIONAL CONTRACT TERMS ON THE REVERSE SIDE OF THIS DOCUMENT, INCLUDING LIMITATION ON WARRANTIES AND REMEDIES, WHICH ARE EXPRESSLY INCORPORATED HEREIN AND WHICH PURCHASER ACKNOWLEDGES HAVE BEEN READ AND FULLY UNDERSTOOD.

AUTHORIZED BY (print name)_____**SIGNATURE**_____**DATE**_____

TERMS AND CONDITIONS

These terms and conditions ('Terms and Conditions'), together with the estimate/quote (the "Quote") and/or invoice ("Invoice") attached to these Terms and Conditions, are hereinafter collectively referred to as this "Agreement" and shall constitute the entire agreement between the customer ("Customer") identified on the Quote and/or Invoice and Cummins Inc. ("Cummins") and supersede any previous representation, statements, agreements or understanding (oral or written) between the parties with respect to the subject matter of this Agreement. Customer shall be deemed to have made an unqualified acceptance of these Terms and Conditions represents that by its signing of this Agreement that the signer represents that he or she is duly authorized to enter into this Agreement. Further, Customer authorizes, if applicable, the performance of services and labor on Customer's vehicle and/or equipment as provided. This shall become a binding agreement between the parties on the earliest of the following to occur: (i) Cummins' receipt of Customer's purchase order or purchase order number; (ii) Customer's signing or acknowledgment of this Agreement; (iii) Cummins' release of Products to production pursuant to Customer's oral or written instruction or direction; (iv) Customer's payment of any amounts due to Cummins; or (v) any other event constituting acceptance under applicable law. No prior inconsistent course of dealing, course of performance, or usage of trade, if any, constitutes a waiver of, or serves to explain or interpret, the Terms and Conditions set forth in this Agreement.

Electronic transactions between Customer and Cummins will be solely governed by the Terms and Conditions of this Agreement, and any terms and conditions on Customer's website, vendor portal, or other internet site will be null and void and of no legal effect on Cummins. In the event Customer delivers, references, incorporates by reference, or produces any purchase order or document, vendor portal terms, specifications, agreement (whether upstream or otherwise), or any terms and conditions related thereto, then such specifications, terms, document, or other agreement: (i) shall be null and void and of no legal effect on Cummins, and (ii) this Agreement shall remain the governing terms of the transaction.

1. SCOPE OF SERVICES; PERFORMANCE OF SERVICES. Cummins shall supply part(s) and/or component(s) and/or engine(s) and/or generator set(s) (""Goods"") and/or perform the maintenance, troubleshooting, diagnostic testing, and/or repair (""Service(s)"") on the equipment identified in the Quote and/or Invoice (""Equipment""), if applicable, in accordance with the specifications in the Quote and/or Invoice. Unless otherwise agreed by the Parties in writing: (i) no additional services or goods are included in this Agreement; and (ii) this Quote is valid for a maximum period of thirty (30) days from the date appearing on the first page of this Quote ('Quote Validation Period'). At the end of the Quote Validation Period, this Quote will automatically expire unless accepted by Customer prior to the end of the Quote Validation Period. The foregoing notwithstanding, in no event shall this Quote Validation Period be deemed or otherwise considered to be a firm offer period nor to establish an option contract, and Cummins hereby reserves its right to revoke or amend this Quote at any time prior to Customer's acceptance.

2. CUSTOMER OBLIGATIONS. If necessary, Customer shall provide Cummins safe and free access to Customer's site and arrange for all related services and utilities necessary for Cummins to safely and freely perform the Services. During the performance of the Services, Customer shall fully and completely secure all or any part of any facility where the Equipment is located to remove and mitigate any and all safety issues and risks, including but not limited to injury to facility occupants, customers, invitees, or any third party and/or property damage or work interruption arising out of the Services. If applicable, Customer shall make all necessary arrangements to address and mitigate the consequences of any electrical service interruption which might occur during the Services. Customer is responsible for operating and maintaining the Equipment in accordance with the owner's manual for the Equipment.

3. INVOICING AND PAYMENT. Unless otherwise agreed to by the parties in writing and subject to credit approval by Cummins, payments are due thirty (30) days from the date of Invoice. If Customer does not have approved credit with Cummins, as solely determined by Cummins, payments are due in advance or at the time of supply of the Goods and/or Services.

If payment is not received when due, in addition to any rights Cummins may have at law, Cummins may charge Customer eighteen percent (18%) interest annually on late payments, or the maximum amount allowed by law. Customer agrees to pay all Cummins' costs and expenses (including all reasonable attorneys' fees) related to Cummins' enforcement and collection of unpaid invoices, or any other enforcement of this Agreement by Cummins. If Customer fails to make any payments to Cummins when due and payable, and such failure continues for more than sixty (60) days from the date of the invoice, or less if required by applicable law, then Cummins may, at Cummins' sole discretion and without prejudice to any other rights or remedies, either (i) terminate this Agreement; or (ii) suspend its Services and/or suspend delivery of any undelivered Goods or parts in Cummins' possession until payment for unpaid invoices is received. In the event that Cummins suspends its performance of Services due to Customer's breach or non-payment, then Cummins shall be entitled to an equitable extension of its delivery dates and/or schedule of Services for a period of time equal to the suspension period, plus a reasonable ramp up period and all costs (including default interest) caused by such suspension shall be assumed by Customer. Any dispute or claim Customer may have with or against Cummins' invoice, regarding the scope, quality or amount charged for any parts or services provided to Customer, must be asserted in writing and noticed pursuant to these Terms and Conditions within thirty (30) days of the date of the invoice, or shall be waived by the Customer.

4. TAXES; EXEMPTIONS. The Invoice includes all applicable local, state, or federal sales and/or use or similar taxes which Cummins is required by applicable laws to collect from Customer under this Agreement. Customer must provide a valid tax exemption certificate or direct payment certificate prior to shipment of the Goods or performance of the Services, or such taxes will be included in the Invoice.

5. DELIVERY; TITLE AND RISK OF LOSS. Unless otherwise agreed in writing by the parties, any Goods supplied under this Agreement shall be delivered FOB Origin, freight prepaid to the first destination. If agreed, any charges for third party freight are subject to adjustment to reflect any change in price at time of shipment. Unless otherwise agreed to, packaging method, shipping documents and manner, route and carrier and delivery shall be as Cummins deems appropriate. All shipments are made within normal business hours, Monday through Friday. Unless otherwise agreed in writing by the parties, title and risk of loss for any Goods sold under this Agreement shall pass to Customer upon delivery of Goods by Cummins to freight carrier or to Customer at pickup at Cummins' facility. The purchase of Goods or the performance of Services on Equipment, Customer-owned motor vehicle, or any other personal property, is a 'take or pay' obligation on the part of the Customer, such that Customer is absolutely and irrevocably required to accept and pay for the Goods, or any Services performed on Equipment, Customer-owned motor vehicle, or any other personal property, if delivery or pick-up of Goods, Equipment, Customer-owned motor vehicle, or any other personal property, is delayed, deferred, or refused by Customer beyond thirty (30) days from the agreed upon delivery date or the date of completion of Services.

In the event Customer fails to pick-up Equipment, Customer-owned motor vehicle, or any other personal property, or fails to take any or all shipments of Goods ordered hereunder within thirty (30) days of the agreed upon delivery date, Cummins shall invoice the Customer and, upon Cummins' sole discretion, Cummins may either: (i) deliver the Goods or Equipment to the location indicated on Customer's purchase order (regardless of whether Customer elected to pick up the Goods or Equipment at Cummins' facility or otherwise indicated an alternate delivery method), and Customer shall assume all associated delivery costs incurred by Cummins, or (ii) charge storage fees for the additional inventory holding period, the additional inventory holding period not to exceed sixty (60) days from the agreed upon delivery date or the date of completion of Services, unless otherwise agreed by Cummins in writing or required by law. A storage fee of twenty-five dollars ($25.00) per day or one and one-half percent (1.5%) per month of the invoiced amount, whichever is greater, shall be assessed for any Goods, Equipment, Customer-owned motor vehicle, or any other personal property, whose delivery or pick-up is delayed, deferred, or refused by Customer beyond thirty (30) days from the agreed upon delivery date or the date of completion of Services.

Unless otherwise agreed by Cummins in writing, in the event delivery or pick-up of Goods, Equipment, Customer-owned motor vehicle, or any other personal property, are delayed, deferred, or refused by Customer beyond sixty (60) days from the agreed upon delivery or pick-up date, or date of completion of Services, then Cummins has the right, in its sole discretion, to: (i) tow, remove, or otherwise dispose of the unclaimed Goods, Equipment, Customer-owned motor vehicle, or any other personal property, in accordance with applicable abandonment laws, and/or (ii) make the Goods, Equipment, Customer-owned motor vehicle, or any other personal property, available for auction or sale to other customers or to the public, or (iii) otherwise use, destroy, or recycle the Goods, Equipment, Customer-owned motor vehicle, or any other personal property, at Customer's sole cost and expense, and without any liability to Cummins.

6. DELAYS. Any delivery, shipping, installation, or performance dates indicated in this Agreement are estimated and not guaranteed. Further, delivery time is subject to confirmation at time of order. Cummins shall not be liable to Customer or any third party for any loss, damage, or expense suffered by Customer or third party due to any delay in delivery, shipping, installation, or performance, however occasioned, including any delays in performance that result directly or indirectly from acts of Customer or causes beyond Cummins' control, including but not limited to acts of God, accidents, fire, explosions, flood, unusual weather conditions, acts of government authority, embargos, wars, strikes or other labor disputes, civil commotion, terrorism, sabotage, late delivery by Cummins'

suppliers, fuel or other energy shortages, or an inability to obtain necessary labor, materials, supplies, equipment or manufacturing facilities. AS A RESULT OF COVID-19 RELATED EFFECTS OR INDUSTRY SUPPLY CHAIN DISRUPTIONS, TEMPORARY DELAYS IN DELIVERY, LABOR OR SERVICES FROM CUMMINS AND ITS SUB-SUPPLIERS OR SUBCONTRACTORS MAY OCCUR. AMONG OTHER FACTORS, CUMMINS' DELIVERY OBLIGATIONS ARE SUBJECT TO CORRECT AND PUNCTUAL SUPPLY FROM OUR SUB-SUPPLIERS OR SUBCONTRACTORS, AND CUMMINS RESERVES THE RIGHT TO MAKE PARTIAL DELIVERIES OR MODIFY ITS LABOR OR SERVICE. WHILE CUMMINS SHALL MAKE EVERY COMMERCIALLY REASONABLE EFFORT TO MEET THE DELIVERY, SERVICE OR COMPLETION OBLIGATIONS SET FORTH HEREIN, SUCH DATES ARE SUBJECT TO CHANGE. IN THE EVENT DELIVERY, SHIPPING, INSTALLATION, OR PERFORMANCE IS DELAYED, HOWEVER OCCASSIONED, DUE TO EVENTS BEYOND CUMMINS' REASONABLE CONTROL, THEN THE DATE OF DELIVERY, SHIPPING, INSTALLATION, OR PERFORMANCE FOR THE GOODS OR SERVICES SHALL BE EQUITABLY EXTENDED FOR A PERIOD EQUAL TO THE TIME LOST, PLUS REASONABLE RAMP-UP.

7. LIMITED WARRANTIES.

New Goods: New Goods purchased or supplied under this Agreement are governed by the express written manufacturers' warranty. No other warranty for Goods supplied under this Agreement is provided under this Agreement.

Cummins Exchange Components, Other Exchange Components, and Recon: Cummins will administer the Cummins exchange component warranty and the warranties of other manufacturers' exchange components or Recon Components which are sold by Cummins. In the event of defects in such items, only manufacturers' warranties will apply.

HHP Exchange Engine: HHP Exchange Engines remanufactured by Cummins under this Agreement are governed by the express Cummins' written warranty. No other warranty for HHP exchange Engines supplied under this Agreement is provided under this Agreement."

General Service Work: All Services shall be free from defects in workmanship (i) for power generation equipment (including engines in such equipment), for a period of ninety (90) days after completion of Services or 500 hours of operation, whichever occurs first; or (ii) for engines, for a period of ninety (90) days after completion of Services, 25,000 miles or 900 hours of operation, whichever occurs first. In the event of a warrantable defect in workmanship of Services supplied under this Agreement (""Warrantable Defect""), Cummins' obligation shall be solely limited to correcting the Warrantable Defect. Cummins shall correct the Warrantable Defect where (i) such Warrantable Defect becomes apparent to Customer during the warranty period; (ii) Cummins receives written notice of the Warrantable Defect within thirty (30) days following discovery by Customer; and (iii) Cummins has determined that there is a Warrantable Defect. Warrantable Defects remedied under this provision shall be subject to the remaining warranty period of the original warranty of the Services. New Goods supplied during the remedy of Warrantable Defects are warranted for the balance of the warranty period still available from the original warranty of such Goods.

Used Goods: Used Goods are sold ""as is, where is"" unless exception is made in writing between Cummins and Customer. Customer agrees to inspect all used Goods before completing the purchase.

THE REMEDIES PROVIDED IN THE LIMITED WARRANTIES AND THIS AGREEMENT ARE THE SOLE AND EXCLUSIVE WARRANTIES AND REMEDIES PROVIDED BY CUMMINS TO THE CUSTOMER UNDER THIS AGREEMENT. EXCEPT AS SET OUT IN THE WARRANTY AND THIS AGREEMENT, AND TO THE EXTENT PERMITTED BY LAW, CUMMINS EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS, WARRANTIES, ENDORSEMENTS, AND CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY STATUTORY OR COMMON LAW IMPLIED REPRESENTATIONS, WARRANTIES AND CONDITIONS OF FITNESS FOR A PURPOSE OR MERCHANTABILITY.

8. INDEMNIFICATION. Customer shall indemnify, defend and hold harmless Cummins from and against any and all claims, actions, costs, expenses, damages and liabilities, including reasonable attorneys' fees, brought against or incurred by Cummins related to or arising out of this Agreement or the Services and/or Goods supplied under this Agreement (collectively, the ""Claims""), where such Claims were caused or contributed, in whole or in part, by the acts, omissions, fault or negligence of the Customer. Customer shall present any Claims covered by this indemnity, including any tenders for defense and indemnity by Cummins to its insurance carrier unless Cummins directs that the defense will be handled by Cummins' legal counsel at Customer's expense.

9. LIMITATION OF LIABILITY. NOTWITHSTANDING ANY OTHER TERM OF THIS AGREEMENT, IN NO EVENT SHALL CUMMINS, ITS OFFICERS, DIRECTORS, EMPLOYEES, OR AGENTS BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, LIQUIDATED, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION DOWNTIME, LOSS OF PROFIT OR REVENUE, LOSS OF DATA, LOSS OF OPPORTUNITY, DAMAGE TO GOODWILL, ENHANCED DAMAGES, MONETARY REQUESTS RELATING TO RECALL EXPENSES AND REPAIRS TO PROPERTY, AND/OR DAMAGES CAUSED BY DELAY), OR IN ANY WAY RELATED TO OR ARISING FROM CUMMINS' SUPPLY OF GOODS OR SERVICES UNDER THIS AGREEMENT. IN NO EVENT SHALL CUMMINS? LIABILITY TO CUSTOMER OR ANY THIRD PARTY CLAIMING DIRECTLY THROUGH CUSTOMER OR ON CUSTOMER?S BEHALF UNDER THIS AGREEMENT EXCEED THE TOTAL COST OF GOODS AND SERVICES SUPPLIED BY CUMMINS UNDER THIS AGREEMENT GIVING RISE TO THE CLAIM. BY ACCEPTANCE OF THIS AGREEMENT, CUSTOMER ACKNOWLEDGES CUSTOMER'S SOLE REMEDY AGAINST CUMMINS FOR ANY LOSS SHALL BE THE REMEDY PROVIDED HEREIN.

10. GOVERNING LAW AND JURISDICTION. This Agreement and all matters arising hereunder shall be governed by and construed in accordance with the laws of the State of Indiana without giving effect to any choice or conflict of law provision. The parties agree that the court of the State of Indiana shall have exclusive jurisdiction to settle any dispute or claim arising in connection with this Agreement.

11. ASSIGNMENT. This Agreement is binding on the parties and their successors and assigns. Customer shall not assign this Agreement without the prior written consent of Cummins.

12. CANCELLATION; TERMINATION. Orders placed with and accepted by Cummins may not be cancelled except with Cummins' prior written consent. Cummins may charge Customer a cancellation charge in accordance with current Cummins policy which is available upon request, in addition to the actual, non- recoverable costs incurred by Cummins. Cummins may terminate this Agreement, in whole or in part, for cause if the Customer breaches its obligations under this Agreement, and such breach is not cured within fifteen (15) days after written notice to Customer, or such longer time that Cummins may specify in its notice. Cummins may, at any time, terminate this Agreement for convenience upon thirty (30) days' written notice to Customer. If the Customer defaults by (i) breaching any term of this Agreement, (ii) becoming insolvent or declared bankrupt, or (iii) making an assignment for the benefit of creditors, Cummins may, upon written notice to Customer, immediately terminate this Agreement. Upon such termination for default, Cummins shall immediately cease any further performance under this Agreement, without further obligation or liability to Customer, and Customer shall pay Cummins for any Goods or Services supplied under this Agreement, in accordance with the payment terms detailed in this Agreement.

If a notice of termination for default has been issued and is later determined, for any reason, that the Customer was not in default, the rights and obligations of the parties shall treat the termination as a termination for convenience.

13. REFUNDS; CREDITS. Goods ordered and delivered by Cummins under this Agreement are not returnable unless agreed to by Cummins. Cummins may, at its sole discretion, agree to accept Goods for return and provide credit where Goods are in new and saleable condition and presented with a copy of the original invoice. Credits for returns will be subject to up to a 15% handling/restocking charge and are limited to eligible items purchased from Cummins.

14. INTELLECTUAL PROPERTY. Any intellectual property rights created by either party, whether independently or jointly, in the course of the performance of this Agreement or otherwise related to Cummins pre-existing intellectual property or subject matter related thereto, shall be Cummins' property. Customer agrees to assign, and does hereby assign, all right, title, and interest to such intellectual property to Cummins. Any Cummins pre-existing intellectual property shall remain Cummins' property. Nothing in this Agreement shall be deemed to have given Customer a license or any other rights to use any of the intellectual property rights of Cummins.

15. COMPLIANCE WITH LAWS. Customer shall comply with all laws applicable to its activities under this Agreement, including without limitation, all applicable national, provincial, and local export, anti-bribery, environmental, health, and safety laws and regulations in effect. Customer acknowledges that the Goods, and any related technology that are sold or otherwise provided hereunder may be subject to export and other trade controls restricting the sale, export, re-export and/or transfer, directly or indirectly, of such Goods or technology to certain countries or parties, including, but not limited to, licensing requirements under applicable laws and regulations of the United States, the United Kingdom and other jurisdictions. It is the intention of Cummins to comply with these laws, rules, and regulations. Any other provision of this Agreement to the contrary notwithstanding, Customer shall comply with all such applicable laws relating to the cross-border movement of goods or technology, and all related orders in effect from time to time, and equivalent measures. Customer shall accept full responsibility for any and all civil or criminal liabilities and costs arising from any breaches of those laws and regulations and will defend, indemnify, and hold Cummins harmless from and against any and all fines, penalties, claim, damages, liabilities, judgments, costs, fees, and expenses incurred by Cummins or its affiliates as a result of Customer's breach.

16. CONFIDENTIALITY. Each party shall keep confidential any information received from the other that is not generally known to the public and at the time of disclosure, would reasonably be understood by the receiving party to be proprietary or confidential, whether disclosed in oral, written, visual, electronic, or other form, and which the receiving party (or agents) learns in connection with this Agreement including, but not limited to: (a) business plans, strategies, sales, projects and analyses; (b) financial information, pricing, and fee structures; (c) business processes, methods, and models; (d) employee and supplier information; (e) specifications; and (f) the terms and conditions of this Agreement. Each party shall take necessary steps to ensure compliance with this provision by its employees and agents.

17. PRICING. To the extent allowed by law, actual prices invoiced to Customer may vary from the price quoted at the time of order placement, as the same will be adjusted for prices prevailing on the date of shipment ('Shipment Date') or, in the case of Services, the date of performance ('Performance Date'), due to economic and market conditions on the Shipment Date or Performance Date, whichever is applicable. Subject to local laws, Cummins reserves the right to adjust pricing on goods and services due to input cost (including without limitation, raw materials, fabrication components, direct or indirect materials, packaging materials, overhead, etc.) and labor cost changes and/or other unforeseen circumstances beyond Cummins' control.

18. MISCELLANEOUS. All notices, including but not limited to disputes of invoices or otherwise, under this Agreement shall be in writing and be delivered personally, mailed via first class certified or registered mail, or sent by a nationally recognized express courier service to the addresses set forth in the Quote and/or Invoice. No amendment of this Agreement shall be valid unless it is writing and signed by the parties hereto. Failure of either party to require performance by the other party of any provision hereof shall in no way affect the right to require such performance at any time thereafter or the enforceability of the Agreement generally, nor shall the waiver by a party of a breach of any of the provisions hereof constitute a waiver of any succeeding breach. Any provision of this Agreement that is invalid or unenforceable shall not affect the validity or enforceability of the remaining terms hereof. The Parties' rights, remedies, and obligations under this Agreement, which by their nature are intended to continue beyond the termination or cancellation of this Agreement, including but not limited to the Section 9. Limitation of Liability provision contained herein, shall survive the expiration, termination, or cancellation of this Agreement. These terms are exclusive and constitute the entire agreement. Customer acknowledges that the provisions were freely negotiated and bargained for and Customer has agreed to purchase of the Goods and/or Services pursuant to these terms and conditions. Acceptance of this Agreement is expressly conditioned on Customer's assent to all such terms and conditions. Neither party has relied on any statement, representation, agreement, understanding, or promise made by the other except as expressly set out in this Agreement. Headings or other subdivisions of this Agreement are inserted for convenience of reference and shall not limit or affect the legal construction of any provision hereof.

19. To the extent applicable, this contractor and subcontractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability. The employee notice requirements set forth in 29 CFR Part 471, Appendix A to Subpart A, are hereby incorporated by reference into this contract.

Cummins Sales and Service

Payment terms are 30 days from invoice date unless otherwise agreed upon in writing. Remit to:
Cummins Sales and Service
PO Box 772639
Detroit, MI 48277-2639

ORLANDO FL BRANCH
4820 ORANGE BLOSSOM TRAIL
MV#95745
ORLANDO, FL 32810-
(407)298-2080

INVOICE NO

ESTIMATE

TO PAY ONLINE LOGON TO
customerpayment.cummins.com

BILL TO

CITY OF PORT ORANGE
ACCOUNTS PAYABLE
PO BOX 291759
PORT ORANGE. FL 32129-1759

OWNER

CITY OF PORT ORANGE
MONROE ST
520 MONROE ST
PORT ORANGE, FL 32127-
DARRAN MELANSON - 386 290-8777

***** CHARGE *****

DATE	CUSTOMER ORDER NO.	DATE IN SERVICE	ENGINE MODEL	PUMP NO.	EQUIPMENT MAKE
25-FEB-2025					
CUSTOMER NO.	**SHIP VIA**	**FAIL DATE**	**ENGINE SERIAL NO.**	**CPL NO.**	**EQUIPMENT MODEL**
362430					
REF. NO.	**SALESPERSON**	**PARTS DISP.**	**MILEAGE/HOURS**	**PUMP CODE**	**UNIT NO.**
238593					

QUANTITY ORDERED	BACK ORDERED	QUANTITY SHIPPED	PART NUMBER	DESCRIPTION	PRODUCT CODE	UNIT PRICE	AMOUNT
1		0	244862247	250KW RENTAL GENERATOR	S1-NSPART4	5,143.11	5,143.11
1		0	DELIVERY	DELIVERY CHARGES	S1-NSPART4	665.00	665.00
1		0	PICKUP	PICKUP CHARGES	S1-NSPART4	665.00	665.00

TAX EXEMPT NUMBERS:

PARTS:		6,473.11
PARTS COVERAGE CREDIT:		0.00CR
TOTAL PARTS:	**6,473.11**	
SURCHARGE TOTAL:		**0.00**
LABOR:		0.00
LABOR COVERAGE CREDIT:		0.00CR
TOTAL LABOR:	**0.00**	
MISC.:		0.00
MISC. COVERAGE CREDIT:		0.00CR
TOTAL MISC.:	**0.00**	
LOCAL		**0.00**

Completion date : 26-Feb-2025 12:48PM. Estimate expires : 27-Mar-2025 11:48AM.

Billing Inquiries? Call (877)480-6970

THERE ARE ADDITIONAL CONTRACT TERMS ON THE REVERSE SIDE OF THIS DOCUMENT, INCLUDING LIMITATION ON WARRANTIES AND REMEDIES, WHICH ARE EXPRESSLY INCORPORATED HEREIN AND WHICH PURCHASER ACKNOWLEDGES HAVE BEEN READ AND FULLY UNDERSTOOD.

SUB TOTAL:	17,379.68
TOTAL TAX:	0.00
TOTAL AMOUNT: US $	**17,379.68**

AUTHORIZED BY (print name)_____**SIGNATURE**_____**DATE**_____

TERMS AND CONDITIONS

These terms and conditions ('Terms and Conditions'), together with the estimate/quote (the "Quote") and/or invoice ("Invoice") attached to these Terms and Conditions, are hereinafter collectively referred to as this "Agreement" and shall constitute the entire agreement between the customer ("Customer") identified on the Quote and/or Invoice and Cummins Inc. ("Cummins") and supersede any previous representation, statements, agreements or understanding (oral or written) between the parties with respect to the subject matter of this Agreement. Customer shall be deemed to have made an unqualified acceptance of these Terms and Conditions represents that by its signing of this Agreement that the signer represents that he or she is duly authorized to enter into this Agreement. Further, Customer authorizes, if applicable, the performance of services and labor on Customer's vehicle and/or equipment as provided. This shall become a binding agreement between the parties on the earliest of the following to occur: (i) Cummins' receipt of Customer's purchase order or purchase order number; (ii) Customer's signing or acknowledgment of this Agreement; (iii) Cummins' release of Products to production pursuant to Customer's oral or written instruction or direction; (iv) Customer's payment of any amounts due to Cummins; or (v) any other event constituting acceptance under applicable law. No prior inconsistent course of dealing, course of performance, or usage of trade, if any, constitutes a waiver of, or serves to explain or interpret, the Terms and Conditions set forth in this Agreement.

Electronic transactions between Customer and Cummins will be solely governed by the Terms and Conditions of this Agreement, and any terms and conditions on Customer's website, vendor portal, or other internet site will be null and void and of no legal effect on Cummins. In the event Customer delivers, references, incorporates by reference, or produces any purchase order or document, vendor portal terms, specifications, agreement (whether upstream or otherwise), or any terms and conditions related thereto, then such specifications, terms, document, or other agreement: (i) shall be null and void and of no legal effect on Cummins, and (ii) this Agreement shall remain the governing terms of the transaction.

1. SCOPE OF SERVICES; PERFORMANCE OF SERVICES. Cummins shall supply part(s) and/or component(s) and/or engine(s) and/or generator set(s) (""Goods"") and/or perform the maintenance, troubleshooting, diagnostic testing, and/or repair (""Service(s)"") on the equipment identified in the Quote and/or Invoice (""Equipment""), if applicable, in accordance with the specifications in the Quote and/or Invoice. Unless otherwise agreed by the Parties in writing: (i) no additional services or goods are included in this Agreement; and (ii) this Quote is valid for a maximum period of thirty (30) days from the date appearing on the first page of this Quote ('Quote Validation Period'). At the end of the Quote Validation Period, this Quote will automatically expire unless accepted by Customer prior to the end of the Quote Validation Period. The foregoing notwithstanding, in no event shall this Quote Validation Period be deemed or otherwise considered to be a firm offer period nor to establish an option contract, and Cummins hereby reserves its right to revoke or amend this Quote at any time prior to Customer's acceptance.

2. CUSTOMER OBLIGATIONS. If necessary, Customer shall provide Cummins safe and free access to Customer's site and arrange for all related services and utilities necessary for Cummins to safely and freely perform the Services. During the performance of the Services, Customer shall fully and completely secure all or any part of any facility where the Equipment is located to remove and mitigate any and all safety issues and risks, including but not limited to injury to facility occupants, customers, invitees, or any third party and/or property damage or work interruption arising out of the Services. If applicable, Customer shall make all necessary arrangements to address and mitigate the consequences of any electrical service interruption which might occur during the Services. Customer is responsible for operating and maintaining the Equipment in accordance with the owner's manual for the Equipment.

3. INVOICING AND PAYMENT. Unless otherwise agreed to by the parties in writing and subject to credit approval by Cummins, payments are due thirty (30) days from the date of Invoice. If Customer does not have approved credit with Cummins, as solely determined by Cummins, payments are due in advance or at the time of supply of the Goods and/or Services.

If payment is not received when due, in addition to any rights Cummins may have at law, Cummins may charge Customer eighteen percent (18%) interest annually on late payments, or the maximum amount allowed by law. Customer agrees to pay all Cummins' costs and expenses (including all reasonable attorneys' fees) related to Cummins' enforcement and collection of unpaid invoices, or any other enforcement of this Agreement by Cummins. If Customer fails to make any payments to Cummins when due and payable, and such failure continues for more than sixty (60) days from the date of the invoice, or less if required by applicable law, then Cummins may, at Cummins' sole discretion and without prejudice to any other rights or remedies, either (i) terminate this Agreement; or (ii) suspend its Services and/or suspend delivery of any undelivered Goods or parts in Cummins' possession until payment for unpaid invoices is received. In the event that Cummins suspends its performance of Services due to Customer's breach or non-payment, then Cummins shall be entitled to an equitable extension of its delivery dates and/or schedule of Services for a period of time equal to the suspension period, plus a reasonable ramp up period and all costs (including default interest) caused by such suspension shall be assumed by Customer. Any dispute or claim Customer may have with or against Cummins' invoice, regarding the scope, quality or amount charged for any parts or services provided to Customer, must be asserted in writing and noticed pursuant to these Terms and Conditions within thirty (30) days of the date of the invoice, or shall be waived by the Customer.

4. TAXES; EXEMPTIONS. The Invoice includes all applicable local, state, or federal sales and/or use or similar taxes which Cummins is required by applicable laws to collect from Customer under this Agreement. Customer must provide a valid tax exemption certificate or direct payment certificate prior to shipment of the Goods or performance of the Services, or such taxes will be included in the Invoice.

5. DELIVERY; TITLE AND RISK OF LOSS. Unless otherwise agreed in writing by the parties, any Goods supplied under this Agreement shall be delivered FOB Origin, freight prepaid to the first destination. If agreed, any charges for third party freight are subject to adjustment to reflect any change in price at time of shipment. Unless otherwise agreed to, packaging method, shipping documents and manner, route and carrier and delivery shall be as Cummins deems appropriate. All shipments are made within normal business hours, Monday through Friday. Unless otherwise agreed in writing by the parties, title and risk of loss for any Goods sold under this Agreement shall pass to Customer upon delivery of Goods by Cummins to freight carrier or to Customer at pickup at Cummins' facility. The purchase of Goods or the performance of Services on Equipment, Customer-owned motor vehicle, or any other personal property, is a 'take or pay' obligation on the part of the Customer, such that Customer is absolutely and irrevocably required to accept and pay for the Goods, or any Services performed on Equipment, Customer-owned motor vehicle, or any other personal property, if delivery or pick-up of Goods, Equipment, Customer-owned motor vehicle, or any other personal property, is delayed, deferred, or refused by Customer beyond thirty (30) days from the agreed upon delivery date or the date of completion of Services.

In the event Customer fails to pick-up Equipment, Customer-owned motor vehicle, or any other personal property, or fails to take any or all shipments of Goods ordered hereunder within thirty (30) days of the agreed upon delivery date, Cummins shall invoice the Customer and, upon Cummins' sole discretion, Cummins may either: (i) deliver the Goods or Equipment to the location indicated on Customer's purchase order (regardless of whether Customer elected to pick up the Goods or Equipment at Cummins' facility or otherwise indicated an alternate delivery method), and Customer shall assume all associated delivery costs incurred by Cummins, or (ii) charge storage fees for the additional inventory holding period, the additional inventory holding period not to exceed sixty (60) days from the agreed upon delivery date or the date of completion of Services, unless otherwise agreed by Cummins in writing or required by law. A storage fee of twenty-five dollars ($25.00) per day or one and one-half percent (1.5%) per month of the invoiced amount, whichever is greater, shall be assessed for any Goods, Equipment, Customer-owned motor vehicle, or any other personal property, whose delivery or pick-up is delayed, deferred, or refused by Customer beyond thirty (30) days from the agreed upon delivery date or the date of completion of Services.

Unless otherwise agreed by Cummins in writing, in the event delivery or pick-up of Goods, Equipment, Customer-owned motor vehicle, or any other personal property, are delayed, deferred, or refused by Customer beyond sixty (60) days from the agreed upon delivery or pick-up date, or date of completion of Services, then Cummins has the right, in its sole discretion, to: (i) tow, remove, or otherwise dispose of the unclaimed Goods, Equipment, Customer-owned motor vehicle, or any other personal property, in accordance with applicable abandonment laws, and/or (ii) make the Goods, Equipment, Customer-owned motor vehicle, or any other personal property, available for auction or sale to other customers or to the public, or (iii) otherwise use, destroy, or recycle the Goods, Equipment, Customer-owned motor vehicle, or any other personal property, at Customer's sole cost and expense, and without any liability to Cummins.

6. DELAYS. Any delivery, shipping, installation, or performance dates indicated in this Agreement are estimated and not guaranteed. Further, delivery time is subject to confirmation at time of order. Cummins shall not be liable to Customer or any third party for any loss, damage, or expense suffered by Customer or third party due to any delay in delivery, shipping, installation, or performance, however occasioned, including any delays in performance that result directly or indirectly from acts of Customer or causes beyond Cummins' control, including but not limited to acts of God, accidents, fire, explosions, flood, unusual weather conditions, acts of government authority, embargos, wars, strikes or other labor disputes, civil commotion, terrorism, sabotage, late delivery by Cummins'

suppliers, fuel or other energy shortages, or an inability to obtain necessary labor, materials, supplies, equipment or manufacturing facilities. AS A RESULT OF COVID-19 RELATED EFFECTS OR INDUSTRY SUPPLY CHAIN DISRUPTIONS, TEMPORARY DELAYS IN DELIVERY, LABOR OR SERVICES FROM CUMMINS AND ITS SUB-SUPPLIERS OR SUBCONTRACTORS MAY OCCUR. AMONG OTHER FACTORS, CUMMINS' DELIVERY OBLIGATIONS ARE SUBJECT TO CORRECT AND PUNCTUAL SUPPLY FROM OUR SUB-SUPPLIERS OR SUBCONTRACTORS, AND CUMMINS RESERVES THE RIGHT TO MAKE PARTIAL DELIVERIES OR MODIFY ITS LABOR OR SERVICE. WHILE CUMMINS SHALL MAKE EVERY COMMERCIALLY REASONABLE EFFORT TO MEET THE DELIVERY, SERVICE OR COMPLETION OBLIGATIONS SET FORTH HEREIN, SUCH DATES ARE SUBJECT TO CHANGE. IN THE EVENT DELIVERY, SHIPPING, INSTALLATION, OR PERFORMANCE IS DELAYED, HOWEVER OCCASSIONED, DUE TO EVENTS BEYOND CUMMINS' REASONABLE CONTROL, THEN THE DATE OF DELIVERY, SHIPPING, INSTALLATION, OR PERFORMANCE FOR THE GOODS OR SERVICES SHALL BE EQUITABLY EXTENDED FOR A PERIOD EQUAL TO THE TIME LOST, PLUS REASONABLE RAMP-UP.

7. LIMITED WARRANTIES.

New Goods: New Goods purchased or supplied under this Agreement are governed by the express written manufacturers' warranty. No other warranty for Goods supplied under this Agreement is provided under this Agreement.

Cummins Exchange Components, Other Exchange Components, and Recon: Cummins will administer the Cummins exchange component warranty and the warranties of other manufacturers' exchange components or Recon Components which are sold by Cummins. In the event of defects in such items, only manufacturers' warranties will apply.

HHP Exchange Engine: HHP Exchange Engines remanufactured by Cummins under this Agreement are governed by the express Cummins' written warranty. No other warranty for HHP exchange Engines supplied under this Agreement is provided under this Agreement."

General Service Work: All Services shall be free from defects in workmanship (i) for power generation equipment (including engines in such equipment), for a period of ninety (90) days after completion of Services or 500 hours of operation, whichever occurs first; or (ii) for engines, for a period of ninety (90) days after completion of Services, 25,000 miles or 900 hours of operation, whichever occurs first. In the event of a warrantable defect in workmanship of Services supplied under this Agreement (""Warrantable Defect""), Cummins' obligation shall be solely limited to correcting the Warrantable Defect. Cummins shall correct the Warrantable Defect where (i) such Warrantable Defect becomes apparent to Customer during the warranty period; (ii) Cummins receives written notice of the Warrantable Defect within thirty (30) days following discovery by Customer; and (iii) Cummins has determined that there is a Warrantable Defect. Warrantable Defects remedied under this provision shall be subject to the remaining warranty period of the original warranty of the Services. New Goods supplied during the remedy of Warrantable Defects are warranted for the balance of the warranty period still available from the original warranty of such Goods.

Used Goods: Used Goods are sold ""as is, where is"" unless exception is made in writing between Cummins and Customer. Customer agrees to inspect all used Goods before completing the purchase.

THE REMEDIES PROVIDED IN THE LIMITED WARRANTIES AND THIS AGREEMENT ARE THE SOLE AND EXCLUSIVE WARRANTIES AND REMEDIES PROVIDED BY CUMMINS TO THE CUSTOMER UNDER THIS AGREEMENT. EXCEPT AS SET OUT IN THE WARRANTY AND THIS AGREEMENT, AND TO THE EXTENT PERMITTED BY LAW, CUMMINS EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS, WARRANTIES, ENDORSEMENTS, AND CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY STATUTORY OR COMMON LAW IMPLIED REPRESENTATIONS, WARRANTIES AND CONDITIONS OF FITNESS FOR A PURPOSE OR MERCHANTABILITY.

8. INDEMNIFICATION. Customer shall indemnify, defend and hold harmless Cummins from and against any and all claims, actions, costs, expenses, damages and liabilities, including reasonable attorneys' fees, brought against or incurred by Cummins related to or arising out of this Agreement or the Services and/or Goods supplied under this Agreement (collectively, the ""Claims""), where such Claims were caused or contributed, in whole or in part, by the acts, omissions, fault or negligence of the Customer. Customer shall present any Claims covered by this indemnity, including any tenders for defense and indemnity by Cummins to its insurance carrier unless Cummins directs that the defense will be handled by Cummins' legal counsel at Customer's expense.

9. LIMITATION OF LIABILITY. NOTWITHSTANDING ANY OTHER TERM OF THIS AGREEMENT, IN NO EVENT SHALL CUMMINS, ITS OFFICERS, DIRECTORS, EMPLOYEES, OR AGENTS BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, LIQUIDATED, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION DOWNTIME, LOSS OF PROFIT OR REVENUE, LOSS OF DATA, LOSS OF OPPORTUNITY, DAMAGE TO GOODWILL, ENHANCED DAMAGES, MONETARY REQUESTS RELATING TO RECALL EXPENSES AND REPAIRS TO PROPERTY, AND/OR DAMAGES CAUSED BY DELAY), OR IN ANY WAY RELATED TO OR ARISING FROM CUMMINS' SUPPLY OF GOODS OR SERVICES UNDER THIS AGREEMENT. IN NO EVENT SHALL CUMMINS? LIABILITY TO CUSTOMER OR ANY THIRD PARTY CLAIMING DIRECTLY THROUGH CUSTOMER OR ON CUSTOMER?S BEHALF UNDER THIS AGREEMENT EXCEED THE TOTAL COST OF GOODS AND SERVICES SUPPLIED BY CUMMINS UNDER THIS AGREEMENT GIVING RISE TO THE CLAIM. BY ACCEPTANCE OF THIS AGREEMENT, CUSTOMER ACKNOWLEDGES CUSTOMER'S SOLE REMEDY AGAINST CUMMINS FOR ANY LOSS SHALL BE THE REMEDY PROVIDED HEREIN.

10. GOVERNING LAW AND JURISDICTION. This Agreement and all matters arising hereunder shall be governed by and construed in accordance with the laws of the State of Indiana without giving effect to any choice or conflict of law provision. The parties agree that the court of the State of Indiana shall have exclusive jurisdiction to settle any dispute or claim arising in connection with this Agreement.

11. ASSIGNMENT. This Agreement is binding on the parties and their successors and assigns. Customer shall not assign this Agreement without the prior written consent of Cummins.

12. CANCELLATION; TERMINATION. Orders placed with and accepted by Cummins may not be cancelled except with Cummins' prior written consent. Cummins may charge Customer a cancellation charge in accordance with current Cummins policy which is available upon request, in addition to the actual, non- recoverable costs incurred by Cummins. Cummins may terminate this Agreement, in whole or in part, for cause if the Customer breaches its obligations under this Agreement, and such breach is not cured within fifteen (15) days after written notice to Customer, or such longer time that Cummins may specify in its notice. Cummins may, at any time, terminate this Agreement for convenience upon thirty (30) days' written notice to Customer. If the Customer defaults by (i) breaching any term of this Agreement, (ii) becoming insolvent or declared bankrupt, or (iii) making an assignment for the benefit of creditors, Cummins may, upon written notice to Customer, immediately terminate this Agreement. Upon such termination for default, Cummins shall immediately cease any further performance under this Agreement, without further obligation or liability to Customer, and Customer shall pay Cummins for any Goods or Services supplied under this Agreement, in accordance with the payment terms detailed in this Agreement.

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13. REFUNDS; CREDITS. Goods ordered and delivered by Cummins under this Agreement are not returnable unless agreed to by Cummins. Cummins may, at its sole discretion, agree to accept Goods for return and provide credit where Goods are in new and saleable condition and presented with a copy of the original invoice. Credits for returns will be subject to up to a 15% handling/restocking charge and are limited to eligible items purchased from Cummins.

14. INTELLECTUAL PROPERTY. Any intellectual property rights created by either party, whether independently or jointly, in the course of the performance of this Agreement or otherwise related to Cummins pre-existing intellectual property or subject matter related thereto, shall be Cummins' property. Customer agrees to assign, and does hereby assign, all right, title, and interest to such intellectual property to Cummins. Any Cummins pre-existing intellectual property shall remain Cummins' property. Nothing in this Agreement shall be deemed to have given Customer a license or any other rights to use any of the intellectual property rights of Cummins.

15. COMPLIANCE WITH LAWS. Customer shall comply with all laws applicable to its activities under this Agreement, including without limitation, all applicable national, provincial, and local export, anti-bribery, environmental, health, and safety laws and regulations in effect. Customer acknowledges that the Goods, and any related technology that are sold or otherwise provided hereunder may be subject to export and other trade controls restricting the sale, export, re-export and/or transfer, directly or indirectly, of such Goods or technology to certain countries or parties, including, but not limited to, licensing requirements under applicable laws and regulations of the United States, the United Kingdom and other jurisdictions. It is the intention of Cummins to comply with these laws, rules, and regulations. Any other provision of this Agreement to the contrary notwithstanding, Customer shall comply with all such applicable laws relating to the cross-border movement of goods or technology, and all related orders in effect from time to time, and equivalent measures. Customer shall accept full responsibility for any and all civil or criminal liabilities and costs arising from any breaches of those laws and regulations and will defend, indemnify, and hold Cummins harmless from and against any and all fines, penalties, claim, damages, liabilities, judgments, costs, fees, and expenses incurred by Cummins or its affiliates as a result of Customer's breach.

16. CONFIDENTIALITY. Each party shall keep confidential any information received from the other that is not generally known to the public and at the time of disclosure, would reasonably be understood by the receiving party to be proprietary or confidential, whether disclosed in oral, written, visual, electronic, or other form, and which the receiving party (or agents) learns in connection with this Agreement including, but not limited to: (a) business plans, strategies, sales, projects and analyses; (b) financial information, pricing, and fee structures; (c) business processes, methods, and models; (d) employee and supplier information; (e) specifications; and (f) the terms and conditions of this Agreement. Each party shall take necessary steps to ensure compliance with this provision by its employees and agents.

17. PRICING. To the extent allowed by law, actual prices invoiced to Customer may vary from the price quoted at the time of order placement, as the same will be adjusted for prices prevailing on the date of shipment ('Shipment Date') or, in the case of Services, the date of performance ('Performance Date'), due to economic and market conditions on the Shipment Date or Performance Date, whichever is applicable. Subject to local laws, Cummins reserves the right to adjust pricing on goods and services due to input cost (including without limitation, raw materials, fabrication components, direct or indirect materials, packaging materials, overhead, etc.) and labor cost changes and/or other unforeseen circumstances beyond Cummins' control.

18. MISCELLANEOUS. All notices, including but not limited to disputes of invoices or otherwise, under this Agreement shall be in writing and be delivered personally, mailed via first class certified or registered mail, or sent by a nationally recognized express courier service to the addresses set forth in the Quote and/or Invoice. No amendment of this Agreement shall be valid unless it is writing and signed by the parties hereto. Failure of either party to require performance by the other party of any provision hereof shall in no way affect the right to require such performance at any time thereafter or the enforceability of the Agreement generally, nor shall the waiver by a party of a breach of any of the provisions hereof constitute a waiver of any succeeding breach. Any provision of this Agreement that is invalid or unenforceable shall not affect the validity or enforceability of the remaining terms hereof. The Parties' rights, remedies, and obligations under this Agreement, which by their nature are intended to continue beyond the termination or cancellation of this Agreement, including but not limited to the Section 9. Limitation of Liability provision contained herein, shall survive the expiration, termination, or cancellation of this Agreement. These terms are exclusive and constitute the entire agreement. Customer acknowledges that the provisions were freely negotiated and bargained for and Customer has agreed to purchase of the Goods and/or Services pursuant to these terms and conditions. Acceptance of this Agreement is expressly conditioned on Customer's assent to all such terms and conditions. Neither party has relied on any statement, representation, agreement, understanding, or promise made by the other except as expressly set out in this Agreement. Headings or other subdivisions of this Agreement are inserted for convenience of reference and shall not limit or affect the legal construction of any provision hereof.

19. To the extent applicable, this contractor and subcontractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability. The employee notice requirements set forth in 29 CFR Part 471, Appendix A to Subpart A, are hereby incorporated by reference into this contract.

Contract Submission Form: 520 Monroe St - Generator

____***Contracts in the amount between $25,000 and $100,000 requires a scope of work and three (3) written quotes.***

Upload the following documents for Formal Written Quotes:

- [x] Three (3) written quotes and any Vendor supporting documentation*
  - *if this is a project that may have additional quotes from sub-contractors, upload documentation
  - *if Vendor provides any additional pages to their quote/proposal, please upload all pages, as these pages mayhave additional terms and conditions or warranty information, that can require Legal review.
- [ ] Sole Source Documentation, if applicable
- [x] SunBiz Corporate Report providing a valid/active corporate status with correct officer/authorized representative
- [ ] N/A Current COI that includes all insurance requirements as provided for in Contract and/or Solicitation, or City Manager Waiver of Insurance

__X__Additional requirement: Affidavit Re: Human Trafficking

__X__Additional requirement: Scope of Work (attorney requested)

Scope of Work:
Provide rental 300 KW Generator for Pump Station at 520 Monroe St., delivery and return fees.

Contract Info: rental term to be four-week periods, not to exceed 9 four-week periods, Installation on April 1 through December 1, 2025. Initiated by Purchase Order.

Contact Info - Vendor #253
Ring Power Corporation
Power Systems Division
Mike Lugo | AVP | Rental Manager |
10421 Fern Hill Dr | Riverview, Florida 33578 Mobile:813-294-7522 Mike.lugo@ringpower.com

Greg Baker-Fitzgerald, Account Manager
Cell: 407-276-3757 Office: 386-947-5714
Email: Greg.Baker-Fitzgerald@Ringpower.com
EIN: 59-0934246

Sunbiz.org DIVISION of CORPORATIONS an official State of Florida website

Detail by FEI/EIN Number

Florida Profit Corporation
RING POWER CORPORATION

Filing Information

Document Number	249380
FEI/EIN Number	59-0934246
Date Filed	07/17/1961
State	FL
Status	ACTIVE
Last Event	CORPORATE MERGER
Event Date Filed	12/01/2015
Event Effective Date	NONE

Principal Address

500 WORLD COMMERCE PKWY
ST AUGUSTINE, FL 32092

Changed: 05/25/2005

Mailing Address

500 WORLD COMMERCE PKWY
ST AUGUSTINE, FL 32092

Changed: 05/25/2005

Registered Agent Name & Address

RINGHAVER, RANDAL L
500 WORLD COMMERCE PKWY
ST AUGUSTINE, FL 32092

Name Changed: 02/11/1987

Address Changed: 06/29/2005

Officer/Director Detail

Name & Address

Title Chairman

RINGHAVER, RANDAL L
500 WORLD COMMERCE PKWY
ST AUGUSTINE, FL 32092

Title CEO, President

ALBAN, DAVID W
500 WORLD COMMERCE PKWY
ST AUGUSTINE, FL 32092

Title Executive VP, Director

Robbins, Kevin M
500 WORLD COMMERCE PKWY
ST AUGUSTINE, FL 32092

Title Senior VP, Director

Miller, Susan K
500 WORLD COMMERCE PKWY
ST AUGUSTINE, FL 32092

Title Senior VP, Director

O'Brien, Patrick W
500 WORLD COMMERCE PKWY
ST AUGUSTINE, FL 32092

Title VP

Rabil, Joseph Matthew
500 WORLD COMMERCE PKWY
ST AUGUSTINE, FL 32092

Title Executive VP, CFO, T, S, Director

Meyers, Heather
500 WORLD COMMERCE PKWY
ST AUGUSTINE, FL 32092

Annual Reports

Report Year	Filed Date
2024	01/03/2024
2024	03/18/2024
2025	01/03/2025

Document Images

01/03/2025 -- ANNUAL REPORT	View image in PDF format
08/09/2024 -- AMENDED ANNUAL REPORT	View image in PDF format
03/18/2024 -- AMENDED ANNUAL REPORT	View image in PDF format

01/03/2024 -- ANNUAL REPORT	View image in PDF format
01/27/2023 -- ANNUAL REPORT	View image in PDF format
01/27/2022 -- ANNUAL REPORT	View image in PDF format
01/08/2021 -- ANNUAL REPORT	View image in PDF format
01/08/2020 -- ANNUAL REPORT	View image in PDF format
03/20/2019 -- AMENDED ANNUAL REPORT	View image in PDF format
01/11/2019 -- ANNUAL REPORT	View image in PDF format
05/30/2018 -- AMENDED ANNUAL REPORT	View image in PDF format
01/03/2018 -- ANNUAL REPORT	View image in PDF format
01/09/2017 -- ANNUAL REPORT	View image in PDF format
02/24/2016 -- ANNUAL REPORT	View image in PDF format
12/01/2015 -- Merger	View image in PDF format
06/19/2015 -- AMENDED ANNUAL REPORT	View image in PDF format
02/27/2015 -- AMENDED ANNUAL REPORT	View image in PDF format
01/14/2015 -- ANNUAL REPORT	View image in PDF format
01/09/2014 -- ANNUAL REPORT	View image in PDF format
03/25/2013 -- ANNUAL REPORT	View image in PDF format
01/13/2012 -- ANNUAL REPORT	View image in PDF format
01/05/2011 -- ANNUAL REPORT	View image in PDF format
09/15/2010 -- ADDRESS CHANGE	View image in PDF format
01/05/2010 -- ANNUAL REPORT	View image in PDF format
05/06/2009 -- Amendment	View image in PDF format
02/16/2009 -- ANNUAL REPORT	View image in PDF format
01/25/2008 -- ANNUAL REPORT	View image in PDF format
12/20/2007 -- Merger	View image in PDF format
02/20/2007 -- ANNUAL REPORT	View image in PDF format
02/09/2006 -- ANNUAL REPORT	View image in PDF format
12/07/2005 -- Merger	View image in PDF format
07/11/2005 -- Merger	View image in PDF format
06/29/2005 -- Reg. Agent Change	View image in PDF format
03/10/2005 -- ANNUAL REPORT	View image in PDF format
03/01/2005 -- ANNUAL REPORT	View image in PDF format
03/01/2004 -- ANNUAL REPORT	View image in PDF format
10/30/2003 -- Merger	View image in PDF format
02/03/2003 -- ANNUAL REPORT	View image in PDF format
03/15/2002 -- ANNUAL REPORT	View image in PDF format
02/09/2001 -- ANNUAL REPORT	View image in PDF format
02/08/2000 -- ANNUAL REPORT	View image in PDF format
03/18/1999 -- ANNUAL REPORT	View image in PDF format
02/26/1998 -- ANNUAL REPORT	View image in PDF format
01/30/1997 -- ANNUAL REPORT	View image in PDF format
02/26/1996 -- ANNUAL REPORT	View image in PDF format
03/01/1995 -- ANNUAL REPORT	View image in PDF format

Frey, Denyce

From: Melanson, Darran
Sent: Wednesday, February 26, 2025 8:36 AM
To: DiEulio, Thomas; Matter, Brett; Frey, Denyce
Cc: McBride, James
Subject: 410 Monroe Pl.(B st) Generator Rental
Attachments: Cat 250kw - 410 Monroe Pl Monthly - RPC.pdf; Rental Quote_244863417.PDF; Cummins City of Port Orange Quote#238592.PDF

Follow Up Flag: Follow up
Flag Status: Flagged

Good Morning,

Please see attached quotes for 410 Monroe Pl.(B st) stormwater pump station generator rental - 250kw
Each quote is * 4-week rental starting March 1st , 2025
includes:
-Generator
- delivery
-pick up

Pricing:

CAT- $4402.64
United -$6525.46
Cummins -$17379.68

Thanks,
Darran

Darran Melanson
Generator Technician
City of Port Orange
386-290-8777

HUMAN TRAFFICKING AFFIDAVIT
(SECTION 787.06, FLORIDA STATUTES)

STATE OF Florida
COUNTY OF St. Johns

The undersigned ("Affiant"), on behalf of the entity listed below ("Entity"), after being duly sworn, hereby attests as follows:

1. My name is Alan Thomas. I am over the age of Twenty-one years old. I am the VP/Director of Government Sales (Title) of Ring Power Corporation (Business Name), a non-governmental entity which does business in the State of Florida, hereinafter called the "Entity."

2. I have personal knowledge of each and every statement of fact contained herein, and each and every statement of fact is true and correct.

3. Entity does not use coercion, as defined in Section 787.06, Florida Statutes, for labor or services.

4. The undersigned is an officer or representative of the entity and is authorized to execute this affidavit on behalf of the Entity.

5. Under penalties of perjury, I declare that I have read the foregoing Human Trafficking Affidavit and that the facts stated herein are true.

Further Affiant sayeth not.

Date: September 24, 2024

Signed: _____
Print Name: Alan Thomas
Title: VP/Director of Government Sales

SUBSCRIBED AND SWORN before me by means of [✓] physical presence or [__] online notarization on the 24th day of September, 20 24 by Alan Thomas as VP/Director of Government Sales on behalf of Ring Power Corporation who is personally known to me or who has produced _____ as identification.

(Notary Seal)

SARAH LU GRIFFITH
NOTARY PUBLIC
STATE OF FLORIDA
NO. HH 445427
MY COMMISSION EXPIRES SEP. 29, 2027

_____
Notary Public, State of Florida
Printed name, commission and expiration of commission term

SKB.7.8.2024. Rev. 9.6.2024
CA7985

CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 4/15/2025

SUBJECT: (C7g) Approval to Award a Contract to Ring Power for the rental of a back-up generator at 410 Monroe Place

DEPARTMENT: Public Works

GOAL: 1 - Public Safety, 2 - Infrastructure

RECOMMENDED MOTION: Move to Approve a Contract with Ring Power Corporation for the rental of a temporary generator at 410 Monroe Place; authorize the city manager and city attorney to review and approve final terms and conditions of the contract prior to execution; and authorize the Mayor and City Clerk to execute all necessary documents.

SUMMARY: The Virginia Monroe Stormwater Improvements project was completed in 2021. This project included the construction of two stormwater pump stations, one being located at 410 Monroe Place. When the pump stations were constructed, back-up generators were not included as part of the project. The Engineering Department is currently in the design phase of a project that will include the installation of permanent back-up generators at this location, as well as at 520 Monroe Street. The rental generator will be used during hurricane season until the project is completed, and the permanent generator is installed.

Three quotes were requested for monthly back-up generator rental at 410 Monroe Place, and Ring Power provided the lowest price.

The rental contract for the generators will not exceed $33,120 and the rental term will begin May 1, 2025, terminating on December 1, 2025. The cost of the equipment rental will be charged to the appropriated budget in Public Works - Stormwater.

PRESENTER: Thomas DiEulio

ATTACHMENTS:

1.	Ring Power Corporation - Backup Generator Addendum No. 1 - 410 Monroe Place	Ring Power Corporation - Backup Generator Addendum No. 1 - 410 Monroe Place.pdf
2.	Ring Power Quote - 410 Monroe Pl Monthly - RPC	Ring Power Quote - 410 Monroe Pl Monthly - RPC.pdf
3.	United Rental Quote 244863417 - 410	United Rental Quote 244863417 - 410

	Monroe Pl	Monroe Pl.pdf
4.	Cummins Quote#238592 - 410 Monroe Pl	Cummins Quote#238592 - 410 Monroe Pl.pdf
5.	410 Monroe Pl Generator Contract Information	410 Monroe Pl Generator Contract Information.pdf

Robin Fenwick	Created/Initiated - 4/2/2025
Thomas DiEulio	Approved - 4/2/2025
Matthew Jones	Approved - 4/3/2025
Wayne Clark	Final Approval - 4/3/2025

ADDENDUM NO. 1
to Ring Power Corporation Rental Quote Q05713
dated _____, 2025

This Addendum No. 1 ("Addendum") is entered into on the day and year set forth hereinafter by and between the **CITY OF PORT ORANGE**, a Florida municipal corporation whose principal address is 1000 City Center Circle, Port Orange, Florida 32129 (the "City") and **RING POWER CORPORATION** ("Contractor"), a Florida corporation, whose principal address is 500 World Commerce Parkway, Saint Augustine, Florida 32092, collectively "the Parties." The Parties have agreed as follows:

1. This Addendum No. 1 supplements the Rental Quote ("Base Contract") for the rental of a 300 KW temporary backup generator for the Storm Water Pump Station located at 410 Monroe Place, and as more specifically described in the Base Contract, dated as indicated above, between Ring Power Corporation and the City of Port Orange. The Base Contract, and this Addendum, attached hereto as Exhibit No. 1, are made a part hereof by reference and shall constitute the formal written Contract between the City and Contractor.

2. *Term*: The term of this Addendum No. 1 shall on May 1, 2025 and continue until December 1, 2025 ("Term").

3. *City Obligations*. In return for the services identified in the Base Contract, the City agrees to compensate Contractor at the rates set forth in the Base Contract subject to a limit not to exceed Thirty-Three Thousand One Hundred Twenty and 00/100 Dollars ($33,120.00). All payments shall be governed by the Local Government Prompt Payment Act as set forth in Sections 218.70 through 218.79, Florida Statutes, as amended.

4. *Contract Administration*. Tom DiEulio, Public Works Director, shall perform contract administration of this Contract. For notice provisions, see the paragraph below entitled "Notice."

5. *Examination of Records*

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

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

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

arbitration, litigation or claims shall have been finally disposed of.

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

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

(b) Provide the public with access to public records on the same terms and conditions that the City would provide the records and at a cost that does not exceed the cost provided in Section 119, Florida Statutes, or as otherwise provided by law.

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

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

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

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

7. *Insurance*. Contractor shall maintain insurance, as required herein, during the life of this Contract. Contractor shall provide to the City, a certificate of insurance endorsing the City of Port Orange as an additional named insured. All insurance coverages of the Contractor shall be primary and non-contributory. All insurance coverages of the Contractor shall not seek contribution from any other insurance or self-insurance available to the City. For workers' compensation coverage, the Contractor's insurance certificate shall include the insurer's waiver of subrogation in lieu of endorsing the City as an additional insured for workers' compensation. The City shall not accept Workers' Compensation Exemptions Contractor may use leased employees if the Contractor ensures that all workers who access the jobsite are employees covered by the employee leasing company, and no non-employees are permitted to access the jobsite. Any Contractor using a leased employee shall complete the City's Leased Employee Affidavit Form Exhibit. Policies for Workers' Compensation may be issued by companies authorized as a group self-insurer by F.S. 440.572.

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

payment. The Certificates of Insurance and required insurance policies shall contain provisions that thirty (30) days prior written notice shall be given to the City of any cancellation, intent not to renew, or reduction in the policies or coverages.

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

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

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

Standard Insurance Requirements			
	Insurance	**Standards**	**Additional Requirements**
☒	Workers' Compensation The Contractor shall maintain coverage for its employees with statutory workers' compensation limits, and no less than the limits indicated in the Schedule of Limits for Employers' Liability. Said coverage shall include a waiver of subrogation in favor of the City. **The City will not accept elective exemptions**. Any contractor using an employee leasing company shall complete the Leased Employee Affidavit Form Exhibit.	Contract Amount Limits Up to $10 million Statutory/$500,000 $10 - $20 million Statutory/$1,000,000 Contracts over $20 million To Be Determined by the City.	☐ If Contract requires work on or about navigable waters, Longshoreman's and Harbor Workers' Coverage required. ☐ If vessels involved, Jones Act coverage with limits of $500,000 required.

☒	Comprehensive General Liability (including Completed Operations and Contractual Liability	Limits:	Combined Single Limit Bodily Injury and Property damage $1,000,000 occurrence $1,000,000 aggregate	☐When work is on or under Railroad rights of way or properties, the Contractor shall take out and maintain during the life of the Contract, Railroad protective liability and property damage insurance in amounts as requested by the Railroad.
☒	Comprehensive Business, Automobile Liability to include all owned, hired and non-owned automobiles.	Limits:	Auto Liability Body Injury and Property Damage: $1,000,000 each occurrence $1,000,000 aggregate	
	Additional Insurance Requirements			
☐	Property Insurance Builders Risk. Additional Coverage:	Limits:	Buildings - Completed value of Contract. "All Risk" coverage on latest ISO for or its equivalent. Permission granted to occupy. Owner named as insured AIMA	If Agreement requires handling or installation of Owner's equipment, coverage should be furnished on "All Risk" form, including transit and Owner shall be named.
☐	Professional Liability	Limits:	Coverage - $1,000,000	
☐	Installation Floater (IT)	Limits:	Coverage - $ To be determined.	
☐	Contractor Pollution Liability	Limits:	Coverage - $1,000,000	
☐	Errors and Omissions	Limits:	Coverage - $1,000,000	
☐	Umbrella Policy	Limits:	Coverage – $ To be determined.	
☐	Payment and Performance Bond Required	Limits:	Coverage - Equal to amount of Contract.	
☐	**City Manager waives Payment and Performance Bond for work under $25,000.00.**			
☐	**Unless otherwise required by law, City Manager waives Insurance for FOB goods under $25,000.00.**			

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

9. *Notice.* For purposes of this agreement, notices shall be sent as follows:

City:	City of Port Orange Attention: City Manager 1000 City Center Circle Port Orange, Florida 32129 (386) 506-5501
Copy to:	City of Port Orange Attention: Tom DiEulio, Public Works Director 1000 City Center Circle Port Orange, Florida 32129 (386) 506-5752
Contractor:	Ring Power Corporation Attention: Randal L. Ringhaver, Director 500 World Commerce Parkway Saint Augustine, Florida 32092 E-Mail: Mike.Lugo@RingPower.com

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

10. *Liability*. Notwithstanding anything to the contrary contained herein, the City shall bear the liability for any damage caused to leased equipment, as a result of the City's negligence. The City agrees to maintain insurance for the duration of the rental period of such type and in such an amount sufficient to pay for any damages to the leased equipment caused by the City up to the full amount of the replacement cost of the leased equipment.

11. *Integration*. This Addendum No. 1 shall supersede all previous communications, representations, or agreements, written or verbal, between the parties hereto. In the event of a conflict between the Base Contract, and this Addendum, this Addendum shall control.

12. *Contract Construction*. This Addendum 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 Addendum shall be deemed valid as if an original signature was delivered. No contract shall be formed between Contractor and the City until the City signs this Addendum.

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

[remainder of page intentionally left blank]

Witnesses:

_____

Printed Name: _____

_____

Printed Name: _____

RING POWER CORPORATION

By: _____

Name/Title: _____

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

Date: _____

Please note that at this time the City does not accept electronic/digital signatures. A wet signature is required for this document.

CITY OF PORT ORANGE

By: _____
Wayne Clark, City Manager

Date: _____

Attest:

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

Date: _____

Ring Power CAT

Power Systems Division

9901 RINGHAVER DRIVE, ORLANDO, FL 32824
ORLANDO PSD 407 855 6195

Rental Quote

Quote Q05713

Date Out: **03/01/2025 Sat**
Est. Date In: **03/28/2025 Fri**
Delivery Date: **03/01/2025 Sat**

Customer: **005589**

Bill to: **CITY OF PORT ORANGE**
1000 CITY CENTER CIRCLE
PORT ORANGE FL 32129

Jobsite: **LIFT STATION 2**
Contact: **DARRAN MELANSON**
Phone: **386-290-8777**
410 MONROE PL
410 MONROE PL
PORT ORANGE, FL, 32129
SMALL TRUCK NEEDED TO PLACE GEN
LANDOLL WILL NOT WORK

Sales Rep: **GREG BAKER FITZGERALD - RENT**

Order By: **DARRAN MELANSON**

PO #: **TO FOLLOW**

QTY	DESCRIPTION			DAY	WEEK	4WEEK	
Rental Items							
1.	300KW GENERATOR SET		Single Shift	$447	$1,341	$4,022	$4,022
	Voltage:	277/480v, 3 phase					
	Frequency:	60 HZ					
	HRS ALLOWED: 8/40/176						
	QUOTED AS 250KW						
Miscellaneous Items							
1	ENV FEE				2.00 %		80.44
1	DELIVERY				150.00 each		150.00
1	PICK UP				150.00 each		150.00

..... THANK YOU FOR YOUR BUSINESS!.....
THIS QUOTE IS SET AT 1ST SHIFT RATES / 8HRS PER DAY & 40HRS PER WEEK & 176HRS PER MONTH
CUSTOMER IS RESPONSIBLE FOR PROVIDING DIESEL FUEL AND DEF FLUID (IF NECESSARY)
SETUP TECHNICIANS ARE AN ADDITIONAL COST

Total: 4,402.64

QUOTE

AGREEMENT AND ACKNOWLEDGEMENT

~~BY EXECUTION OF THIS RENTAL AGREEMENT, LESSEE ACKNOWLEDGES THAT THE EQUIPMENT DESCRIBED HEREIN IS RENTED TO AND IN ACCORDANCE WITH THE TERMS, CONDITIONS, AND PROVISIONS SET FORTH ABOVE (PAGE ONE) AND ON THE TERMS AND CONDITIONS OF THIS AGREEMENT (PAGE TWO) AND LESSEE REPRESENTS THAT LESSEE HAS READ AND AGREES TO ALL TERMS, CONDITIONS AND PROVISIONS OF THIS AGREEMENT.~~

LESSEE SIGNATURE X See Page 7 of Addendum No. 1 **DATE** _____

PRINT NAME _____

TITLE _____

SUBJECT TO ACCEPTANCE AT JACKSONVILLE, FLORIDA
ACCEPTED: RING POWER CORPORATION

BY (LESSOR) Greg Baker-fitzgerald

DATE 1/29/2025

ORIGINAL **Terms and Conditions continued on the backside of this Rental Agreement**

Responsibilities

- The customer is responsible for installation, removal, and maintenance of all equipment.

Notes:

- Rentals are 1 week minimum, Daily rate applies after first week.
  3 Days = 1 Week
  3 Weeks = 1 Month

Shift Hours:

- RATES ARE BASED ON SINGLE SHIFT OPERATIONS UNLESS OTHERWISE STATED
  SINGLE SHIFT = 8 HRS / DAY, 40 HRS / WEEK, 176 HRS / 4 WEEKS
  DOUBLE SHIFT = 16 HRS / DAY, 80 HRS / WEEK, 352 HRS / 4 WEEKS
  TRIPLE SHIFT = UNLIMITED USAGE
- DOUBLE SHIFT IS 1.5 X SINGLE RATE
  TRIPLE SHIFT IS 2 X SINGLE RATE

Responsibilities

- The customer is responsible for refueling the generator prior to return - Ring Power charges $12.00/gallon if required to refuel upon return.

Notes:

- All emergency and Storm related rentals will be charged at the Unlimited Usage rate and will carry a minimum charge as outlined on the schedule below:
  35-400 kW (1) week minimum charge at the unlimited rental rate
  401- 2000 kW (2) week minimum charge at the unlimited rental rate

Responsibilities

- The customer is responsible for providing a fork-lift for unloading and loading equipment if needed.
- The customer is responsible for any required permits.
- The customer is responsible for providing onsite diesel fuel unless otherwise noted in quotation.

Notes:

- The pricing set forth in this quote is valid for thirty (30) days, after which this quote expires.
- This quote is not a guarantee, without a contract in place rental generator availability is subject to change without prior notice.
- Freight/transportation charges are not included in rental rate unless otherwise noted in quotation.
- Monthly rentals are billed on a 4 consecutive week / 28 day billing cycle.

Insurance:

- Ring Power requires the customer to provide certificate of insurance showing PROPERTY DAMAGE coverage for rented/leased equipment for the replacement value of the equipment.
  ~~Ring Power needs to be added as additional insured and loss payee, as well named as certificate holder.~~
  ~~If customer elects not to provide property damage coverage there will be an additional monthly charge of 14% for our Fire, Theft, and Vandalism Waiver.~~
- ~~Ring Power needs to be added as additional insured and loss payee, as well named as certificate holder.~~
- Ring Power requires customer to provide certificate of insurance showing GENERAL LIABILITY coverage for a minimum of $1,000,000 prior to the delivery of equipment.

QUOTE

TERMS AND CONDITIONS

RING POWER CORPORATION (and its affiliates), a Florida corporation, Lessor, and Lessee, enter into the following Lease Agreement (the "Agreement").

1 . RENTAL: Lessor rents to Lessee machinery, equipment and other personal property referred to as "Equipment." This agreement is for rental only and nothing herein contained shall be construed as conveying to the Lessee any right, title or interest in or to the Equipment, except the right of possession and use as a Lessee. The rental of the Equipment shall not be construed as an offer to sell the Equipment. It is understood and agreed that rentals paid will not apply toward a subsequent purchase of the Equipment unless an agreement in writing is made by Lessor and Lessee prior to delivery of the Equipment. ~~Lessee agrees to indemnify, protect, and hold harmless the Lessor, its agents, successors and assigns against all losses, damages, injuries, claims, demands, and expenses, including legal expenses, of whatever nature, including property damage, personal injury, or strict liability arising out of the use, transportation, condition, or operation of any Equipment. The terms and conditions of this Agreement are incorporated into all other leases executed by Lessee.~~

2. ACCEPTANCE AND RETURN OF EQUIPMENT: The Equipment is the property of Lessor, and is in good repair and mechanical condition. Acceptance of delivery constitutes acknowledgment by the Lessee that the Equipment is in good repair and mechanical condition. If the Equipment is not in proper working order when received, Lessee shall notify Lessor of any claimed deficiency in writing by certified mail within twenty-four (24) hours of delivery of the Equipment or be deemed to have waived any such claim. Risk of loss to the Equipment shall pass to the Lessee when the Equipment leaves the Lessor's yard. In the event the Equipment is damaged during the term of this Lease, the Lessee shall at its own expense maintain the Equipment in good working order and condition. The Lessee is responsible for all repairs on the Equipment. Lessee shall return Equipment in the same condition as received, ordinary wear and tear excepted, to the rental location on the day specified or sooner if demanded by Lessor.

3. CHARGES: ~~Lessee shall promptly pay no later than thirty (30) days from the date of the invoice at the Lessor's Address set forth in the Agreement all rental and other charges, including but not limited to time, mileage, service, repairs, minimum delivery, pick-up and fuel. Acceptable forms of payment include: EFT, wire, credit card, company check, certified check, money order, cash.~~ If payment is made with a credit card the lessee asserts that a signature authorizing the sale is not specifically required to constitute the sale. The daily, weekly and monthly rental shall entitle Lessee to a maximum of one-shift use (8 hours per day, 40 hours per week, 176 per month. Double-shift use will incur a charge of one-and-a-half (1-1/2%) times the hourly rate and triple-shift use will incur a charge of two (2) times the hourly rate. Rentals are F.O.B. at Lessor's Rental Office. Shipping charges from such location to destination and return all transportation loading, unloading, assembling and dismantling costs shall be paid by Lessee and the Lessee further agrees that it is the Lessee's responsibility to provide competent and adequate labor and auxiliary equipment, including rigging, for purposes of assembly and/or disassembly of the Equipment. Lessee shall remain liable for rent under this agreement, and rent shall continue to be charged, for damaged Equipment until the Equipment is repaired to the same condition as received by Lessee. In the event of the loss or destruction of the Equipment or any of its accessories for any reason, or the failure to return the same for any reason, Lessee shall promptly pay Lessor the fair market value at the time of the loss plus all past due rent. ~~No credit shall be given for non-working days and the Lessee shall not be entitled to abatement, reduction of or set off against rent for any reason whatsoever.~~

4. USE OF EQUIPMENT: Equipment shall be used solely in Lessee's business and kept only at its place of business or job site (except that Equipment may be moved in the normal course of Lessee's business), and shall not be removed without prior written consent of Lessor. At no time shall the Equipment ever be used in or near salt water. In any event, the Equipment shall not be removed from the continental United States. Lessee shall notify Lessor, prior to moving Equipment from its place of business or the job site as set forth in this Agreement, of the location and project to which the Equipment is relocated and the date(s) the Equipment is removed or placed on any job site. Lessee shall promptly respond to all requests by Lessor concerning the job site (including, but not limited to, the identity of the property owner, general contractor, surety, if any, and legal description of premises).

5. SERVICE: Lessee shall perform and pay for all services, adjustments, and lubrication of Equipment including but not limited to: checking of Equipment before each shift; and supplying fuel, oil and water; and checking cooling system (engine only); and, checking tire pressures and battery fluid and charge levels at least weekly; repair and replacement of all friction materials, clutches, brakes and under carriage components, drive sprockets, crawler chains, idlers, pins, pads, rub rails, rollers and bushings.

~~**6. LIABILITY:** Lessor shall not be liable to Lessee for any loss or liability of any kind, including without limitation consequential or indirect damages of any kind whatsoever under this Agreement. LESSEE IS RESPONSIBLE FOR MAKING ARRANGEMENTS FOR THE RETURN OF THE EQUIPMENT. THIS AGREEMENT DOES NOT TERMINATE UNTIL THE EQUIPMENT IS RECEIVED IN GOOD CONDITION AT LESSOR'S RENTAL OFFICE.~~

7. INSURANCE: Lessee shall at Lessee's expense, during the term hereof, maintain in force a policy of general liability with a limit of at least $1,000,000 with bodily injury and death liability limits of at least $1,000,000 for each person in each accident on a primary and not excess or contributory basis against its liability for damages sustained by any person or persons including but not limited to employees of Lessee, as a result of the maintenance, use, operation, storage, erection, dismantling, servicing or transportation of such Equipment. Also at Lessee's expense, Lessee shall insure the equipment for its full replacement value under a standard physical damage ALL RISKS POLICY with an insurance company acceptable and approved by Ring Power. Lessee shall furnish Lessor a certificate of ~~such insurance naming Ring Power as an additional insured, which may not be canceled or materially modified except on thirty (30) days prior written notice to Lessor.~~ Lessee agrees to abide by the provisions of said policy and to make a written report to Lessor and the insurer within forty-eight (48) hours of Lessee's knowledge of any accident or occurrence involving such Equipment. Lessee's agents and employees shall cooperate fully with Lessor and Lessee's insurer in the investigation, prosecution and/or defense of any claim or suit and shall do nothing to impair or invalidate any applicable insurance coverage. Lessee's insurance shall also insure except as may be otherwise provided herein, against all risks of direct physical loss or damage to the Equipment, while in transit or otherwise within the United States of America and Canada~~, and shall also include general average and salvage charges on Equipment while waterborne~~.

8. COMPLIANCE WITH LAW: Lessee shall, at its expense, comply with all state, federal and local laws and regulations affecting Equipment and its use, erection, design and transportation, including licensing and building code requirements and shall defend, indemnify ~~and hold Lessor harmless from all loss, liability and expense, including Lessor's reasonable attorney's fees, resulting from actual or asserted violations of any such laws.~~

9. VENUE AND CHOICE OF LAW: This Agreement shall be controlled by the laws of Florida. The Lessee specifically agrees to personal jurisdiction in the State of Florida and agrees that venue for all actions related to the Agreement or actions related to the Equipment of any kind will be brought in a state court of competent jurisdiction in Jacksonville, Duval County, Florida or St. Augustine, St. Johns County, Florida.

10. DEFAULT: An event of default shall occur if: (a) Lessee fails to pay rent and such failure continues for a period of five (5) days; (b) Lessee shall fail to perform or observe any conditions in the Agreement for ten (10) days after written notice; (c) Lessee ceases doing business as a going concern, makes an assignment for the benefit of creditors; or (d) Lessee has abandoned the Equipment or attempts to remove, sell, transfer, or encumber the Equipment.

11. REMEDIES: All delinquent rent shall bear interest at the highest lawful rate in the State of Florida. In the event of default or breach of this Agreement by Lessee, or if Lessor for any reason deems itself insecure, Lessor, at its option, shall be entitled to any one or more of the following remedies: Lessor may, (a) enter premises where Equipment is located and render same inoperative or remove Equipment with or without process of law and without notice or liability to Lessee; (b) terminate this Agreement without prejudice to any remedies or claims which Lessor might otherwise have; (c) collect from Lessee for arrears of rent and expenses of retaking; (d) accelerate the remaining rental payments to be due and payable immediately, which shall be construed as liquidated damages and not as a penalty; (e) collect from Lessee the fair market value of the Equipment, for loss of use or for any loss or damage to the Equipment; and (f) collect from Lessee the cost to repair or refurbish the Equipment. Upon the occurrence of any event of default, Lessee agrees to pay all costs of collection and expenses, which may be incurred by Lessor, including reasonable attorney's fees, to enforce any right provided in the Agreement.

12. DISCLAIMER OF WARRANTIES: LESSOR MAKES NO WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO ALL EQUIPMENT. LESSEE TAKES AND RENTS EQUIPMENT "AS IS" AND WITH ALL FAULTS OR DEFECTS.

13. NOTICES: Any notice to be given or mailed by certified mail, return receipt requested, with postage prepaid, at the respective addresses set forth in the Agreement.

14. SPECIAL PROVISIONS:

a.) LESSEE'S GENERAL RESPONSIBILITY: Under this Agreement the Lessee renting the Equipment is responsible to Lessor for any loss or damage to the Equipment and/or its return in the same condition in which received, ordinary wear and tear excepted.

~~b.) SUBROGATION: In the event of any loss or damage to the Equipment, Lessor shall have the right of subrogation with respect to any right of the Lessee to recover against any person, firm or corporation. Lessee shall cooperate.~~

c.) FIRE, THEFT AND VANDALISM WAIVER ("FTV")**: At Ring Power's option, FTV may be offered. If offered and accepted by Lessee, the "Fire, Theft and Vandalism Waiver" option ("FTV") is not insurance. The FTV option may be accepted by the Lessee only at the commencement of the rental term by Lessee initiating the "ACCEPTS FTV" addendum on the rental invoice and by Lessee paying the additional charges specified therein. The FTV option is not available for over the road vehicles, Cranes, Machines in Mowing and Mulching Applications. If the Lessee accepts the FTV option and the Lessee fulfills all terms, conditions and provisions of this Agreement including making of all payments required, time being of the essence, then Lessor agrees to waive the Lessee's liability to Lessor for loss or damage to the equipment due to the specific perils relating to Fire, Theft and Vandalism exceeding the larger of the following applicable amounts: (a) $500 per item of equipment; or (b) triple the monthly rental charge in effect on the date of this agreement, per item of equipment, without regard to the rental period of this agreement. **Opting for FTV does not waive your obligation under the Agreement to provide General Liability Coverage. *****Opting for FTV does not waive your obligation under the Agreement to provide General Liability Coverage.***

d.) When demonstrator units are included in this Agreement, they shall be deemed to be Rentals pursuant to the terms of this Agreement.

e.) The Lessee and Lessor agree that the prevailing party shall be entitled to a reasonable attorney's fee for any dispute regarding this Agreement.

f.) This Agreement may be executed in multiple counterparts. Facsimile signatures of each party s authorized representative shall be deemed to be binding upon such party.

g.) THE LESSEE SPECIFICALLY AGREES TO WAIVE ALL RIGHTS TO A JURY TRIAL IN THE STATE OF FLORIDA.

h.) AUTHORIZED OPERATORS. CUSTOMER shall only permit individuals to operate a piece of Equipment if that individual possesses the necessary experience, training, certification and/or licensure to safely do so. CUSTOMER releases, holds harmless and will indemnify Ring Power Corporation, its subsidiaries and affiliated companies, their officers, agents and employees against any and all loss, liability, expense, including reasonable attorneys' fees, damages including, but not limited to, property damage, personal injury, or strict liability, resulting from, or allegedly resulting from, an operator's lack of such experience, training, certification and/or licensure.

i.) SAFETY EQUIPMENT. CUSTOMER will require any and all operators of Equipment to wear or use proper safety equipment, including but not limited to any harnesses or personal protective equipment, that a reasonable operator would use while operating such Equipment, or as recommended and/or required by the operator's manual for the Equipment. ~~CUSTOMER will release, hold harmless and indemnify Lessor, its subsidiaries and affiliated companies, their officers, agents and employees against any and all loss, liability, expense, including reasonable attorneys' fees, damages including, but not limited to, property damage, personal injury, or strict liability, resulting from, or allegedly resulting from, an operator's failure to wear or use such safety equipment.~~

Initials: See Page 7 of Addendum No. 1

Rental Quote
Quote Q05713

Power Systems Division
9901 RINGHAVER DRIVE, ORLANDO, FL 32824
ORLANDO PSD 407 855 6195

Date Out: **03/01/2025 Sat**
Est. Date In: **03/28/2025 Fri**
Delivery Date: **03/01/2025 Sat**

Customer: **005589**
Bill to: **CITY OF PORT ORANGE**
1000 CITY CENTER CIRCLE
PORT ORANGE FL 32129

Jobsite: **LIFT STATION 2**
Contact: **DARRAN MELANSON**
Phone: **386-290-8777**
410 MONROE PL
410 MONROE PL
PORT ORANGE, FL, 32129
SMALL TRUCK NEEDED TO PLACE GEN
LANDOLL WILL NOT WORK

Sales Rep: **GREG BAKER FITZGERALD - RENT**
Order By: **DARRAN MELANSON**
PO #: **TO FOLLOW**

QTY	DESCRIPTION		DAY	WEEK	4WEEK	
Rental Items						
1.	300KW GENERATOR SET	Single Shift	$447	$1,341	$4,022	$4,022
	Voltage: 277/480v, 3 phase					
	Frequency: 60 HZ					
	HRS ALLOWED: 8/40/176					
	QUOTED AS 250KW					

Miscellaneous Items

1	ENV FEE	2.00	%	80.44
1	DELIVERY	150.00	each	150.00
1	PICK UP	150.00	each	150.00

..... THANK YOU FOR YOUR BUSINESS!.....
THIS QUOTE IS SET AT 1ST SHIFT RATES / 8HRS PER DAY & 40HRS PER WEEK & 176HRS PER MONTH
CUSTOMER IS RESPONSIBLE FOR PROVIDING DIESEL FUEL AND DEF FLUID (IF NECESSARY)
SETUP TECHNICIANS ARE AN ADDITIONAL COST

Total: 4,402.64

QUOTE

AGREEMENT AND ACKNOWLEDGEMENT

BY EXECUTION OF THIS RENTAL AGREEMENT, LESSEE ACKNOWLEDGES THAT THE EQUIPMENT DESCRIBED HEREIN IS RENTED TO AND IN ACCORDANCE WITH THE TERMS, CONDITIONS, AND PROVISIONS SET FORTH ABOVE (PAGE ONE) AND ON THE TERMS AND CONDITIONS OF THIS AGREEMENT (PAGE TWO) AND LESSEE REPRESENTS THAT LESSEE HAS READ AND AGREES TO ALL TERMS, CONDITIONS AND PROVISIONS OF THIS AGREEMENT.

LESSEE SIGNATURE X _____ **DATE** _____

PRINT NAME _____

TITLE _____

SUBJECT TO ACCEPTANCE AT JACKSONVILLE, FLORIDA
ACCEPTED: RING POWER CORPORATION

BY (LESSOR) Greg Baker-fitzgerald

DATE 1/29/2025

ORIGINAL

Terms and Conditions continued on the backside of this Rental Agreement

Responsibilities

- The customer is responsible for installation, removal, and maintenance of all equipment.

Notes:

- Rentals are 1 week minimum, Daily rate applies after first week.
  3 Days = 1 Week
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Shift Hours:

- RATES ARE BASED ON SINGLE SHIFT OPERATIONS UNLESS OTHERWISE STATED
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Responsibilities

- The customer is responsible for refueling the generator prior to return - Ring Power charges $12.00/gallon if required to refuel upon return.

Notes:

- All emergency and Storm related rentals will be charged at the Unlimited Usage rate and will carry a minimum charge as outlined on the schedule below:
  35-400 kW (1) week minimum charge at the unlimited rental rate
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- The customer is responsible for providing onsite diesel fuel unless otherwise noted in quotation.

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- This quote is not a guarantee, without a contract in place rental generator availability is subject to change without prior notice.
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  Ring Power needs to be added as additional insured and loss payee, as well named as certificate holder.
  If customer elects not to provide property damage coverage there will be an additional monthly charge of 14% for our Fire, Theft, and Vandalism Waiver.
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QUOTE

TERMS AND CONDITIONS

RING POWER CORPORATION (and its affiliates), a Florida corporation, Lessor, and Lessee, enter into the following Lease Agreement (the "Agreement").

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2. ACCEPTANCE AND RETURN OF EQUIPMENT: The Equipment is the property of Lessor, and is in good repair and mechanical condition. Acceptance of delivery constitutes acknowledgment by the Lessee that the Equipment is in good repair and mechanical condition. If the Equipment is not in proper working order when received, Lessee shall notify Lessor of any claimed deficiency in writing by certified mail within twenty-four (24) hours of delivery of the Equipment or be deemed to have waived any such claim. Risk of loss to the Equipment shall pass to the Lessee when the Equipment leaves the Lessor's yard. In the event the Equipment is damaged during the term of this Lease, the Lessee shall at its own expense maintain the Equipment in good working order and condition. The Lessee is responsible for all repairs on the Equipment. Lessee shall return Equipment in the same condition as received, ordinary wear and tear excepted, to the rental location on the day specified or sooner if demanded by Lessor.

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4. USE OF EQUIPMENT: Equipment shall be used solely in Lessee's business and kept only at its place of business or job site (except that Equipment may be moved in the normal course of Lessee's business), and shall not be removed without prior written consent of Lessor. At no time shall the Equipment ever be used in or near salt water. In any event, the Equipment shall not be removed from the continental United States. Lessee shall notify Lessor, prior to moving Equipment from its place of business or the job site as set forth in this Agreement, of the location and project to which the Equipment is relocated and the date(s) the Equipment is removed or placed on any job site. Lessee shall promptly respond to all requests by Lessor concerning the job site (including, but not limited to, the identity of the property owner, general contractor, surety, if any, and legal description of premises).

5. SERVICE: Lessee shall perform and pay for all services, adjustments, and lubrication of Equipment including but not limited to: checking of Equipment before each shift; and supplying fuel, oil and water; and checking cooling system (engine only); and, checking tire pressures and battery fluid and charge levels at least weekly; repair and replacement of all friction materials, clutches, brakes and under carriage components, drive sprockets, crawler chains, idlers, pins, pads, rub rails, rollers and bushings.

6. LIABILITY: Lessor shall not be liable to Lessee for any loss or liability of any kind, including without limitation consequential or indirect damages of any kind whatsoever under this Agreement. LESSEE IS RESPONSIBLE FOR MAKING ARRANGEMENTS FOR THE RETURN OF THE EQUIPMENT. THIS AGREEMENT DOES NOT TERMINATE UNTIL THE EQUIPMENT IS RECEIVED IN GOOD CONDITION AT LESSOR'S RENTAL OFFICE.

7. INSURANCE: Lessee shall at Lessee's expense, during the term hereof, maintain in force a policy of general liability with a limit of at least $1,000,000 with bodily injury and death liability limits of at least $1,000,000 for each person in each accident on a primary and not excess or contributory basis against its liability for damages sustained by any person or persons including but not limited to employees of Lessee, as a result of the maintenance, use, operation, storage, erection, dismantling, servicing or transportation of such Equipment. Also at Lessee's expense, Lessee shall insure the equipment for its full replacement value under a standard physical damage ALL RISKS POLICY with an insurance company acceptable and approved by Ring Power. Lessee shall furnish Lessor a certificate of such insurance naming Ring Power as an additional insured, which may not be canceled or materially modified except on thirty (30) days prior written notice to Lessor. Lessee agrees to abide by the provisions of said policy and to make a written report to Lessor and the insurer within forty-eight (48) hours of Lessee's knowledge of any accident or occurrence involving such Equipment. Lessee's agents and employees shall cooperate fully with Lessor and Lessee's insurer in the investigation, prosecution and/or defense of any claim or suit and shall do nothing to impair or invalidate any applicable insurance coverage. Lessee's insurance shall also insure except as may be otherwise provided herein, against all risks of direct physical loss or damage to the Equipment, while in transit or otherwise within the United States of America and Canada, and shall also include general average and salvage charges on Equipment while waterborne.

8. COMPLIANCE WITH LAW: Lessee shall, at its expense, comply with all state, federal and local laws and regulations affecting Equipment and its use, erection, design and transportation, including licensing and building code requirements and shall defend, indemnify and hold Lessor harmless from all loss, liability and expense, including Lessor's reasonable attorney's fees, resulting from actual or asserted violations of any such laws.

9. VENUE AND CHOICE OF LAW: This Agreement shall be controlled by the laws of Florida. The Lessee specifically agrees to personal jurisdiction in the State of Florida and agrees that venue for all actions related to the Agreement or actions related to the Equipment of any kind will be brought in a state court of competent jurisdiction in Jacksonville, Duval County, Florida or St. Augustine, St. Johns County, Florida.

10. DEFAULT: An event of default shall occur if: (a) Lessee fails to pay rent and such failure continues for a period of five (5) days; (b) Lessee shall fail to perform or observe any conditions in the Agreement for ten (10) days after written notice; (c) Lessee ceases doing business as a going concern, makes an assignment for the benefit of creditors; or (d) Lessee has abandoned the Equipment or attempts to remove, sell, transfer, or encumber the Equipment.

11. REMEDIES: All delinquent rent shall bear interest at the highest lawful rate in the State of Florida. In the event of default or breach of this Agreement by Lessee, or if Lessor for any reason deems itself insecure, Lessor, at its option, shall be entitled to any one or more of the following remedies: Lessor may, (a) enter premises where Equipment is located and render same inoperative or remove Equipment with or without process of law and without notice or liability to Lessee; (b) terminate this Agreement without prejudice to any remedies or claims which Lessor might otherwise have; (c) collect from Lessee for arrears of rent and expenses of retaking; (d) accelerate the remaining rental payments to be due and payable immediately, which shall be construed as liquidated damages and not as a penalty; (e) collect from Lessee the fair market value of the Equipment, for loss of use or for any loss or damage to the Equipment; and (f) collect from Lessee the cost to repair or refurbish the Equipment. Upon the occurrence of any event of default, Lessee agrees to pay all costs of collection and expenses, which may be incurred by Lessor, including reasonable attorney's fees, to enforce any right provided in the Agreement.

12. DISCLAIMER OF WARRANTIES: LESSOR MAKES NO WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO ALL EQUIPMENT. LESSEE TAKES AND RENTS EQUIPMENT "AS IS" AND WITH ALL FAULTS OR DEFECTS.

13. NOTICES: Any notice to be given or mailed by certified mail, return receipt requested, with postage prepaid, at the respective addresses set forth in the Agreement.

14. SPECIAL PROVISIONS:

a.) LESSEE'S GENERAL RESPONSIBILITY: Under this Agreement the Lessee renting the Equipment is responsible to Lessor for any loss or damage to the Equipment and/or its return in the same condition in which received, ordinary wear and tear excepted.

b.) SUBROGATION: In the event of any loss or damage to the Equipment, Lessor shall have the right of subrogation with respect to any right of the Lessee to recover against any person, firm or corporation. Lessee shall cooperate.

c.) FIRE, THEFT AND VANDALISM WAIVER ("FTV")**: At Ring Power's option, FTV may be offered. If offered and accepted by Lessee, the "Fire, Theft and Vandalism Waiver" option ("FTV") is not insurance. The FTV option may be accepted by the Lessee only at the commencement of the rental term by Lessee initiating the "ACCEPTS FTV" addendum on the rental invoice and by Lessee paying the additional charges specified therein. The FTV option is not available for over the road vehicles, Cranes, Machines in Mowing and Mulching Applications. If the Lessee accepts the FTV option and the Lessee fulfills all terms, conditions and provisions of this Agreement including making of all payments required, time being of the essence, then Lessor agrees to waive the Lessee's liability to Lessor for loss or damage to the equipment due to the specific perils relating to Fire, Theft and Vandalism exceeding the larger of the following applicable amounts: (a) $500 per item of equipment; or (b) triple the monthly rental charge in effect on the date of this agreement, per item of equipment, without regard to the rental period of this agreement. **Opting for FTV does not waive your obligation under the Agreement to provide General Liability Coverage. ***Opting for FTV does not waive your obligation under the Agreement to provide General Liability Coverage.***

d.) When demonstrator units are included in this Agreement, they shall be deemed to be Rentals pursuant to the terms of this Agreement.

e.) The Lessee and Lessor agree that the prevailing party shall be entitled to a reasonable attorney's fee for any dispute regarding this Agreement.

f.) This Agreement may be executed in multiple counterparts. Facsimile signatures of each party s authorized representative shall be deemed to be binding upon such party.

g.) THE LESSEE SPECIFICALLY AGREES TO WAIVE ALL RIGHTS TO A JURY TRIAL IN THE STATE OF FLORIDA.

h.) AUTHORIZED OPERATORS. CUSTOMER shall only permit individuals to operate a piece of Equipment if that individual possesses the necessary experience, training, certification and/or licensure to safely do so. CUSTOMER releases, holds harmless and will indemnify Ring Power Corporation, its subsidiaries and affiliated companies, their officers, agents and employees against any and all loss, liability, expense, including reasonable attorneys' fees, damages including, but not limited to, property damage, personal injury, or strict liability, resulting from, or allegedly resulting from, an operator's lack of such experience, training, certification and/or licensure.

i.) SAFETY EQUIPMENT. CUSTOMER will require any and all operators of Equipment to wear or use proper safety equipment, including but not limited to any harnesses or personal protective equipment, that a reasonable operator would use while operating such Equipment, or as recommended and/or required by the operator's manual for the Equipment. CUSTOMER will release, hold harmless and indemnify Lessor, its subsidiaries and affiliated companies, their officers, agents and employees against any and all loss, liability, expense, including reasonable attorneys' fees, damages including, but not limited to, property damage, personal injury, or strict liability, resulting from, or allegedly resulting from, an operator's failure to wear or use such safety equipment.

Initials: _____

United Rentals
POWER & HVAC

BRANCH G35
9375 BOGGY CREEK RD
ORLANDO FL 32824-8373
407-854-6061
407-857-8308 FAX

RENTAL QUOTE

244863417

Customer #	: 2629647
Quote Date	: 02/25/25
Estimated Out	: 03/01/25 12:00 PM
Estimated In	: 03/29/25 12:00 PM
UR Job Loc	: 410 MONROE PL, PORT
UR Job #	: 28
Customer Job ID:	
P.O. #	: TBD
Ordered By	: DARRAN M
Written By	: TRAVIS GOODMAN
Salesperson	: TRAVIS GOODMAN

Job Site

MONROE PLACE
410 MONROE PL
PORT ORANGE FL 32129

Office: 386-506-5500

CITY OF PORT ORANGE
1000 CITY CENTER CIR
PORT ORANGE FL 32129-4144

This is not an invoice
Please do not pay from this document

RENTAL ITEMS:

Qty	Equipment	Description	Minimum	Day	Week	4 Week	Estimated Amt.
1	2403313	GENERATOR 300-349 KVA TIER 4		1,168.00	2,050.00	5,651.00	5,651.00

```
* RATES ARE BASED ON SINGLE SHIFT OPERATIONS UNLESS OTHERWISE STATED *
*     SINGLE SHIFT = 8 HRS / DAY, 40 HRS / WEEK, 160 HRS / 4 WEEKS   *
*    DOUBLE SHIFT = 16 HRS / DAY, 80 HRS / WEEK, 320 HRS / 4 WEEKS   *
*                   TRIPLE SHIFT = UNLIMITED USAGE                   *
*               DOUBLE SHIFT = 1.5 X SINGLE SHIFT RATE               *
*                TRIPLE SHIFT = 2 X SINGLE SHIFT RATE                *
* GENERATOR WILL BE DELIVERED FULL OF FUEL AND DIESEL EXHAUST FLUID   *
* "DEF" (IF REQUIRED). CUSTOMER IS RESPONSIBLE TO RETURN IN THE SAME  *
* MANNER. FUEL AND DEF SERVIE IS AVAILABLE THROUGH UR.                *
* ENSURE PROPER OPERATION                                .            *
*         IF NOT RETURNED FULL A REFUELING CHARGE WILL APPLY.         *
```

Rental Subtotal:	5,651.00

SALES/MISCELLANEOUS ITEMS:

Qty	Item	Price	Unit of Measure	Extended Amt.
1	DELIVERY CHARGE	437.230	EACH	437.23
1	PICKUP CHARGE	437.230	EACH	437.23

Sales/Misc Subtotal:	874.46
Agreement Subtotal:	6,525.46
Estimated Total:	6,525.46

COMMENTS/NOTES:

CONTACT: DARRAN M
DLV/PKU LOC SELECTED BY MAP PIN OPTION

This proposal may be withdrawn if not accepted within 30 days. The above referenced Rental Protection Plan, environmental, and tax charges are estimates and are subject to change.

NOTICE: This is not a rental agreement. The rental of equipment and any items listed above is subject to availability and subject to the terms and conditions of the Rental and Service Agreement, which are available at https://www.unitedrentals.com/legal/rental-service-terms-US and which are incorporated herein by reference. A COPY OF THE RENTAL AND SERVICE AGREEMENT TERMS ARE AVAILABLE IN PAPER FORM UPON REQUEST.

Cummins Sales and Service

Payment terms are 30 days from invoice date unless otherwise agreed upon in writing. Remit to:
Cummins Sales and Service
PO Box 772639
Detroit, MI 48277-2639

ORLANDO FL BRANCH
4820 ORANGE BLOSSOM TRAIL
MV#95745
ORLANDO, FL 32810-
(407)298-2080

INVOICE NO

ESTIMATE

TO PAY ONLINE LOGON TO
customerpayment.cummins.com

BILL TO

CITY OF PORT ORANGE
ACCOUNTS PAYABLE
PO BOX 291759
PORT ORANGE. FL 32129-1759

OWNER

CITY OF PORT ORANGE
MONROE PLACE
409 MONROE PL
PORT ORANGE, FL 32127-
DARRAN MELANSON - 386 290-8777

***** CHARGE *****

DATE	CUSTOMER ORDER NO.	DATE IN SERVICE	ENGINE MODEL	PUMP NO.	EQUIPMENT MAKE
25-FEB-2025					
CUSTOMER NO.	**SHIP VIA**	**FAIL DATE**	**ENGINE SERIAL NO.**	**CPL NO.**	**EQUIPMENT MODEL**
362430					
REF. NO.	**SALESPERSON**	**PARTS DISP.**	**MILEAGE/HOURS**	**PUMP CODE**	**UNIT NO.**
238592					

QUANTITY ORDERED	BACK ORDERED	QUANTITY SHIPPED	PART NUMBER	DESCRIPTION	PRODUCT CODE	UNIT PRICE	AMOUNT

COMPLAINT

PROVIDE 250KW RENTAL GENERATOR FOR
THE PERIOD OF 4 WEEKS STARTING MARCH 1ST

LOCATION
MONROE PLACE
409 MONROE PL
PORT ORANGE FL 32127

RENTAL FEE $5,143.11
SHIPPING TO $669.00
SHIPPING FROM $669.00

CAUSE CUSTOMER REQUEST

CORRECTION CUSTOMER IS RESPONSIBLE FOR CONNECT AND DISCONNECT

TOWABLE GENERATOR WILL BE DELIVERED FULL OF FUEL AND DIESEL
EXHAUST FLUID "DEF" (IF REQUIRED).
CONTAINERIZED UNITES WILL BE DELIVERED WITH LESS THAN 200 GALLONS.
ON-BOARD FUEL CAPACITY IS 1,000 GALLONS. .
CUSTOMER IS RESPONSIBLE FOR FUEL DURING THE RENTAL PERIOD.
CUSTOMER IS RESPONSIBLE TO RETURN IN THE SAME MANNER AS DELIVERED.
FUEL AND DEF SERVICE IS AVAILABLE THROUGH UR.
IT IS THE CUSTOMER RESPONSIBILITY TO VERIFY ALL FLUIDS EACH DAY TO ENSURE PROPER OPERATION.

COVERAGE CUSTOMER BILLABLE

REMARK THANK YOU FOR YOUR BUSINESS

SRO EMAILED TO DARRAN MELANSON

1	FIELD SERVICE	FIELD SERVICE	**10,906.57**

Completion date : 26-Feb-2025 12:34PM. Estimate expires : 27-Mar-2025 11:34AM.

Billing Inquiries? Call (877)480-6970

THERE ARE ADDITIONAL CONTRACT TERMS ON THE REVERSE SIDE OF THIS DOCUMENT, INCLUDING LIMITATION ON WARRANTIES AND REMEDIES, WHICH ARE EXPRESSLY INCORPORATED HEREIN AND WHICH PURCHASER ACKNOWLEDGES HAVE BEEN READ AND FULLY UNDERSTOOD.

AUTHORIZED BY (print name)_____**SIGNATURE**_____**DATE**_____

TERMS AND CONDITIONS

These terms and conditions ('Terms and Conditions'), together with the estimate/quote (the "Quote") and/or invoice ("Invoice") attached to these Terms and Conditions, are hereinafter collectively referred to as this "Agreement" and shall constitute the entire agreement between the customer ("Customer") identified on the Quote and/or Invoice and Cummins Inc. ("Cummins") and supersede any previous representation, statements, agreements or understanding (oral or written) between the parties with respect to the subject matter of this Agreement. Customer shall be deemed to have made an unqualified acceptance of these Terms and Conditions represents that by its signing of this Agreement that the signer represents that he or she is duly authorized to enter into this Agreement. Further, Customer authorizes, if applicable, the performance of services and labor on Customer's vehicle and/or equipment as provided. This shall become a binding agreement between the parties on the earliest of the following to occur: (i) Cummins' receipt of Customer's purchase order or purchase order number; (ii) Customer's signing or acknowledgment of this Agreement; (iii) Cummins' release of Products to production pursuant to Customer's oral or written instruction or direction; (iv) Customer's payment of any amounts due to Cummins; or (v) any other event constituting acceptance under applicable law. No prior inconsistent course of dealing, course of performance, or usage of trade, if any, constitutes a waiver of, or serves to explain or interpret, the Terms and Conditions set forth in this Agreement.

Electronic transactions between Customer and Cummins will be solely governed by the Terms and Conditions of this Agreement, and any terms and conditions on Customer's website, vendor portal, or other internet site will be null and void and of no legal effect on Cummins. In the event Customer delivers, references, incorporates by reference, or produces any purchase order or document, vendor portal terms, specifications, agreement (whether upstream or otherwise), or any terms and conditions related thereto, then such specifications, terms, document, or other agreement: (i) shall be null and void and of no legal effect on Cummins, and (ii) this Agreement shall remain the governing terms of the transaction.

1. SCOPE OF SERVICES; PERFORMANCE OF SERVICES. Cummins shall supply part(s) and/or component(s) and/or engine(s) and/or generator set(s) (""Goods"") and/or perform the maintenance, troubleshooting, diagnostic testing, and/or repair (""Service(s)"") on the equipment identified in the Quote and/or Invoice (""Equipment""), if applicable, in accordance with the specifications in the Quote and/or Invoice. Unless otherwise agreed by the Parties in writing: (i) no additional services or goods are included in this Agreement; and (ii) this Quote is valid for a maximum period of thirty (30) days from the date appearing on the first page of this Quote ('Quote Validation Period'). At the end of the Quote Validation Period, this Quote will automatically expire unless accepted by Customer prior to the end of the Quote Validation Period. The foregoing notwithstanding, in no event shall this Quote Validation Period be deemed or otherwise considered to be a firm offer period nor to establish an option contract, and Cummins hereby reserves its right to revoke or amend this Quote at any time prior to Customer's acceptance.

2. CUSTOMER OBLIGATIONS. If necessary, Customer shall provide Cummins safe and free access to Customer's site and arrange for all related services and utilities necessary for Cummins to safely and freely perform the Services. During the performance of the Services, Customer shall fully and completely secure all or any part of any facility where the Equipment is located to remove and mitigate any and all safety issues and risks, including but not limited to injury to facility occupants, customers, invitees, or any third party and/or property damage or work interruption arising out of the Services. If applicable, Customer shall make all necessary arrangements to address and mitigate the consequences of any electrical service interruption which might occur during the Services. Customer is responsible for operating and maintaining the Equipment in accordance with the owner's manual for the Equipment.

3. INVOICING AND PAYMENT. Unless otherwise agreed to by the parties in writing and subject to credit approval by Cummins, payments are due thirty (30) days from the date of Invoice. If Customer does not have approved credit with Cummins, as solely determined by Cummins, payments are due in advance or at the time of supply of the Goods and/or Services.

If payment is not received when due, in addition to any rights Cummins may have at law, Cummins may charge Customer eighteen percent (18%) interest annually on late payments, or the maximum amount allowed by law. Customer agrees to pay all Cummins' costs and expenses (including all reasonable attorneys' fees) related to Cummins' enforcement and collection of unpaid invoices, or any other enforcement of this Agreement by Cummins. If Customer fails to make any payments to Cummins when due and payable, and such failure continues for more than sixty (60) days from the date of the invoice, or less if required by applicable law, then Cummins may, at Cummins' sole discretion and without prejudice to any other rights or remedies, either (i) terminate this Agreement; or (ii) suspend its Services and/or suspend delivery of any undelivered Goods or parts in Cummins' possession until payment for unpaid invoices is received. In the event that Cummins suspends its performance of Services due to Customer's breach or non-payment, then Cummins shall be entitled to an equitable extension of its delivery dates and/or schedule of Services for a period of time equal to the suspension period, plus a reasonable ramp up period and all costs (including default interest) caused by such suspension shall be assumed by Customer. Any dispute or claim Customer may have with or against Cummins' invoice, regarding the scope, quality or amount charged for any parts or services provided to Customer, must be asserted in writing and noticed pursuant to these Terms and Conditions within thirty (30) days of the date of the invoice, or shall be waived by the Customer.

4. TAXES; EXEMPTIONS. The Invoice includes all applicable local, state, or federal sales and/or use or similar taxes which Cummins is required by applicable laws to collect from Customer under this Agreement. Customer must provide a valid tax exemption certificate or direct payment certificate prior to shipment of the Goods or performance of the Services, or such taxes will be included in the Invoice.

5. DELIVERY; TITLE AND RISK OF LOSS. Unless otherwise agreed in writing by the parties, any Goods supplied under this Agreement shall be delivered FOB Origin, freight prepaid to the first destination. If agreed, any charges for third party freight are subject to adjustment to reflect any change in price at time of shipment. Unless otherwise agreed to, packaging method, shipping documents and manner, route and carrier and delivery shall be as Cummins deems appropriate. All shipments are made within normal business hours, Monday through Friday. Unless otherwise agreed in writing by the parties, title and risk of loss for any Goods sold under this Agreement shall pass to Customer upon delivery of Goods by Cummins to freight carrier or to Customer at pickup at Cummins' facility. The purchase of Goods or the performance of Services on Equipment, Customer-owned motor vehicle, or any other personal property, is a 'take or pay' obligation on the part of the Customer, such that Customer is absolutely and irrevocably required to accept and pay for the Goods, or any Services performed on Equipment, Customer-owned motor vehicle, or any other personal property, if delivery or pick-up of Goods, Equipment, Customer-owned motor vehicle, or any other personal property, is delayed, deferred, or refused by Customer beyond thirty (30) days from the agreed upon delivery date or the date of completion of Services.

In the event Customer fails to pick-up Equipment, Customer-owned motor vehicle, or any other personal property, or fails to take any or all shipments of Goods ordered hereunder within thirty (30) days of the agreed upon delivery date, Cummins shall invoice the Customer and, upon Cummins' sole discretion, Cummins may either: (i) deliver the Goods or Equipment to the location indicated on Customer's purchase order (regardless of whether Customer elected to pick up the Goods or Equipment at Cummins' facility or otherwise indicated an alternate delivery method), and Customer shall assume all associated delivery costs incurred by Cummins, or (ii) charge storage fees for the additional inventory holding period, the additional inventory holding period not to exceed sixty (60) days from the agreed upon delivery date or the date of completion of Services, unless otherwise agreed by Cummins in writing or required by law. A storage fee of twenty-five dollars ($25.00) per day or one and one-half percent (1.5%) per month of the invoiced amount, whichever is greater, shall be assessed for any Goods, Equipment, Customer-owned motor vehicle, or any other personal property, whose delivery or pick-up is delayed, deferred, or refused by Customer beyond thirty (30) days from the agreed upon delivery date or the date of completion of Services.

Unless otherwise agreed by Cummins in writing, in the event delivery or pick-up of Goods, Equipment, Customer-owned motor vehicle, or any other personal property, are delayed, deferred, or refused by Customer beyond sixty (60) days from the agreed upon delivery or pick-up date, or date of completion of Services, then Cummins has the right, in its sole discretion, to: (i) tow, remove, or otherwise dispose of the unclaimed Goods, Equipment, Customer-owned motor vehicle, or any other personal property, in accordance with applicable abandonment laws, and/or (ii) make the Goods, Equipment, Customer-owned motor vehicle, or any other personal property, available for auction or sale to other customers or to the public, or (iii) otherwise use, destroy, or recycle the Goods, Equipment, Customer-owned motor vehicle, or any other personal property, at Customer's sole cost and expense, and without any liability to Cummins.

6. DELAYS. Any delivery, shipping, installation, or performance dates indicated in this Agreement are estimated and not guaranteed. Further, delivery time is subject to confirmation at time of order. Cummins shall not be liable to Customer or any third party for any loss, damage, or expense suffered by Customer or third party due to any delay in delivery, shipping, installation, or performance, however occasioned, including any delays in performance that result directly or indirectly from acts of Customer or causes beyond Cummins' control, including but not limited to acts of God, accidents, fire, explosions, flood, unusual weather conditions, acts of government authority, embargos, wars, strikes or other labor disputes, civil commotion, terrorism, sabotage, late delivery by Cummins'

suppliers, fuel or other energy shortages, or an inability to obtain necessary labor, materials, supplies, equipment or manufacturing facilities. AS A RESULT OF COVID-19 RELATED EFFECTS OR INDUSTRY SUPPLY CHAIN DISRUPTIONS, TEMPORARY DELAYS IN DELIVERY, LABOR OR SERVICES FROM CUMMINS AND ITS SUB-SUPPLIERS OR SUBCONTRACTORS MAY OCCUR. AMONG OTHER FACTORS, CUMMINS' DELIVERY OBLIGATIONS ARE SUBJECT TO CORRECT AND PUNCTUAL SUPPLY FROM OUR SUB-SUPPLIERS OR SUBCONTRACTORS, AND CUMMINS RESERVES THE RIGHT TO MAKE PARTIAL DELIVERIES OR MODIFY ITS LABOR OR SERVICE. WHILE CUMMINS SHALL MAKE EVERY COMMERCIALLY REASONABLE EFFORT TO MEET THE DELIVERY, SERVICE OR COMPLETION OBLIGATIONS SET FORTH HEREIN, SUCH DATES ARE SUBJECT TO CHANGE. IN THE EVENT DELIVERY, SHIPPING, INSTALLATION, OR PERFORMANCE IS DELAYED, HOWEVER OCCASSIONED, DUE TO EVENTS BEYOND CUMMINS' REASONABLE CONTROL, THEN THE DATE OF DELIVERY, SHIPPING, INSTALLATION, OR PERFORMANCE FOR THE GOODS OR SERVICES SHALL BE EQUITABLY EXTENDED FOR A PERIOD EQUAL TO THE TIME LOST, PLUS REASONABLE RAMP-UP.

7. LIMITED WARRANTIES.

New Goods: New Goods purchased or supplied under this Agreement are governed by the express written manufacturers' warranty. No other warranty for Goods supplied under this Agreement is provided under this Agreement.

Cummins Exchange Components, Other Exchange Components, and Recon: Cummins will administer the Cummins exchange component warranty and the warranties of other manufacturers' exchange components or Recon Components which are sold by Cummins. In the event of defects in such items, only manufacturers' warranties will apply.

HHP Exchange Engine: HHP Exchange Engines remanufactured by Cummins under this Agreement are governed by the express Cummins' written warranty. No other warranty for HHP exchange Engines supplied under this Agreement is provided under this Agreement."

General Service Work: All Services shall be free from defects in workmanship (i) for power generation equipment (including engines in such equipment), for a period of ninety (90) days after completion of Services or 500 hours of operation, whichever occurs first; or (ii) for engines, for a period of ninety (90) days after completion of Services, 25,000 miles or 900 hours of operation, whichever occurs first. In the event of a warrantable defect in workmanship of Services supplied under this Agreement (""Warrantable Defect""), Cummins' obligation shall be solely limited to correcting the Warrantable Defect. Cummins shall correct the Warrantable Defect where (i) such Warrantable Defect becomes apparent to Customer during the warranty period; (ii) Cummins receives written notice of the Warrantable Defect within thirty (30) days following discovery by Customer; and (iii) Cummins has determined that there is a Warrantable Defect. Warrantable Defects remedied under this provision shall be subject to the remaining warranty period of the original warranty of the Services. New Goods supplied during the remedy of Warrantable Defects are warranted for the balance of the warranty period still available from the original warranty of such Goods.

Used Goods: Used Goods are sold ""as is, where is"" unless exception is made in writing between Cummins and Customer. Customer agrees to inspect all used Goods before completing the purchase.

THE REMEDIES PROVIDED IN THE LIMITED WARRANTIES AND THIS AGREEMENT ARE THE SOLE AND EXCLUSIVE WARRANTIES AND REMEDIES PROVIDED BY CUMMINS TO THE CUSTOMER UNDER THIS AGREEMENT. EXCEPT AS SET OUT IN THE WARRANTY AND THIS AGREEMENT, AND TO THE EXTENT PERMITTED BY LAW, CUMMINS EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS, WARRANTIES, ENDORSEMENTS, AND CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY STATUTORY OR COMMON LAW IMPLIED REPRESENTATIONS, WARRANTIES AND CONDITIONS OF FITNESS FOR A PURPOSE OR MERCHANTABILITY.

8. INDEMNIFICATION. Customer shall indemnify, defend and hold harmless Cummins from and against any and all claims, actions, costs, expenses, damages and liabilities, including reasonable attorneys' fees, brought against or incurred by Cummins related to or arising out of this Agreement or the Services and/or Goods supplied under this Agreement (collectively, the ""Claims""), where such Claims were caused or contributed, in whole or in part, by the acts, omissions, fault or negligence of the Customer. Customer shall present any Claims covered by this indemnity, including any tenders for defense and indemnity by Cummins to its insurance carrier unless Cummins directs that the defense will be handled by Cummins' legal counsel at Customer's expense.

9. LIMITATION OF LIABILITY. NOTWITHSTANDING ANY OTHER TERM OF THIS AGREEMENT, IN NO EVENT SHALL CUMMINS, ITS OFFICERS, DIRECTORS, EMPLOYEES, OR AGENTS BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, LIQUIDATED, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION DOWNTIME, LOSS OF PROFIT OR REVENUE, LOSS OF DATA, LOSS OF OPPORTUNITY, DAMAGE TO GOODWILL, ENHANCED DAMAGES, MONETARY REQUESTS RELATING TO RECALL EXPENSES AND REPAIRS TO PROPERTY, AND/OR DAMAGES CAUSED BY DELAY), OR IN ANY WAY RELATED TO OR ARISING FROM CUMMINS' SUPPLY OF GOODS OR SERVICES UNDER THIS AGREEMENT. IN NO EVENT SHALL CUMMINS? LIABILITY TO CUSTOMER OR ANY THIRD PARTY CLAIMING DIRECTLY THROUGH CUSTOMER OR ON CUSTOMER?S BEHALF UNDER THIS AGREEMENT EXCEED THE TOTAL COST OF GOODS AND SERVICES SUPPLIED BY CUMMINS UNDER THIS AGREEMENT GIVING RISE TO THE CLAIM. BY ACCEPTANCE OF THIS AGREEMENT, CUSTOMER ACKNOWLEDGES CUSTOMER'S SOLE REMEDY AGAINST CUMMINS FOR ANY LOSS SHALL BE THE REMEDY PROVIDED HEREIN.

10. GOVERNING LAW AND JURISDICTION. This Agreement and all matters arising hereunder shall be governed by and construed in accordance with the laws of the State of Indiana without giving effect to any choice or conflict of law provision. The parties agree that the court of the State of Indiana shall have exclusive jurisdiction to settle any dispute or claim arising in connection with this Agreement.

11. ASSIGNMENT. This Agreement is binding on the parties and their successors and assigns. Customer shall not assign this Agreement without the prior written consent of Cummins.

12. CANCELLATION; TERMINATION. Orders placed with and accepted by Cummins may not be cancelled except with Cummins' prior written consent. Cummins may charge Customer a cancellation charge in accordance with current Cummins policy which is available upon request, in addition to the actual, non- recoverable costs incurred by Cummins. Cummins may terminate this Agreement, in whole or in part, for cause if the Customer breaches its obligations under this Agreement, and such breach is not cured within fifteen (15) days after written notice to Customer, or such longer time that Cummins may specify in its notice. Cummins may, at any time, terminate this Agreement for convenience upon thirty (30) days' written notice to Customer. If the Customer defaults by (i) breaching any term of this Agreement, (ii) becoming insolvent or declared bankrupt, or (iii) making an assignment for the benefit of creditors, Cummins may, upon written notice to Customer, immediately terminate this Agreement. Upon such termination for default, Cummins shall immediately cease any further performance under this Agreement, without further obligation or liability to Customer, and Customer shall pay Cummins for any Goods or Services supplied under this Agreement, in accordance with the payment terms detailed in this Agreement.

If a notice of termination for default has been issued and is later determined, for any reason, that the Customer was not in default, the rights and obligations of the parties shall treat the termination as a termination for convenience.

13. REFUNDS; CREDITS. Goods ordered and delivered by Cummins under this Agreement are not returnable unless agreed to by Cummins. Cummins may, at its sole discretion, agree to accept Goods for return and provide credit where Goods are in new and saleable condition and presented with a copy of the original invoice. Credits for returns will be subject to up to a 15% handling/restocking charge and are limited to eligible items purchased from Cummins.

14. INTELLECTUAL PROPERTY. Any intellectual property rights created by either party, whether independently or jointly, in the course of the performance of this Agreement or otherwise related to Cummins pre-existing intellectual property or subject matter related thereto, shall be Cummins' property. Customer agrees to assign, and does hereby assign, all right, title, and interest to such intellectual property to Cummins. Any Cummins pre-existing intellectual property shall remain Cummins' property. Nothing in this Agreement shall be deemed to have given Customer a license or any other rights to use any of the intellectual property rights of Cummins.

15. COMPLIANCE WITH LAWS. Customer shall comply with all laws applicable to its activities under this Agreement, including without limitation, all applicable national, provincial, and local export, anti-bribery, environmental, health, and safety laws and regulations in effect. Customer acknowledges that the Goods, and any related technology that are sold or otherwise provided hereunder may be subject to export and other trade controls restricting the sale, export, re-export and/or transfer, directly or indirectly, of such Goods or technology to certain countries or parties, including, but not limited to, licensing requirements under applicable laws and regulations of the United States, the United Kingdom and other jurisdictions. It is the intention of Cummins to comply with these laws, rules, and regulations. Any other provision of this Agreement to the contrary notwithstanding, Customer shall comply with all such applicable laws relating to the cross-border movement of goods or technology, and all related orders in effect from time to time, and equivalent measures. Customer shall accept full responsibility for any and all civil or criminal liabilities and costs arising from any breaches of those laws and regulations and will defend, indemnify, and hold Cummins harmless from and against any and all fines, penalties, claim, damages, liabilities, judgments, costs, fees, and expenses incurred by Cummins or its affiliates as a result of Customer's breach.

16. CONFIDENTIALITY. Each party shall keep confidential any information received from the other that is not generally known to the public and at the time of disclosure, would reasonably be understood by the receiving party to be proprietary or confidential, whether disclosed in oral, written, visual, electronic, or other form, and which the receiving party (or agents) learns in connection with this Agreement including, but not limited to: (a) business plans, strategies, sales, projects and analyses; (b) financial information, pricing, and fee structures; (c) business processes, methods, and models; (d) employee and supplier information; (e) specifications; and (f) the terms and conditions of this Agreement. Each party shall take necessary steps to ensure compliance with this provision by its employees and agents.

17. PRICING. To the extent allowed by law, actual prices invoiced to Customer may vary from the price quoted at the time of order placement, as the same will be adjusted for prices prevailing on the date of shipment ('Shipment Date') or, in the case of Services, the date of performance ('Performance Date'), due to economic and market conditions on the Shipment Date or Performance Date, whichever is applicable. Subject to local laws, Cummins reserves the right to adjust pricing on goods and services due to input cost (including without limitation, raw materials, fabrication components, direct or indirect materials, packaging materials, overhead, etc.) and labor cost changes and/or other unforeseen circumstances beyond Cummins' control.

18. MISCELLANEOUS. All notices, including but not limited to disputes of invoices or otherwise, under this Agreement shall be in writing and be delivered personally, mailed via first class certified or registered mail, or sent by a nationally recognized express courier service to the addresses set forth in the Quote and/or Invoice. No amendment of this Agreement shall be valid unless it is writing and signed by the parties hereto. Failure of either party to require performance by the other party of any provision hereof shall in no way affect the right to require such performance at any time thereafter or the enforceability of the Agreement generally, nor shall the waiver by a party of a breach of any of the provisions hereof constitute a waiver of any succeeding breach. Any provision of this Agreement that is invalid or unenforceable shall not affect the validity or enforceability of the remaining terms hereof. The Parties' rights, remedies, and obligations under this Agreement, which by their nature are intended to continue beyond the termination or cancellation of this Agreement, including but not limited to the Section 9. Limitation of Liability provision contained herein, shall survive the expiration, termination, or cancellation of this Agreement. These terms are exclusive and constitute the entire agreement. Customer acknowledges that the provisions were freely negotiated and bargained for and Customer has agreed to purchase of the Goods and/or Services pursuant to these terms and conditions. Acceptance of this Agreement is expressly conditioned on Customer's assent to all such terms and conditions. Neither party has relied on any statement, representation, agreement, understanding, or promise made by the other except as expressly set out in this Agreement. Headings or other subdivisions of this Agreement are inserted for convenience of reference and shall not limit or affect the legal construction of any provision hereof.

19. To the extent applicable, this contractor and subcontractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability. The employee notice requirements set forth in 29 CFR Part 471, Appendix A to Subpart A, are hereby incorporated by reference into this contract.

Cummins Sales and Service

Payment terms are 30 days from invoice date unless otherwise agreed upon in writing. Remit to:
Cummins Sales and Service
PO Box 772639
Detroit, MI 48277-2639

ORLANDO FL BRANCH
4820 ORANGE BLOSSOM TRAIL
MV#95745
ORLANDO, FL 32810-
(407)298-2080

INVOICE NO

ESTIMATE

TO PAY ONLINE LOGON TO
customerpayment.cummins.com

BILL TO

CITY OF PORT ORANGE
ACCOUNTS PAYABLE
PO BOX 291759
PORT ORANGE. FL 32129-1759

OWNER

CITY OF PORT ORANGE
MONROE PLACE
409 MONROE PL
PORT ORANGE, FL 32127-
DARRAN MELANSON - 386 290-8777

***** CHARGE *****

DATE	CUSTOMER ORDER NO.	DATE IN SERVICE	ENGINE MODEL	PUMP NO.	EQUIPMENT MAKE
25-FEB-2025					
CUSTOMER NO.	**SHIP VIA**	**FAIL DATE**	**ENGINE SERIAL NO.**	**CPL NO.**	**EQUIPMENT MODEL**
362430					
REF. NO.	**SALESPERSON**	**PARTS DISP.**	**MILEAGE/HOURS**	**PUMP CODE**	**UNIT NO.**
238592					

QUANTITY ORDERED	BACK ORDERED	QUANTITY SHIPPED	PART NUMBER	DESCRIPTION	PRODUCT CODE	UNIT PRICE	AMOUNT
1		0	244862247	250KW RENTAL GENERATOR	S1-NSPART4	5,143.11	5,143.11
1		0	DELIVERY	DELIVERY CHARGE	S1-NSPART4	665.00	665.00
1		0	PICKUP	PICKUP CHARGE	S1-NSPART4	665.00	665.00

TAX EXEMPT NUMBERS:

PARTS:		6,473.11
PARTS COVERAGE CREDIT:		0.00CR
TOTAL PARTS:	**6,473.11**	
SURCHARGE TOTAL:		**0.00**
LABOR:		0.00
LABOR COVERAGE CREDIT:		0.00CR
TOTAL LABOR:	**0.00**	
MISC.:		0.00
MISC. COVERAGE CREDIT:		0.00CR
TOTAL MISC.:	**0.00**	
LOCAL		**0.00**

Completion date : 26-Feb-2025 12:34PM. Estimate expires : 27-Mar-2025 11:34AM.

Billing Inquiries? Call (877)480-6970

THERE ARE ADDITIONAL CONTRACT TERMS ON THE REVERSE SIDE OF THIS DOCUMENT, INCLUDING LIMITATION ON WARRANTIES AND REMEDIES, WHICH ARE EXPRESSLY INCORPORATED HEREIN AND WHICH PURCHASER ACKNOWLEDGES HAVE BEEN READ AND FULLY UNDERSTOOD.

SUB TOTAL:	17,379.68
TOTAL TAX:	0.00
TOTAL AMOUNT: US $	**17,379.68**

AUTHORIZED BY (print name)_____**SIGNATURE**_____**DATE**_____

TERMS AND CONDITIONS

These terms and conditions ('Terms and Conditions'), together with the estimate/quote (the "Quote") and/or invoice ("Invoice") attached to these Terms and Conditions, are hereinafter collectively referred to as this "Agreement" and shall constitute the entire agreement between the customer ("Customer") identified on the Quote and/or Invoice and Cummins Inc. ("Cummins") and supersede any previous representation, statements, agreements or understanding (oral or written) between the parties with respect to the subject matter of this Agreement. Customer shall be deemed to have made an unqualified acceptance of these Terms and Conditions represents that by its signing of this Agreement that the signer represents that he or she is duly authorized to enter into this Agreement. Further, Customer authorizes, if applicable, the performance of services and labor on Customer's vehicle and/or equipment as provided. This shall become a binding agreement between the parties on the earliest of the following to occur: (i) Cummins' receipt of Customer's purchase order or purchase order number; (ii) Customer's signing or acknowledgment of this Agreement; (iii) Cummins' release of Products to production pursuant to Customer's oral or written instruction or direction; (iv) Customer's payment of any amounts due to Cummins; or (v) any other event constituting acceptance under applicable law. No prior inconsistent course of dealing, course of performance, or usage of trade, if any, constitutes a waiver of, or serves to explain or interpret, the Terms and Conditions set forth in this Agreement.

Electronic transactions between Customer and Cummins will be solely governed by the Terms and Conditions of this Agreement, and any terms and conditions on Customer's website, vendor portal, or other internet site will be null and void and of no legal effect on Cummins. In the event Customer delivers, references, incorporates by reference, or produces any purchase order or document, vendor portal terms, specifications, agreement (whether upstream or otherwise), or any terms and conditions related thereto, then such specifications, terms, document, or other agreement: (i) shall be null and void and of no legal effect on Cummins, and (ii) this Agreement shall remain the governing terms of the transaction.

1. SCOPE OF SERVICES; PERFORMANCE OF SERVICES. Cummins shall supply part(s) and/or component(s) and/or engine(s) and/or generator set(s) (""Goods"") and/or perform the maintenance, troubleshooting, diagnostic testing, and/or repair (""Service(s)"") on the equipment identified in the Quote and/or Invoice (""Equipment""), if applicable, in accordance with the specifications in the Quote and/or Invoice. Unless otherwise agreed by the Parties in writing: (i) no additional services or goods are included in this Agreement; and (ii) this Quote is valid for a maximum period of thirty (30) days from the date appearing on the first page of this Quote ('Quote Validation Period'). At the end of the Quote Validation Period, this Quote will automatically expire unless accepted by Customer prior to the end of the Quote Validation Period. The foregoing notwithstanding, in no event shall this Quote Validation Period be deemed or otherwise considered to be a firm offer period nor to establish an option contract, and Cummins hereby reserves its right to revoke or amend this Quote at any time prior to Customer's acceptance.

2. CUSTOMER OBLIGATIONS. If necessary, Customer shall provide Cummins safe and free access to Customer's site and arrange for all related services and utilities necessary for Cummins to safely and freely perform the Services. During the performance of the Services, Customer shall fully and completely secure all or any part of any facility where the Equipment is located to remove and mitigate any and all safety issues and risks, including but not limited to injury to facility occupants, customers, invitees, or any third party and/or property damage or work interruption arising out of the Services. If applicable, Customer shall make all necessary arrangements to address and mitigate the consequences of any electrical service interruption which might occur during the Services. Customer is responsible for operating and maintaining the Equipment in accordance with the owner's manual for the Equipment.

3. INVOICING AND PAYMENT. Unless otherwise agreed to by the parties in writing and subject to credit approval by Cummins, payments are due thirty (30) days from the date of Invoice. If Customer does not have approved credit with Cummins, as solely determined by Cummins, payments are due in advance or at the time of supply of the Goods and/or Services.

If payment is not received when due, in addition to any rights Cummins may have at law, Cummins may charge Customer eighteen percent (18%) interest annually on late payments, or the maximum amount allowed by law. Customer agrees to pay all Cummins' costs and expenses (including all reasonable attorneys' fees) related to Cummins' enforcement and collection of unpaid invoices, or any other enforcement of this Agreement by Cummins. If Customer fails to make any payments to Cummins when due and payable, and such failure continues for more than sixty (60) days from the date of the invoice, or less if required by applicable law, then Cummins may, at Cummins' sole discretion and without prejudice to any other rights or remedies, either (i) terminate this Agreement; or (ii) suspend its Services and/or suspend delivery of any undelivered Goods or parts in Cummins' possession until payment for unpaid invoices is received. In the event that Cummins suspends its performance of Services due to Customer's breach or non-payment, then Cummins shall be entitled to an equitable extension of its delivery dates and/or schedule of Services for a period of time equal to the suspension period, plus a reasonable ramp up period and all costs (including default interest) caused by such suspension shall be assumed by Customer. Any dispute or claim Customer may have with or against Cummins' invoice, regarding the scope, quality or amount charged for any parts or services provided to Customer, must be asserted in writing and noticed pursuant to these Terms and Conditions within thirty (30) days of the date of the invoice, or shall be waived by the Customer.

4. TAXES; EXEMPTIONS. The Invoice includes all applicable local, state, or federal sales and/or use or similar taxes which Cummins is required by applicable laws to collect from Customer under this Agreement. Customer must provide a valid tax exemption certificate or direct payment certificate prior to shipment of the Goods or performance of the Services, or such taxes will be included in the Invoice.

5. DELIVERY; TITLE AND RISK OF LOSS. Unless otherwise agreed in writing by the parties, any Goods supplied under this Agreement shall be delivered FOB Origin, freight prepaid to the first destination. If agreed, any charges for third party freight are subject to adjustment to reflect any change in price at time of shipment. Unless otherwise agreed to, packaging method, shipping documents and manner, route and carrier and delivery shall be as Cummins deems appropriate. All shipments are made within normal business hours, Monday through Friday. Unless otherwise agreed in writing by the parties, title and risk of loss for any Goods sold under this Agreement shall pass to Customer upon delivery of Goods by Cummins to freight carrier or to Customer at pickup at Cummins' facility. The purchase of Goods or the performance of Services on Equipment, Customer-owned motor vehicle, or any other personal property, is a 'take or pay' obligation on the part of the Customer, such that Customer is absolutely and irrevocably required to accept and pay for the Goods, or any Services performed on Equipment, Customer-owned motor vehicle, or any other personal property, if delivery or pick-up of Goods, Equipment, Customer-owned motor vehicle, or any other personal property, is delayed, deferred, or refused by Customer beyond thirty (30) days from the agreed upon delivery date or the date of completion of Services.

In the event Customer fails to pick-up Equipment, Customer-owned motor vehicle, or any other personal property, or fails to take any or all shipments of Goods ordered hereunder within thirty (30) days of the agreed upon delivery date, Cummins shall invoice the Customer and, upon Cummins' sole discretion, Cummins may either: (i) deliver the Goods or Equipment to the location indicated on Customer's purchase order (regardless of whether Customer elected to pick up the Goods or Equipment at Cummins' facility or otherwise indicated an alternate delivery method), and Customer shall assume all associated delivery costs incurred by Cummins, or (ii) charge storage fees for the additional inventory holding period, the additional inventory holding period not to exceed sixty (60) days from the agreed upon delivery date or the date of completion of Services, unless otherwise agreed by Cummins in writing or required by law. A storage fee of twenty-five dollars ($25.00) per day or one and one-half percent (1.5%) per month of the invoiced amount, whichever is greater, shall be assessed for any Goods, Equipment, Customer-owned motor vehicle, or any other personal property, whose delivery or pick-up is delayed, deferred, or refused by Customer beyond thirty (30) days from the agreed upon delivery date or the date of completion of Services.

Unless otherwise agreed by Cummins in writing, in the event delivery or pick-up of Goods, Equipment, Customer-owned motor vehicle, or any other personal property, are delayed, deferred, or refused by Customer beyond sixty (60) days from the agreed upon delivery or pick-up date, or date of completion of Services, then Cummins has the right, in its sole discretion, to: (i) tow, remove, or otherwise dispose of the unclaimed Goods, Equipment, Customer-owned motor vehicle, or any other personal property, in accordance with applicable abandonment laws, and/or (ii) make the Goods, Equipment, Customer-owned motor vehicle, or any other personal property, available for auction or sale to other customers or to the public, or (iii) otherwise use, destroy, or recycle the Goods, Equipment, Customer-owned motor vehicle, or any other personal property, at Customer's sole cost and expense, and without any liability to Cummins.

6. DELAYS. Any delivery, shipping, installation, or performance dates indicated in this Agreement are estimated and not guaranteed. Further, delivery time is subject to confirmation at time of order. Cummins shall not be liable to Customer or any third party for any loss, damage, or expense suffered by Customer or third party due to any delay in delivery, shipping, installation, or performance, however occasioned, including any delays in performance that result directly or indirectly from acts of Customer or causes beyond Cummins' control, including but not limited to acts of God, accidents, fire, explosions, flood, unusual weather conditions, acts of government authority, embargos, wars, strikes or other labor disputes, civil commotion, terrorism, sabotage, late delivery by Cummins'

suppliers, fuel or other energy shortages, or an inability to obtain necessary labor, materials, supplies, equipment or manufacturing facilities. AS A RESULT OF COVID-19 RELATED EFFECTS OR INDUSTRY SUPPLY CHAIN DISRUPTIONS, TEMPORARY DELAYS IN DELIVERY, LABOR OR SERVICES FROM CUMMINS AND ITS SUB-SUPPLIERS OR SUBCONTRACTORS MAY OCCUR. AMONG OTHER FACTORS, CUMMINS' DELIVERY OBLIGATIONS ARE SUBJECT TO CORRECT AND PUNCTUAL SUPPLY FROM OUR SUB-SUPPLIERS OR SUBCONTRACTORS, AND CUMMINS RESERVES THE RIGHT TO MAKE PARTIAL DELIVERIES OR MODIFY ITS LABOR OR SERVICE. WHILE CUMMINS SHALL MAKE EVERY COMMERCIALLY REASONABLE EFFORT TO MEET THE DELIVERY, SERVICE OR COMPLETION OBLIGATIONS SET FORTH HEREIN, SUCH DATES ARE SUBJECT TO CHANGE. IN THE EVENT DELIVERY, SHIPPING, INSTALLATION, OR PERFORMANCE IS DELAYED, HOWEVER OCCASSIONED, DUE TO EVENTS BEYOND CUMMINS' REASONABLE CONTROL, THEN THE DATE OF DELIVERY, SHIPPING, INSTALLATION, OR PERFORMANCE FOR THE GOODS OR SERVICES SHALL BE EQUITABLY EXTENDED FOR A PERIOD EQUAL TO THE TIME LOST, PLUS REASONABLE RAMP-UP.

7. LIMITED WARRANTIES.

New Goods: New Goods purchased or supplied under this Agreement are governed by the express written manufacturers' warranty. No other warranty for Goods supplied under this Agreement is provided under this Agreement.

Cummins Exchange Components, Other Exchange Components, and Recon: Cummins will administer the Cummins exchange component warranty and the warranties of other manufacturers' exchange components or Recon Components which are sold by Cummins. In the event of defects in such items, only manufacturers' warranties will apply.

HHP Exchange Engine: HHP Exchange Engines remanufactured by Cummins under this Agreement are governed by the express Cummins' written warranty. No other warranty for HHP exchange Engines supplied under this Agreement is provided under this Agreement."

General Service Work: All Services shall be free from defects in workmanship (i) for power generation equipment (including engines in such equipment), for a period of ninety (90) days after completion of Services or 500 hours of operation, whichever occurs first; or (ii) for engines, for a period of ninety (90) days after completion of Services, 25,000 miles or 900 hours of operation, whichever occurs first. In the event of a warrantable defect in workmanship of Services supplied under this Agreement (""Warrantable Defect""), Cummins' obligation shall be solely limited to correcting the Warrantable Defect. Cummins shall correct the Warrantable Defect where (i) such Warrantable Defect becomes apparent to Customer during the warranty period; (ii) Cummins receives written notice of the Warrantable Defect within thirty (30) days following discovery by Customer; and (iii) Cummins has determined that there is a Warrantable Defect. Warrantable Defects remedied under this provision shall be subject to the remaining warranty period of the original warranty of the Services. New Goods supplied during the remedy of Warrantable Defects are warranted for the balance of the warranty period still available from the original warranty of such Goods.

Used Goods: Used Goods are sold ""as is, where is"" unless exception is made in writing between Cummins and Customer. Customer agrees to inspect all used Goods before completing the purchase.

THE REMEDIES PROVIDED IN THE LIMITED WARRANTIES AND THIS AGREEMENT ARE THE SOLE AND EXCLUSIVE WARRANTIES AND REMEDIES PROVIDED BY CUMMINS TO THE CUSTOMER UNDER THIS AGREEMENT. EXCEPT AS SET OUT IN THE WARRANTY AND THIS AGREEMENT, AND TO THE EXTENT PERMITTED BY LAW, CUMMINS EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS, WARRANTIES, ENDORSEMENTS, AND CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY STATUTORY OR COMMON LAW IMPLIED REPRESENTATIONS, WARRANTIES AND CONDITIONS OF FITNESS FOR A PURPOSE OR MERCHANTABILITY.

8. INDEMNIFICATION. Customer shall indemnify, defend and hold harmless Cummins from and against any and all claims, actions, costs, expenses, damages and liabilities, including reasonable attorneys' fees, brought against or incurred by Cummins related to or arising out of this Agreement or the Services and/or Goods supplied under this Agreement (collectively, the ""Claims""), where such Claims were caused or contributed, in whole or in part, by the acts, omissions, fault or negligence of the Customer. Customer shall present any Claims covered by this indemnity, including any tenders for defense and indemnity by Cummins to its insurance carrier unless Cummins directs that the defense will be handled by Cummins' legal counsel at Customer's expense.

9. LIMITATION OF LIABILITY. NOTWITHSTANDING ANY OTHER TERM OF THIS AGREEMENT, IN NO EVENT SHALL CUMMINS, ITS OFFICERS, DIRECTORS, EMPLOYEES, OR AGENTS BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, LIQUIDATED, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION DOWNTIME, LOSS OF PROFIT OR REVENUE, LOSS OF DATA, LOSS OF OPPORTUNITY, DAMAGE TO GOODWILL, ENHANCED DAMAGES, MONETARY REQUESTS RELATING TO RECALL EXPENSES AND REPAIRS TO PROPERTY, AND/OR DAMAGES CAUSED BY DELAY), OR IN ANY WAY RELATED TO OR ARISING FROM CUMMINS' SUPPLY OF GOODS OR SERVICES UNDER THIS AGREEMENT. IN NO EVENT SHALL CUMMINS? LIABILITY TO CUSTOMER OR ANY THIRD PARTY CLAIMING DIRECTLY THROUGH CUSTOMER OR ON CUSTOMER?S BEHALF UNDER THIS AGREEMENT EXCEED THE TOTAL COST OF GOODS AND SERVICES SUPPLIED BY CUMMINS UNDER THIS AGREEMENT GIVING RISE TO THE CLAIM. BY ACCEPTANCE OF THIS AGREEMENT, CUSTOMER ACKNOWLEDGES CUSTOMER'S SOLE REMEDY AGAINST CUMMINS FOR ANY LOSS SHALL BE THE REMEDY PROVIDED HEREIN.

10. GOVERNING LAW AND JURISDICTION. This Agreement and all matters arising hereunder shall be governed by and construed in accordance with the laws of the State of Indiana without giving effect to any choice or conflict of law provision. The parties agree that the court of the State of Indiana shall have exclusive jurisdiction to settle any dispute or claim arising in connection with this Agreement.

11. ASSIGNMENT. This Agreement is binding on the parties and their successors and assigns. Customer shall not assign this Agreement without the prior written consent of Cummins.

12. CANCELLATION; TERMINATION. Orders placed with and accepted by Cummins may not be cancelled except with Cummins' prior written consent. Cummins may charge Customer a cancellation charge in accordance with current Cummins policy which is available upon request, in addition to the actual, non- recoverable costs incurred by Cummins. Cummins may terminate this Agreement, in whole or in part, for cause if the Customer breaches its obligations under this Agreement, and such breach is not cured within fifteen (15) days after written notice to Customer, or such longer time that Cummins may specify in its notice. Cummins may, at any time, terminate this Agreement for convenience upon thirty (30) days' written notice to Customer. If the Customer defaults by (i) breaching any term of this Agreement, (ii) becoming insolvent or declared bankrupt, or (iii) making an assignment for the benefit of creditors, Cummins may, upon written notice to Customer, immediately terminate this Agreement. Upon such termination for default, Cummins shall immediately cease any further performance under this Agreement, without further obligation or liability to Customer, and Customer shall pay Cummins for any Goods or Services supplied under this Agreement, in accordance with the payment terms detailed in this Agreement.

If a notice of termination for default has been issued and is later determined, for any reason, that the Customer was not in default, the rights and obligations of the parties shall treat the termination as a termination for convenience.

13. REFUNDS; CREDITS. Goods ordered and delivered by Cummins under this Agreement are not returnable unless agreed to by Cummins. Cummins may, at its sole discretion, agree to accept Goods for return and provide credit where Goods are in new and saleable condition and presented with a copy of the original invoice. Credits for returns will be subject to up to a 15% handling/restocking charge and are limited to eligible items purchased from Cummins.

14. INTELLECTUAL PROPERTY. Any intellectual property rights created by either party, whether independently or jointly, in the course of the performance of this Agreement or otherwise related to Cummins pre-existing intellectual property or subject matter related thereto, shall be Cummins' property. Customer agrees to assign, and does hereby assign, all right, title, and interest to such intellectual property to Cummins. Any Cummins pre-existing intellectual property shall remain Cummins' property. Nothing in this Agreement shall be deemed to have given Customer a license or any other rights to use any of the intellectual property rights of Cummins.

15. COMPLIANCE WITH LAWS. Customer shall comply with all laws applicable to its activities under this Agreement, including without limitation, all applicable national, provincial, and local export, anti-bribery, environmental, health, and safety laws and regulations in effect. Customer acknowledges that the Goods, and any related technology that are sold or otherwise provided hereunder may be subject to export and other trade controls restricting the sale, export, re-export and/or transfer, directly or indirectly, of such Goods or technology to certain countries or parties, including, but not limited to, licensing requirements under applicable laws and regulations of the United States, the United Kingdom and other jurisdictions. It is the intention of Cummins to comply with these laws, rules, and regulations. Any other provision of this Agreement to the contrary notwithstanding, Customer shall comply with all such applicable laws relating to the cross-border movement of goods or technology, and all related orders in effect from time to time, and equivalent measures. Customer shall accept full responsibility for any and all civil or criminal liabilities and costs arising from any breaches of those laws and regulations and will defend, indemnify, and hold Cummins harmless from and against any and all fines, penalties, claim, damages, liabilities, judgments, costs, fees, and expenses incurred by Cummins or its affiliates as a result of Customer's breach.

16. CONFIDENTIALITY. Each party shall keep confidential any information received from the other that is not generally known to the public and at the time of disclosure, would reasonably be understood by the receiving party to be proprietary or confidential, whether disclosed in oral, written, visual, electronic, or other form, and which the receiving party (or agents) learns in connection with this Agreement including, but not limited to: (a) business plans, strategies, sales, projects and analyses; (b) financial information, pricing, and fee structures; (c) business processes, methods, and models; (d) employee and supplier information; (e) specifications; and (f) the terms and conditions of this Agreement. Each party shall take necessary steps to ensure compliance with this provision by its employees and agents.

17. PRICING. To the extent allowed by law, actual prices invoiced to Customer may vary from the price quoted at the time of order placement, as the same will be adjusted for prices prevailing on the date of shipment ('Shipment Date') or, in the case of Services, the date of performance ('Performance Date'), due to economic and market conditions on the Shipment Date or Performance Date, whichever is applicable. Subject to local laws, Cummins reserves the right to adjust pricing on goods and services due to input cost (including without limitation, raw materials, fabrication components, direct or indirect materials, packaging materials, overhead, etc.) and labor cost changes and/or other unforeseen circumstances beyond Cummins' control.

18. MISCELLANEOUS. All notices, including but not limited to disputes of invoices or otherwise, under this Agreement shall be in writing and be delivered personally, mailed via first class certified or registered mail, or sent by a nationally recognized express courier service to the addresses set forth in the Quote and/or Invoice. No amendment of this Agreement shall be valid unless it is writing and signed by the parties hereto. Failure of either party to require performance by the other party of any provision hereof shall in no way affect the right to require such performance at any time thereafter or the enforceability of the Agreement generally, nor shall the waiver by a party of a breach of any of the provisions hereof constitute a waiver of any succeeding breach. Any provision of this Agreement that is invalid or unenforceable shall not affect the validity or enforceability of the remaining terms hereof. The Parties' rights, remedies, and obligations under this Agreement, which by their nature are intended to continue beyond the termination or cancellation of this Agreement, including but not limited to the Section 9. Limitation of Liability provision contained herein, shall survive the expiration, termination, or cancellation of this Agreement. These terms are exclusive and constitute the entire agreement. Customer acknowledges that the provisions were freely negotiated and bargained for and Customer has agreed to purchase of the Goods and/or Services pursuant to these terms and conditions. Acceptance of this Agreement is expressly conditioned on Customer's assent to all such terms and conditions. Neither party has relied on any statement, representation, agreement, understanding, or promise made by the other except as expressly set out in this Agreement. Headings or other subdivisions of this Agreement are inserted for convenience of reference and shall not limit or affect the legal construction of any provision hereof.

19. To the extent applicable, this contractor and subcontractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability. The employee notice requirements set forth in 29 CFR Part 471, Appendix A to Subpart A, are hereby incorporated by reference into this contract.

Contract Submission Form: 410 Monroe Place - Generator

✓ ***Contracts in the amount between $25,000 and $100,000 requires a scope of work and three (3) written quotes.***

Upload the following documents for Formal Written Quotes:

- ☑ Three (3) written quotes and any Vendor supporting documentation*
  - *if this is a project that may have additional quotes from sub-contractors, upload documentation
  - *if Vendor provides any additional pages to their quote/proposal, please upload all pages, as these pages mayhave additional terms and conditions or warranty information, that can require Legal review.
- ☐ Sole Source Documentation, if applicable
- ☑ SunBiz Corporate Report providing a valid/active corporate status with correct officer/authorized representative
- N/A ☐ Current COI that includes all insurance requirements as provided for in Contract and/or Solicitation, or City Manager Waiver of Insurance

__X__Additional requirement: Affidavit Re: Human Trafficking

__X__Additional requirement: Scope of Work

Scope of Work:
Provide rental 300 KW Generator for Pump Station at 410 Monroe Place, delivery and return fees.

Contract Info: rental term to be four-week periods, not to exceed 9 four-week periods. Installation on April 1 through December 1, 2025. Initiated by Purchase Order.

Contact Info - Vendor #253
Ring Power Corporation
Power Systems Division
Mike Lugo | AVP | Rental Manager |
10421 Fern Hill Dr | Riverview, Florida 33578 Mobile:813-294-7522 Mike.lugo@ringpower.com

Greg Baker-Fitzgerald, Account Manager
Cell: 407-276-3757 Office: 386-947-5714
Email: Greg.Baker-Fitzgerald@Ringpower.com
EIN: 59-0934246



Detail by FEI/EIN Number

Florida Profit Corporation
RING POWER CORPORATION

Filing Information

Document Number	249380
FEI/EIN Number	59-0934246
Date Filed	07/17/1961
State	FL
Status	ACTIVE
Last Event	CORPORATE MERGER
Event Date Filed	12/01/2015
Event Effective Date	NONE

Principal Address

500 WORLD COMMERCE PKWY
ST AUGUSTINE, FL 32092

Changed: 05/25/2005

Mailing Address

500 WORLD COMMERCE PKWY
ST AUGUSTINE, FL 32092

Changed: 05/25/2005

Registered Agent Name & Address

RINGHAVER, RANDAL L
500 WORLD COMMERCE PKWY
ST AUGUSTINE, FL 32092

Name Changed: 02/11/1987

Address Changed: 06/29/2005

Officer/Director Detail

Name & Address

Title Chairman

RINGHAVER, RANDAL L
500 WORLD COMMERCE PKWY
ST AUGUSTINE, FL 32092

Title CEO, President

ALBAN, DAVID W
500 WORLD COMMERCE PKWY
ST AUGUSTINE, FL 32092

Title Executive VP, Director

Robbins, Kevin M
500 WORLD COMMERCE PKWY
ST AUGUSTINE, FL 32092

Title Senior VP, Director

Miller, Susan K
500 WORLD COMMERCE PKWY
ST AUGUSTINE, FL 32092

Title Senior VP, Director

O'Brien, Patrick W
500 WORLD COMMERCE PKWY
ST AUGUSTINE, FL 32092

Title VP

Rabil, Joseph Matthew
500 WORLD COMMERCE PKWY
ST AUGUSTINE, FL 32092

Title Executive VP, CFO, T, S, Director

Meyers, Heather
500 WORLD COMMERCE PKWY
ST AUGUSTINE, FL 32092

Annual Reports

Report Year	Filed Date
2024	01/03/2024
2024	03/18/2024
2025	01/03/2025

Document Images

01/03/2025 -- ANNUAL REPORT	View image in PDF format
08/09/2024 -- AMENDED ANNUAL REPORT	View image in PDF format
03/18/2024 -- AMENDED ANNUAL REPORT	View image in PDF format

01/03/2024 -- ANNUAL REPORT	View image in PDF format
01/27/2023 -- ANNUAL REPORT	View image in PDF format
01/27/2022 -- ANNUAL REPORT	View image in PDF format
01/08/2021 -- ANNUAL REPORT	View image in PDF format
01/08/2020 -- ANNUAL REPORT	View image in PDF format
03/20/2019 -- AMENDED ANNUAL REPORT	View image in PDF format
01/11/2019 -- ANNUAL REPORT	View image in PDF format
05/30/2018 -- AMENDED ANNUAL REPORT	View image in PDF format
01/03/2018 -- ANNUAL REPORT	View image in PDF format
01/09/2017 -- ANNUAL REPORT	View image in PDF format
02/24/2016 -- ANNUAL REPORT	View image in PDF format
12/01/2015 -- Merger	View image in PDF format
06/19/2015 -- AMENDED ANNUAL REPORT	View image in PDF format
02/27/2015 -- AMENDED ANNUAL REPORT	View image in PDF format
01/14/2015 -- ANNUAL REPORT	View image in PDF format
01/09/2014 -- ANNUAL REPORT	View image in PDF format
03/25/2013 -- ANNUAL REPORT	View image in PDF format
01/13/2012 -- ANNUAL REPORT	View image in PDF format
01/05/2011 -- ANNUAL REPORT	View image in PDF format
09/15/2010 -- ADDRESS CHANGE	View image in PDF format
01/05/2010 -- ANNUAL REPORT	View image in PDF format
05/06/2009 -- Amendment	View image in PDF format
02/16/2009 -- ANNUAL REPORT	View image in PDF format
01/25/2008 -- ANNUAL REPORT	View image in PDF format
12/20/2007 -- Merger	View image in PDF format
02/20/2007 -- ANNUAL REPORT	View image in PDF format
02/09/2006 -- ANNUAL REPORT	View image in PDF format
12/07/2005 -- Merger	View image in PDF format
07/11/2005 -- Merger	View image in PDF format
06/29/2005 -- Reg. Agent Change	View image in PDF format
03/10/2005 -- ANNUAL REPORT	View image in PDF format
03/01/2005 -- ANNUAL REPORT	View image in PDF format
03/01/2004 -- ANNUAL REPORT	View image in PDF format
10/30/2003 -- Merger	View image in PDF format
02/03/2003 -- ANNUAL REPORT	View image in PDF format
03/15/2002 -- ANNUAL REPORT	View image in PDF format
02/09/2001 -- ANNUAL REPORT	View image in PDF format
02/08/2000 -- ANNUAL REPORT	View image in PDF format
03/18/1999 -- ANNUAL REPORT	View image in PDF format
02/26/1998 -- ANNUAL REPORT	View image in PDF format
01/30/1997 -- ANNUAL REPORT	View image in PDF format
02/26/1996 -- ANNUAL REPORT	View image in PDF format
03/01/1995 -- ANNUAL REPORT	View image in PDF format

HUMAN TRAFFICKING AFFIDAVIT
(SECTION 787.06, FLORIDA STATUTES)

STATE OF Florida
COUNTY OF St. Johns

The undersigned ("Affiant"), on behalf of the entity listed below ("Entity"), after being duly sworn, hereby attests as follows:

1. My name is Alan Thomas. I am over the age of Twenty-one years old. I am the VP/Director of Government Sales (Title) of Ring Power Corporation (Business Name), a non-governmental entity which does business in the State of Florida, hereinafter called the "Entity."

2. I have personal knowledge of each and every statement of fact contained herein, and each and every statement of fact is true and correct.

3. Entity does not use coercion, as defined in Section 787.06, Florida Statutes, for labor or services.

4. The undersigned is an officer or representative of the entity and is authorized to execute this affidavit on behalf of the Entity.

5. Under penalties of perjury, I declare that I have read the foregoing Human Trafficking Affidavit and that the facts stated herein are true.

Further Affiant sayeth not.

Date: September 24, 2024

Signed: _____
Print Name: Alan Thomas
Title: VP/Director of Government Sales

SUBSCRIBED AND SWORN before me by means of [✓] physical presence or [__] online notarization on the 24th day of September, 20 24 by Alan Thomas as VP/Director of Government Sales on behalf of Ring Power Corporation who is personally known to me or who has produced _____ as identification.

(Notary Seal)

SARAH LU GRIFFITH
NOTARY PUBLIC
STATE OF FLORIDA
NO. HH 445427
MY COMMISSION EXPIRES SEP. 29, 2027

_____
Notary Public, State of Florida
Printed name, commission and expiration of commission term

SKB.7.8.2024. Rev. 9.6.2024
CA7985

CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 4/15/2025

SUBJECT: (C8) Resolution No. 25-23 - Approval of Second Quarter Budget Amendments for Fiscal Year 2024-2025

DEPARTMENT: Finance

GOAL: 5 - Fiscal Sustainability

RECOMMENDED MOTION: Move to approve Resolution No. 25-23.

SUMMARY: This item is the second quarter of the fiscal year budget review covering the period from January 1 to March 31, 2025. Staff performed a review covering the revenue and expenditure figures through the second quarter to compare the current amounts with the amount budgeted. In addition, a review of departmental operating needs was performed to see if adjustments were warranted. Additionally, there was a project related carry forward that required adjustment as part of this request.

Staff requests the Council amend the Fiscal Year 2024-2025 budget by revising the budget in total pursuant to itemization contained in Exhibit "A" of the Resolution.

Notable items in the budget amendments include:

- Fire – Replacement of 9 Lifepak cardiac monitors and 7-year maintenance agreement to upgrade existing aging medical equipment
- Fleet - Replacement of Police cars damaged in service following the receipt of insurance proceeds
- Engineering - Sugar Forest Stormwater Pump Station and Force Main Design
- Public Utilities - Pilot study at the Water Treatment Plant for a pelletized softening system which will potentially save the City $800,000 annually in lime disposal cost

PRESENTER: Linda Truitt

ATTACHMENTS:

1.	Resolution No. 25-23 w exhibit	Resolution No. 25-23 w exhibit.pdf

Linda Truitt	Created/Initiated - 3/24/2025
Linda Truitt	Approved - 3/26/2025
Matthew Jones	Approved - 3/28/2025
Wayne Clark	Final Approval - 4/3/2025

RESOLUTION NO. 25-23

A RESOLUTION OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, PERTAINING TO BUDGET ADJUSTMENTS FOR FISCAL YEAR 2024-25; PROVIDING APPROVAL FOR ADJUSTMENTS OF 2024-2025 BUDGET ADJUSTMENTS; PROVIDING FOR SCRIVENER'S ERRORS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on September 18, 2024, the City of Port Orange, adopted Resolution 24-39 approving the City's total operating and capital budgets for Fiscal Year 2024-25; and

WHEREAS, the City of Port Orange adopted Resolution 24-47 on November 19, 2024; Resolution No. 25-03 on January 21, 2025; Resolution No. 25-11 on February 18, 2025; and Resolution No. 25-20 on March 18, 2025, amending the total operating budget for Fiscal Year 2024-25; and

WHEREAS**,** in order to recognize unanticipated revenues and expenditures, it is necessary to make adjustments to the City's 2024-25 operating budget.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA:

Section 1. Section 1. The above Recitals are incorporated by reference into the body of this Resolution.

Section 2. Approval of 2024-2025 Budget Adjustments. The City's 2024-25 Operating Budget is hereby adjusted as set forth in **Exhibit "A"** attached hereto. As applicable, the transfer of funds may be made from any legally acceptable source.

Section 2. T h e budget items 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"

AMENDED BUDGET FISCAL YEAR 2024-25

Fund	Description	Adopted Resolution 24-38	Resolution 24-47	Resolution 25-03	Resolution 25-11	Resolution 25-20	Resolution 25-23	Amended Budget
001	General Fund	$ 61,190,570	4,061,756	$1,671,610	$ 84,030		$ 269,000	**$ 67,276,966**
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**
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	2025 GO Bond Debt	30,000,000	-					**30,000,000**
301	Capital Projects	7,475,829	3,256,707					**10,732,536**
310	Police Impact Fee	109,785	-					**109,785**
311	Fire Impact Fee	72,660	-	27,000				**99,660**
312	Transportation Impact Fee	273,530	-					**273,530**
313	Recreation Impact Fee	212,774	-					**212,774**
317	General Capital Replacement	5,827,865	8,761,063	84,414	84,030		300,000	**15,057,372**
321	Parks Bond Capital Projects	10,000,000	-					**10,000,000**
401	Water/Sewer	31,644,162	49,190,543	69,675			200,000	**81,104,380**
403	Water/Sewer R&R	5,450,000	48,053,563	69,675				**53,573,238**
405	Water Impact Fee	679,627	-				200,000	**879,627**
410	Solid Waste	10,708,138	-					**10,708,138**
412	Stormwater Utility	5,988,199	6,618,675	(841,571)			961,109	**12,726,412**
413	Stormwater Capital	9,252,488	6,954,949	880,039			961,109	**18,048,585**
414	Drainage Bond Sinking	699,004	-					**699,004**
416	Wetland Mitigation	96,968	-					**96,968**
418	SRF Debt Service	784,846	-					**784,846**
420	Forestry	319,536	430,325				355,000	**1,104,861**
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			798,504	**5,831,228**
606	Police Benefit Trust	4,500	-					**4,500**
607	Police Forfeiture	70,000	-			95,000		**165,000**
615	Police Education Trust	10,000	-					**10,000**
625	Federal Police Forfeiture	15,000	-					**15,000**
	Grand Total:	**$ 205,719,722**	**$ 132,685,517**	**$2,672,647**	**$ 168,060**	**$ 95,000**	**$4,044,722**	**$ 345,385,668**

Exhibit "A" DETAIL FOR RES. 25-23
FY25 2ND QUARTER BUDGET ADJUSTMENT REQUEST

FUND	ACCOUNT DESCRIPTION		ADJUSTMENT REQUEST	DESCRIPTION
GENERAL FUND - 001				
	APPROPRIATED FUND BALANCE		269,000	APPROPRIATION OF RESTRICTED FUNDING
		REVENUES	269,000	
	TRANSFER OUT - FUND 505		269,000	PARTIAL FUNDING FOR REPLACEMENT CARDIAC MONITORS
		EXPENDITURES	269,000	
GENERAL CAPITAL REPLACEMENT - 317				
	APPROPRIATED FUND BALANCE		300,000	APPROPRIATED FUND BALANCE
		REVENUES	300,000	
	CAPITAL OUTLAY/CIP - PARKS & REC		300,000	PK246 - CITY CENTER PLAYGROUND FROM FY2024 ROLL FORWARD
		EXPENDITURES	300,000	
WATER AND SEWER - 401				
	APPROPRIATED FUND BALANCE		200,000	APPROPRIATED FUND BALANCE
		REVENUES	200,000	
	TRANSFER OUT - FUND 403		200,000	TRANSFER OUT TO FUND PILOT STUDY AT WATER TREATMENT PLANT
		EXPENDITURES	200,000	
WATER AND SEWER R&R - 403				
	TRANSFER IN - FUND 401		200,000	TRANSFER IN
		REVENUES	200,000	
	WATER & SEWER ENGINEERING		200,000	PU25E - PILOT STUDY FOR SOFTENING SYSTEM AT WATER TREATMENT PLANT
		EXPENDITURES	200,000	
STORMWATER UTILITY - 412				
	APPROPRIATED FUND BALANCE		961,109	APPROPRIATED FUND BALANCE
		REVENUES	961,109	
	TRANSFER OUT - 413		961,109	STORMWATER CIP PROJECTS, ADJUSTED FROM FY24 ROLL FORWARD
		EXPENDITURES	961,109	
STORMWATER UTILITY CAPITAL PROJECTS - 413				
	TRANSFER IN - 412		961,109	TRANSFER IN
		REVENUES	961,109	

CAPITAL OUTLAY/CIP - STORMWATER		800,000	SW25E - DESIGN OF SUGAR FOREST PUMP STATION, COLLECTION SYSTEM & FORCE MAIN
CAPITAL OUTLAY/CIP - STORMWATER		161,109	SW173 - ADDITIONAL FUNDING FOR COMPLETION OF STORMWATER MASTER PLAN
	EXPENDITURES	961,109	
FORESTRY MANAGEMENT - 420			
APPROPRIATED FUND BALANCE		355,000	APPROPRIATED FUND BALANCE
	REVENUES	355,000	
CAPITAL OUTLAY/CIP - WATER & SEWER ENGINEERING		355,000	PU224 - ADDITIONAL FUNDING FOR FORESTRY BUILDING
	EXPENDITURES	355,000	
LEASE & REPLACEMENT - 505			
APPROPRIATED FUND BALANCE		529,504	APPROPRIATED FUND BALANCE
TRANSFER IN - 001		269,000	PRIOR APPROPRIATIONS
	REVENUES	798,504	
CAPITAL OUTLAY - POLICE DEPARTMENT		213,886	DAMAGED IN SERVICE PD VEHICLES
CAPITAL OUTLAY - POLICE DEPARTMENT		6,260	MOTORCYCLE LEASE ADDITIONAL COST
CAPITAL OUTLAY - FIRE DEPARTMENT		578,358	CARDIAC MONITORS REPLACEMENT- FIRE
	EXPENDITURES	798,504	

REVENUES	4,044,722	
EXPENDITURES	4,044,722	-
VARIANCE	-	

CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 4/15/2025

SUBJECT: (C9) Resolution No. 25-06 - Approval of FDOT Local Agency Program (LAP) Agreement 444033 Port Orange Sidewalk Gaps (various locations)

DEPARTMENT: Community Development

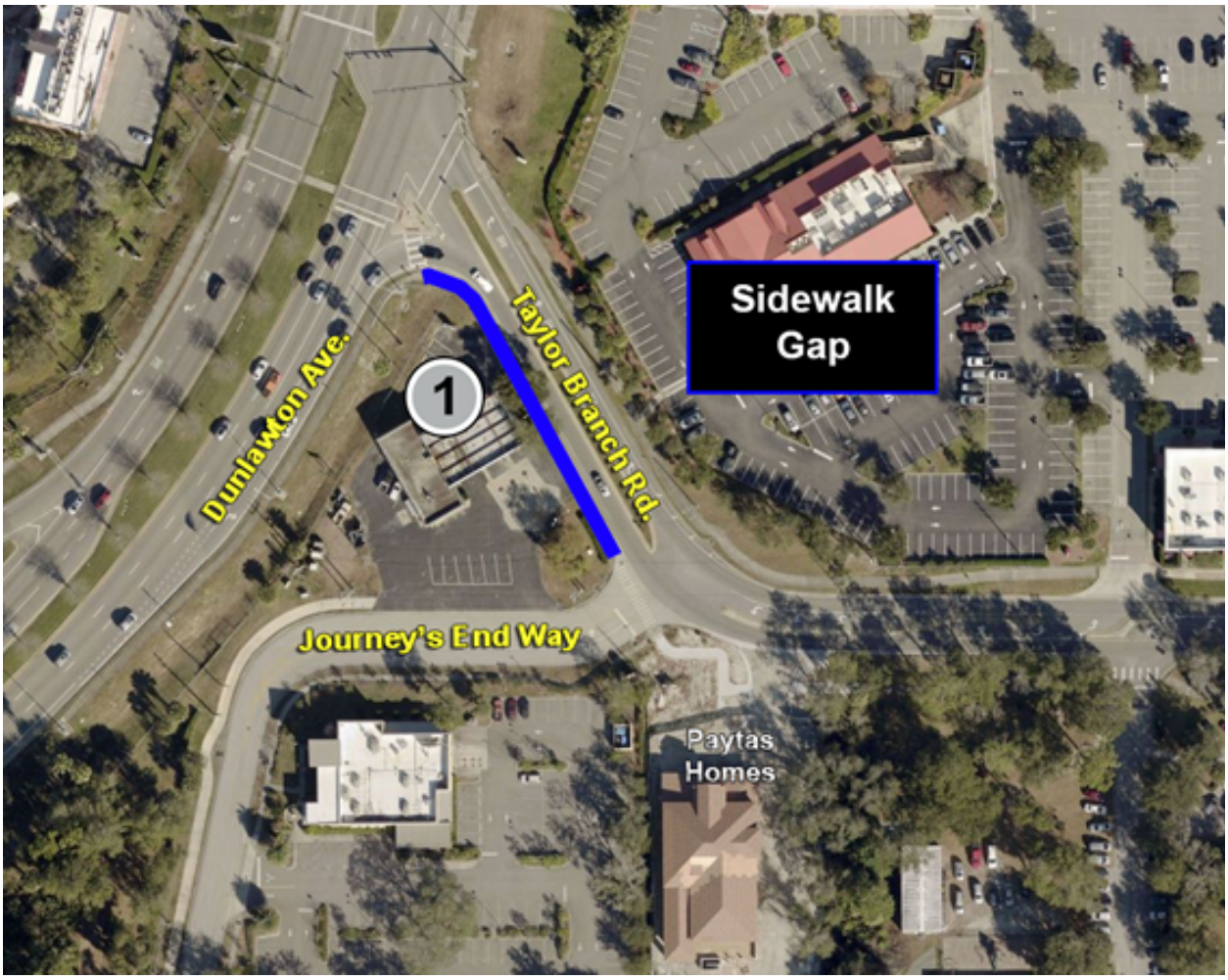
GOAL: 1 - Public Safety
2 - Infrastructure
3 - Quality of Life

RECOMMENDED MOTION: Move to approve Resolution No. 25-06, approving the Local Agency Program (LAP) Agreement for the construction of Port Orange Sidewalk Gaps and authorizing the Mayor and City Clerk to execute the Agreement and Resolution.

SUMMARY: The project associated with this Florida Department of Transportation (FDOT) Local Agency Program (LAP) Agreement is for the construction of the Port Orange Sidewalk Gaps project (FDOT #444033).

On September 18, 2024, as part of the FY 25-29 Capital Improvements Program (CIP), the City approved the proposed budget to include funds for constructing sidewalks to complete sidewalk gaps identified in Port Orange Project #CD184. The project consists of filling in sidewalk gaps at four locations within Port Orange:

1) West side of Taylor Branch Road from Dunlawton Avenue to Journey's End Way
2) North and South sides of Woodlake Drive from Clyde Morris Boulevard to existing sidewalks
3) North and South sides of Ravenwood Drive from Clyde Morris Boulevard to Woodlake Drive
4) South side of Herbert Street between City Center Drive and Gulfstream Village driveway


Sidewalk Gap
1
Dunlawton Ave.
Taylor Branch Rd.
Journey's End Way
Paytas Homes


3
2
4
Sidewalk Gaps
Woodlake Dr.
Ravenwood Dr.
Clyde Morris Blvd.
Herbert St.
City Center Dr.
Sun Retreats Daytona Beach
Gulf Stream Village
City Center Sports Complex

Construction is anticipated to begin in the summer of 2025 and be complete within 120 days after the Notice to Proceed is issued. Filling these sidewalk gaps will improve the safety of pedestrians walking along these major roadway corridors by eliminating the need to use the shoulder or roadway.

Funding in the Agreement has been adjusted based on the City's construction award amount and the negotiated Construction Engineering and Inspection (CEI) contract fee. CEI services will now be performed under a continuing services contract (CSC) procured by FDOT District 5. Initially, the City was responsible for funding the CEI but now it will be funded with federal funds. The City is responsible for a 15% CEI Contingency amount of $22,906. The local funds initially allocated toward CEI cost will be allocated to the construction cost for the project. Resolution No. 25-09 on this agenda establishes the City's contribution and procedure to fund the CEI phase.

The Volusia-Flagler TPO and FDOT have agreed to fund 86% of the cost for construction and CEI in an amount not to exceed $749,444. The City's contribution toward construction and CEI is $122,860, or 14% of the $872,304 estimated construction and CEI cost. Funds are budgeted and available in Project #CD184 for this purpose. Approval of this Resolution and LAP Agreement will allow the project to go out to bid and start construction in the Summer of 2025.

PRESENTER: Tim Burman

ATTACHMENTS:

1.	Resolution No. 25-06	Resolution No. 25-06.pdf
2.	444033-2-58-01 (FY25) - LAP - Port Orange Sidewalk Gaps w city signature & attest	444033-2-58-01 (FY25) - LAP - Port Orange Sidewalk Gaps w city signature & attest.pdf

Lisa Epstein	Created/Initiated - 1/17/2025
Tim Burman	Approved - 1/19/2025
Linda Truitt	Approved - 1/22/2025
Shannon Balmer	Approved - 4/7/2025
Wayne Clark	Final Approval - 4/7/2025

RESOLUTION NO. 25-06

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, APPROVING A LOCAL AGENCY PROGRAM AGREEMENT FOR FPN 444033-2-58-01, FOR CONSTRUCTION OF PORT ORANGE SIDEWALK GAPS PROJECT (VARIOUS LOCATIONS); AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE THE AGREEMENT WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the State of Florida Department of Transportation and the City of Port Orange desire to facilitate the Local Agency Program (LAP) Agreement for construction of sidewalks to complete sidewalk gaps identified in Port Orange Project #CD184; and

WHEREAS, the State of Florida Department of Transportation has requested the City of Port Orange to execute and deliver to the State of Florida Department of Transportation the Local Agency Program Agreement for the aforementioned project, FPN 444033-2-58-01.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA:

Section 1. The City Council of the City of Port Orange, Florida, hereby approves and authorizes the Mayor and City Clerk to make, execute, and deliver to the State of Florida Department of Transportation the Local Agency Program Agreement, and any Supplemental Agreements to the Local Agency Program Agreement for the aforementioned project, Financial Project Number (FPN) 444033-2-58-01.

Section 2. This resolution shall become effective immediately upon adoption.

_____
MAYOR SCOTT STILTNER

ATTEST:

_____
Robin L. Fenwick, MMC, City Clerk

Adopted on the day of

Reviewed and Approved: _____
Shannon K. Balmer, Senior Assistant City Attorney

LOCAL AGENCY PROGRAM AGREEMENT

FPN: 444033-2-58-01	FPN:	FPN:
Federal No (FAIN): D524 061 B	Federal No (FAIN):	Federal No (FAIN):
Federal Award Date:	Federal Award Date:	Federal Award Date:
Fund: LF/SU/TALU	Fund:	Fund:
Org Code: 55054010508	Org Code:	Org Code:
FLAIR Approp: 088717	FLAIR Approp:	FLAIR Approp:
FLAIR Obj: 780000	FLAIR Obj:	FLAIR Obj:

County No: 79 Contract No:
Recipient Vendor No: F596000412003 Recipient Unique Entity ID (UEI) No: LV8ZD1LYF3H4

Assistance Listing Number (ALN): 20.205 Highway Planning and Construction

THIS LOCAL AGENCY PROGRAM AGREEMENT ("Agreement"), is entered into on _____, by and between the State of Florida Department of Transportation, an agency
(This date to be entered by DOT only)
of the State of Florida ("Department"), and the City of Port Orange ("Recipient").

NOW, THEREFORE, in consideration of the mutual benefits to be derived from joint participation on the Project, the Parties agree to the following:

1. **Authority:** The Department is authorized to enter into this Agreement pursuant to Section 339.12, Florida Statutes. The Recipient by Resolution or other form of official authorization, a copy of which is attached as **Exhibit "D"** and made a part of this Agreement, has authorized its officers to execute this Agreement on its behalf.

2. **Purpose of Agreement:** The purpose of this Agreement is to provide for the Department's participation in the Port Orange Sidewalk Gaps project, as further described in **Exhibit "A",** Project Description and Responsibilities attached to and incorporated in this Agreement ("Project"), to provide Department financial assistance to the Recipient; state the terms and conditions upon which Department funds will be provided; and to set forth the manner in which the Project will be undertaken and completed.

3. **Term of Agreement:** The Recipient agrees to complete the Project on or before April 30, 2026. If the Recipient does not complete the Project within this time period, this Agreement will expire on the last day of the scheduled completion as provided in this paragraph unless an extension of the time period is requested by the Recipient and granted in writing by the Department prior to the expiration of this Agreement. Expiration of this Agreement will be considered termination of the Project. The cost of any work performed after the term of this Agreement will not be reimbursed by the Department.

4. **Project Cost:**

   a. The estimated cost of the Project is $ 696,693.00 (Six Hundred Ninety-Six Thousand Six Hundred Ninety-Three Dollars and No/100). This amount is based upon the Schedule of Financial Assistance in **Exhibit "B"**, attached to and incorporated in this Agreement. **Exhibit "B"** may be modified by mutual execution of an amendment as provided for in paragraph 5.i.

   b. The Department agrees to participate in the Project cost up to the maximum amount of $596,739.00 (Five Hundred Ninety-Six Thousand Seven Hundred Thirty-Nine Dollars and No/100) and as more fully described in **Exhibit "B"**. This amount includes Federal-aid funds which are limited to the actual amount of Federal-aid participation. The Department's participation may be increased or reduced upon determination of the actual bid amounts of the Project by the mutual execution of an amendment. The Recipient agrees to bear all expenses in excess of the total cost of the Project and any deficits incurred in connection with the completion of the Project.

   c. Project costs eligible for Department participation will be allowed only from the date of this Agreement. It is understood that Department participation in eligible Project costs is subject to:

i. Legislative approval of the Department's appropriation request in the work program year that the Project is scheduled to be committed;

ii. Availability of funds as stated in paragraphs 5.l. and 5.m. of this Agreement;

iii. Approval of all plans, specifications, contracts or other obligating documents and all other terms of this Agreement; and

iv. Department approval of the Project scope and budget at the time appropriation authority becomes available.

5. Requisitions and Payments

a. The Recipient shall provide quantifiable, measurable, and verifiable units of deliverables. Each deliverable must specify the required minimum level of service to be performed and the criteria for evaluating successful completion. The Project and the quantifiable, measurable, and verifiable units of deliverables are described more fully in **Exhibit "A"**.

b. Invoices shall be submitted by the Recipient in detail sufficient for a proper pre-audit and post-audit based on the quantifiable, measurable and verifiable units of deliverables as established in **Exhibit "A"**. Deliverables must be received and accepted in writing by the Department's Project Manager prior to payments. Requests for reimbursement by the Recipient shall include an invoice, progress report and supporting documentation for the period of services being billed that are acceptable to the Department. The Recipient shall use the format for the invoice and progress report that is approved by the Department.

c. The Recipient shall charge to the Project account all eligible costs of the Project except costs agreed to be borne by the Recipient or its contractors and subcontractors. Costs in excess of the programmed funding or attributable to actions which have not received the required approval of the Department shall not be considered eligible costs. All costs charged to the Project, including any approved services contributed by the Recipient or others, shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers evidencing in proper detail the nature and propriety of the charges.

d. If the Recipient is considered a rural community or rural area of opportunity, as these terms are defined by Section 288.0656(2), Florida Statutes, Recipient may submit payment requests for eligible performance completed/costs incurred under this agreement pursuant to **Exhibit "H", Alternative Advance Payment Financial Provisions.**

e. Supporting documentation must establish that the deliverables were received and accepted in writing by the Recipient and must also establish that the required minimum level of service to be performed based on the criteria for evaluating successful completion as specified in **Exhibit "A"** was met. All costs invoiced shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers evidencing in proper detail the nature and propriety of charges as described in **Exhibit "F",** Contract Payment Requirements.

f. Bills for travel expenses specifically authorized in this Agreement shall be submitted on the Department's Contractor Travel Form No. 300-000-06 and will be paid in accordance with Section 112.061, Florida Statutes and the most current version of the Disbursement Handbook for Employees and Managers.

g. Payment shall only be made after receipt and approval of goods and services unless the payment is made under **Exhibit "H"** or advance payments are authorized by the Chief Financial Officer of the State of Florida under Chapters 215 and 216, Florida Statutes or the Department's Comptroller under Section 334.044(29), Florida Statutes.

If the Department determines that the performance of the Recipient is unsatisfactory, the Department shall notify the Recipient of the deficiency to be corrected, which correction shall be made within a time-frame to be specified by the Department. The Recipient shall, within thirty (30) days after notice from the Department,

provide the Department with a corrective action plan describing how the Recipient will address all issues of contract non-performance, unacceptable performance, failure to meet the minimum performance levels, deliverable deficiencies, or contract non-compliance. If the corrective action plan is unacceptable to the Department, the Recipient will not be reimbursed or paid under Exhibit "H", to the extent of the non-performance. The Recipient will not be reimbursed or paid until the Recipient resolves the deficiency. If the deficiency is subsequently resolved, the Recipient may bill the Department for any unpaid performance completed by the Recipient during the next billing period or as provided by **Exhibit "H", Alternative Advance Payment Financial Provisions**. If the Recipient is unable to resolve the deficiency, the funds shall be forfeited at the end of the Agreement's term.

h. Agencies providing goods and services to the Department should be aware of the following time frames. Inspection and approval of goods or services shall take no longer than 20 days from the Department's receipt of the invoice. The Department has 20 days to deliver a request for payment (voucher) to the Department of Financial Services. The 20 days are measured from the latter of the date the invoice is received or the goods or services are received, inspected, and approved.

If a payment is not available within 40 days, a separate interest penalty at a rate as established pursuant to ***Section 55.03(1), F.S.***, will be due and payable, in addition to the invoice amount, to the Recipient. Interest penalties of less than one (1) dollar will not be enforced unless the Recipient requests payment. Invoices that have to be returned to an Recipient because of Recipient preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the Department.

A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for Agencies who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 413-5516.

i. The Recipient shall maintain an accounting system or separate accounts to ensure funds and projects are tracked separately. Records of costs incurred under the terms of this Agreement shall be maintained and made available upon request to the Department at all times during the period of this Agreement and for five years after final payment is made. Copies of these documents and records shall be furnished to the Department upon request. Records of costs incurred include the Recipient's general accounting records and the project records, together with supporting documents and records, of the contractor and all subcontractors performing work on the project, and all other records of the Contractor and subcontractors considered necessary by the Department for a proper audit of costs.

j. Prior to the execution of this Agreement, a Project schedule of funding shall be prepared by the Recipient and approved by the Department. The Recipient shall maintain said schedule of funding, carry out the Project, and shall incur obligations against and make disbursements of Project funds only in conformity with the latest approved schedule of funding for the Project. The schedule of funding may be revised by execution of a Local Agency Program ("LAP") Supplemental Agreement between the Department and the Recipient. The Recipient acknowledges and agrees that funding for this project may be reduced upon determination of the Recipient's contract award amount.

k. If, after Project completion, any claim is made by the Department resulting from an audit or for work or services performed pursuant to this Agreement, the Department may offset such amount from payments due for work or services done under any agreement which it has with the Recipient owing such amount if, upon demand, payment of the amount is not made within 60 days to the Department. Offsetting any amount pursuant to this paragraph shall not be considered a breach of contract by the Department.

l. The Recipient must submit the final invoice on the Project to the Department within 120 days after the completion of the Project. Invoices submitted after the 120-day time period may not be paid.

m. The Department's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. If the Department's funding for this Project is in multiple fiscal years, funds approval from the Department's Comptroller must be received each fiscal year prior to costs being incurred. See **Exhibit "B"** for funding levels by fiscal year. Project costs utilizing these fiscal year funds are not

eligible for reimbursement if incurred prior to funds approval being received. The Department will notify the Recipient, in writing, when funds are available.

n. In the event this Agreement is in excess of $25,000 and has a term for a period of more than one year, the provisions of Section 339.135(6)(a), Florida Statutes, are hereby incorporated:

> "The Department, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The Department shall require a statement from the comptroller of the Department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding 1 year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years, and this paragraph shall be incorporated verbatim in all contracts of the Department which are for an amount in excess of $25,000 and which have a term for a period of more than 1 year."

6. Department Payment Obligations:

Subject to other provisions of this Agreement, the Department will honor requests for reimbursement to the Recipient pursuant to this Agreement. However, notwithstanding any other provision of this Agreement, the Department may elect by notice in writing not to make a payment if:

a. The Recipient shall have made misrepresentation of a material nature in its application, or any supplement or amendment to its application, or with respect to any document or data furnished with its application or pursuant to this Agreement;

b. There is any pending litigation with respect to the performance by the Recipient of any of its duties or obligations which may jeopardize or adversely affect the Project, the Agreement or payments to the Project;

c. The Recipient shall have taken any action pertaining to the Project which, under this Agreement, requires the approval of the Department or has made a related expenditure or incurred related obligations without having been advised by the Department that same are approved;

d. There has been any violation of the conflict of interest provisions contained in paragraph 14.f.; or

e. The Recipient has been determined by the Department to be in default under any of the provisions of the Agreement.

The Department may suspend or terminate payment for that portion of the Project which the Federal Highway Administration ("FHWA"), or the Department acting in lieu of FHWA, may designate as ineligible for Federal-aid.

In determining the amount of the payment, the Department will exclude all Project costs incurred by the Recipient prior to the Department's issuance of a Notice to Proceed ("NTP"), costs incurred after the expiration of the Agreement, costs which are not provided for in the latest approved schedule of funding in **Exhibit "B"** for the Project, costs agreed to be borne by the Recipient or its contractors and subcontractors for not meeting the Project commencement and final invoice time lines, and costs attributable to goods or services received under a contract or other arrangements which have not been approved in writing by the Department.

7. General Requirements:

The Recipient shall complete the Project with all practical dispatch, in a sound, economical, and efficient manner, and in accordance with the provisions in this Agreement, and all applicable laws. The Project will be performed in accordance with all applicable Department procedures, guidelines, manuals, standards, and directives as described in the Department's **Local Agency Program Manual** (FDOT Topic No. 525-010-300), which by this reference is made a part of this Agreement. Time is of the essence as to each and every obligation under this Agreement.

a. A full time employee of the Recipient, qualified to ensure that the work being pursued is complete, accurate, and consistent with the terms, conditions, and specifications of this Agreement shall be in responsible charge of the Project, which employee should be able to perform the following duties and functions:

i. Administers inherently governmental project activities, including those dealing with cost, time, adherence to contract requirements, construction quality and scope of Federal-aid projects;

ii. Maintains familiarity of day to day Project operations, including Project safety issues;

iii. Makes or participates in decisions about changed conditions or scope changes that require change orders or supplemental agreements;

iv. Visits and reviews the Project on a frequency that is commensurate with the magnitude and complexity of the Project;

v. Reviews financial processes, transactions and documentation to ensure that safeguards are in place to minimize fraud, waste, and abuse;

vi. Directs Project staff, agency or consultant, to carry out Project administration and contract oversight, including proper documentation;

vii. Is aware of the qualifications, assignments and on-the-job performance of the Recipient and consultant staff at all stages of the Project.

b. Once the Department issues the NTP for the Project, the Recipient shall be obligated to submit an invoice or other request for reimbursement to the Department no less than once every 90 days (quarterly), beginning from the day the NTP is issued. If the Recipient fails to submit quarterly invoices to the Department, and in the event the failure to timely submit invoices to the Department results in the FHWA removing any unbilled funding or the loss of state appropriation authority (which may include the loss of state and federal funds, if there are state funds programmed to the Project), then the Recipient will be solely responsible to provide all funds necessary to complete the Project and the Department will not be obligated to provide any additional funding for the Project. The Recipient waives the right to contest such removal of funds by the Department, if the removal is related to FHWA's withdrawal of funds or if the removal is related to the loss of state appropriation authority. In addition to the loss of funding for the Project, the Department will also consider the de-certification of the Recipient for future LAP Projects. No cost may be incurred under this Agreement until after the Recipient has received a written NTP from the Department. The Recipient agrees to advertise or put the Project out to bid thirty (30) days from the date the Department issues the NTP to advertise the Project. If the Recipient is not able to meet the scheduled advertisement, the Department District LAP Administrator should be notified as soon as possible.

c. If all funds are removed from the Project, including amounts previously billed to the Department and reimbursed to the Recipient, and the Project is off the State Highway System, then the Department will have to request repayment for the previously billed amounts from the Recipient. No state funds can be used on off-system projects, unless authorized pursuant to **Exhibit "I",** State Funds Addendum, which will be attached to and incorporated in this Agreement in the event state funds are used on the Project.

d. In the event that any election, referendum, approval, permit, notice or other proceeding or authorization is required under applicable law to enable the Recipient to enter into this Agreement or to undertake the Project or to observe, assume or carry out any of the provisions of the Agreement, the Recipient will initiate and consummate, as provided by law, all actions necessary with respect to any such matters.

e. The Recipient shall initiate and prosecute to completion all proceedings necessary, including Federal-aid requirements, to enable the Recipient to provide the necessary funds for completion of the Project.

f. The Recipient shall submit to the Department such data, reports, records, contracts, and other documents relating to the Project as the Department and FHWA may require. The Recipient shall make such submissions using Department-designated information systems.

g. Federal-aid funds shall not participate in any cost which is not incurred in conformity with applicable federal and state laws, the regulations in 23 Code of Federal Regulations (C.F.R.) and 49 C.F.R., and policies and procedures prescribed by the Division Administrator of FHWA. Federal funds shall not be paid on account of any cost incurred prior to authorization by FHWA to the Department to proceed with the Project or part thereof involving such cost (23 C.F.R. 1.9 (a)). If FHWA or the Department determines that any amount claimed is not eligible, federal participation may be approved in the amount determined to be adequately supported and the Department shall notify the Recipient in writing citing the reasons why items and amounts are not eligible for federal participation. Where correctable non-compliance with provisions of law or FHWA requirements exists federal funds may be withheld until compliance is obtained. Where non-compliance is not correctable, FHWA or the Department may deny participation in parcel or Project costs in part or in total. For any amounts determined to be ineligible for federal reimbursement for which the Department has advanced payment, the Recipient shall promptly reimburse the Department for all such amounts within 90 days of written notice.

h. For any project requiring additional right-of-way, the Recipient must submit to the Department an annual report of its real property acquisition and relocation assistance activities on the project. Activities shall be reported on a federal fiscal year basis, from October 1 through September 30. The report must be prepared using the format prescribed in 49 C.F.R. Part 24, Appendix B, and be submitted to the Department no later than October 15 of each year.

8. Audit Reports:

The administration of resources awarded through the Department to the Recipient by this Agreement may be subject to audits and/or monitoring by the Department. The following requirements do not limit the authority of the Department to conduct or arrange for the conduct of additional audits or evaluations of federal awards or limit the authority of any state agency inspector general, the State of Florida Auditor General, or any other state official. The Recipient shall comply with all audit and audit reporting requirements as specified below.

a. In addition to reviews of audits conducted in accordance with 2 CFR Part 200, Subpart F – Audit Requirements, monitoring procedures may include, but not be limited to, on-site visits by Department staff and/or other procedures including, reviewing any required performance and financial reports, following up, ensuring corrective action, and issuing management decisions on weaknesses found through audits when those findings pertain to federal awards provided through the Department by this Agreement. By entering into this Agreement, the Recipient agrees to comply and cooperate fully with any monitoring procedures/processes deemed appropriate by the Department. The Recipient further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Department, State of Florida Chief Financial Officer ("CFO"), or State of Florida Auditor General.

b. The Recipient, a non-federal entity as defined by 2 CFR Part 200, as a subrecipient of a federal award awarded by the Department through this Agreement is subject to the following requirements:

i. In the event the Recipient expends a total amount of federal awards equal to or in excess of the threshold established by 2 CFR Part 200, Subpart F – Audit Requirements, the Recipient must have a federal single or program-specific audit for such fiscal year conducted in accordance with the provisions of 2 CFR Part 200, Subpart F – Audit Requirements. **Exhibit "E"** to this Agreement provides the required federal award identification information needed by the Recipient to further comply with the requirements of 2 CFR Part 200, Subpart F – Audit Requirements. In determining federal awards expended in a fiscal year, the Recipient must consider all sources of federal awards based on when the activity related to the federal award occurs, including the federal award provided through the Department by this Agreement. The determination of amounts of federal awards expended should be in accordance with the guidelines established by 2 CFR Part 200, Subpart F – Audit Requirements. An audit conducted by the State of Florida Auditor General in accordance with the provisions of 2 CFR Part 200, Subpart F – Audit Requirements, will meet the requirements of this part.

ii. In connection with the audit requirements, the Recipient shall fulfill the requirements relative to the auditee responsibilities as provided in 2 CFR Part 200, Subpart F – Audit Requirements.

iii. In the event the Recipient expends less than the threshold established by 2 CFR Part 200, Subpart F – Audit Requirements, in federal awards, the Recipient is exempt from federal audit requirements for that fiscal year. However, the Recipient must provide a single audit exemption statement to the Department at FDOTSingleAudit@dot.state.fl.us no later than nine months after the end of the Recipient's audit period for each applicable audit year. In the event the Recipient expends less than the threshold established by 2 CFR Part 200, Subpart F – Audit Requirements, in federal awards in a fiscal year and elects to have an audit conducted in accordance with the provisions of 2 CFR Part 200, Subpart F – Audit Requirements, the cost of the audit must be paid from non-federal resources (*i.e.*, the cost of such an audit must be paid from the Recipient's resources obtained from other than federal entities).

iv. The Recipient must electronically submit to the Federal Audit Clearinghouse ("FAC") at https://harvester.census.gov/facweb/ the audit reporting package as required by 2 CFR Part 200, Subpart F – Audit Requirements, within the earlier of 30 calendar days after receipt of the auditor's report(s) or nine months after the end of the audit period. The FAC is the repository of record for audits required by 2 CFR Part 200, Subpart F – Audit Requirements, and this Agreement. However, the Department requires a copy of the audit reporting package also be submitted to FDOTSingleAudit@dot.state.fl.us within the earlier of 30 calendar days after receipt of the auditor's report(s) or nine months after the end of the audit period as required by 2 CFR Part 200, Subpart F – Audit Requirements.

v. Within six months of acceptance of the audit report by the FAC, the Department will review the Recipient's audit reporting package, including corrective action plans and management letters, to the extent necessary to determine whether timely and appropriate action on all deficiencies has been taken pertaining to the federal award provided through the Department by this Agreement. If the Recipient fails to have an audit conducted in accordance with 2 CFR Part 200, Subpart F – Audit Requirements, the Department may impose additional conditions to remedy noncompliance. If the Department determines that noncompliance cannot be remedied by imposing additional conditions, the Department may take appropriate actions to enforce compliance, which actions may include but not be limited to the following:

1. Temporarily withhold cash payments pending correction of the deficiency by the Recipient or more severe enforcement action by the Department;
2. Disallow (deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance;
3. Wholly or partly suspend or terminate the federal award;
4. Initiate suspension or debarment proceedings as authorized under 2 C.F.R. Part 180 and federal awarding agency regulations (or in the case of the Department, recommend such a proceeding be initiated by the federal awarding agency);
5. Withhold further federal awards for the Project or program;
6. Take other remedies that may be legally available.

vi. As a condition of receiving this federal award, the Recipient shall permit the Department or its designee, the CFO, or State of Florida Auditor General access to the Recipient's records including financial statements, the independent auditor's working papers, and project records as necessary. Records related to unresolved audit findings, appeals, or litigation shall be retained until the action is complete or the dispute is resolved.

vii. The Department's contact information for requirements under this part is as follows:

Office of Comptroller, MS 24
605 Suwannee Street
Tallahassee, Florida 32399-0450
FDOTSingleAudit@dot.state.fl.us

c. The Recipient shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of five years from the date the audit report is issued and shall allow the Department or its designee, the CFO, or State of Florida Auditor General access to such records upon request. The Recipient shall ensure that the audit working papers are made available to the Department or its designee, the CFO, or State of Florida Auditor General upon request for a period of five years from the date the audit report is issued, unless extended in writing by the Department.

9. Termination or Suspension of Project:

The Department may, by written notice to the Recipient, suspend any or all of the Department's obligations under this Agreement for the Recipient's failure to comply with applicable law or the terms of this Agreement until such time as the event or condition resulting in such suspension has ceased or been corrected.

a. If the Department intends to terminate the Agreement, the Department shall notify the Recipient of such termination in writing at least thirty (30) days prior to the termination of the Agreement, with instructions to the effective date of termination or specify the stage of work at which the Agreement is to be terminated.

b. The Parties to this Agreement may terminate this Agreement when its continuation would not produce beneficial results commensurate with the further expenditure of funds. In this event, the Parties shall agree upon the termination conditions.

c. If the Agreement is terminated before performance is completed, the Recipient shall be paid only for that work satisfactorily performed for which costs can be substantiated. Such payment, however, may not exceed the equivalent percentage of the Department's maximum financial assistance. If any portion of the Project is located on the Department's right-of-way, then all work in progress on the Department right-of-way will become the property of the Department and will be turned over promptly by the Recipient.

d. In the event the Recipient fails to perform or honor the requirements and provisions of this Agreement, the Recipient shall promptly refund in full to the Department within thirty (30) days of the termination of the Agreement any funds that were determined by the Department to have been expended in violation of the Agreement.

e. The Department reserves the right to unilaterally cancel this Agreement for failure by the Recipient to comply with the Public Records provisions of Chapter 119, Florida Statutes.

10. Contracts of the Recipient:

a. Except as otherwise authorized in writing by the Department, the Recipient shall not execute any contract or obligate itself in any manner requiring the disbursement of Department funds, including consultant or construction contracts or amendments thereto, with any third party with respect to the Project without the written approval of the Department. Failure to obtain such approval shall be sufficient cause for nonpayment by the Department. The Department specifically reserves the right to review the qualifications of any consultant or contractor and to approve or disapprove the employment of such consultant or contractor.

b. It is understood and agreed by the parties to this Agreement that participation by the Department in a project with the Recipient, where said project involves a consultant contract for engineering, architecture or surveying services, is contingent on the Recipient's complying in full with provisions of Section 287.055, Florida Statutes, Consultants' Competitive Negotiation Act, the federal Brooks Act, 23 C.F.R. 172, and 23 U.S.C. 112. At the discretion of the Department, the Recipient will involve the Department in the consultant selection process for all projects funded under this Agreement. In all cases, the Recipient shall certify to the Department that selection has been accomplished in compliance with the Consultants' Competitive Negotiation Act and the federal Brooks Act.

c. The Recipient shall comply with, and require its consultants and contractors to comply with applicable federal law pertaining to the use of Federal-aid funds. The Recipient shall comply with the provisions in the FHWA-1273 form as set forth in **Exhibit "G",** FHWA 1273 attached to and incorporated in this Agreement. The Recipient shall include FHWA-1273 in all contracts with contractors performing work on the Project.

d. The Recipient shall require its consultants and contractors to take emergency steps to close any public road whenever there is a risk to life, health and safety of the travelling public. The safety of the travelling public is the Department's first priority for the Recipient. If lane or road closures are required by the LA to ensure the life, health, and safety of the travelling public, the LA must notify the District Construction Engineer and District Traffic Operations Engineer immediately once the travelling public are not at imminent risk. The Department expects professional engineering judgment be applied in all aspects of locally

delivered projects. Defect management and supervision of LAP project structures components must be proactively managed, monitored, and inspected by department prequalified structures engineer(s). The District Construction Engineer must be notified immediately of defect monitoring that occurs in LAP project construction, whether or not the defects are considered an imminent risk to life, health, or safety of the travelling public. When defects, including but not limited to, structural cracks, are initially detected during bridge construction, the engineer of record, construction engineering inspector, design-build firm, or local agency that owns or is responsible for the bridge construction has the authority to immediately close the bridge to construction personnel and close the road underneath. The LA shall also ensure compliance with the CPAM, Section 9.1.8 regarding actions for maintenance of traffic and safety concerns.

11. Disadvantaged Business Enterprise (DBE) Policy and Obligation:

It is the policy of the Department that DBE's, as defined in 49 C.F.R. Part 26, as amended, shall have the opportunity to participate in the performance of contracts financed in whole or in part with Department funds under this Agreement. The DBE requirements of applicable federal and state laws and regulations apply to this Agreement.

The Recipient and its contractors agree to ensure that DBE's have the opportunity to participate in the performance of this Agreement. In this regard, all recipients and contractors shall take all necessary and reasonable steps in accordance with applicable federal and state laws and regulations to ensure that the DBE's have the opportunity to compete for and perform contracts. The Recipient and its contractors and subcontractors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of contracts, entered pursuant to this Agreement.

12. Compliance with Conditions and Laws:

The Recipient shall comply and require its contractors and subcontractors to comply with all terms and conditions of this Agreement and all federal, state, and local laws and regulations applicable to this Project. Execution of this Agreement constitutes a certification that the Recipient is in compliance with, and will require its contractors and subcontractors to comply with, all requirements imposed by applicable federal, state, and local laws and regulations, including the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions," in 49 C.F.R. Part 29, and 2 C.F.R. Part 200 when applicable.

13. Performance Evaluations:

Recipients are evaluated on a project-by-project basis. The evaluations provide information about oversight needs and provide input for the recertification process. Evaluations are submitted to the Recipient's person in responsible charge or designee as part of the Project closeout process. The Department provides the evaluation to the Recipient no more than 30 days after final acceptance.

a. Each evaluation will result in one of three ratings. A rating of Unsatisfactory Performance means the Recipient failed to develop the Project in accordance with applicable federal and state regulations, standards and procedures, required excessive District involvement/oversight, or the Project was brought in-house by the Department. A rating of Satisfactory Performance means the Recipient developed the Project in accordance with applicable federal and state regulations, standards and procedures, with minimal District involvement/oversight. A rating of Above Satisfactory Performance means the Recipient developed the Project in accordance with applicable federal and state regulations, standards and procedures, and the Department did not have to exceed the minimum oversight and monitoring requirements identified for the project.

b. The District will determine which functions can be further delegated to Recipients that continuously earn Satisfactory and Above Satisfactory evaluations.

14. Restrictions, Prohibitions, Controls, and Labor Provisions:

During the performance of this Agreement, the Recipient agrees as follows, and agrees to require its contractors and subcontractors to include in each subcontract the following provisions:

a. The Recipient will comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964, the regulations of the U.S. Department of Transportation issued thereunder, and the assurance by the Recipient pursuant thereto. The Recipient shall include the attached **Exhibit "C",** Title VI Assurances in all contracts

with consultants and contractors performing work on the Project that ensure compliance with Title VI of the Civil Rights Act of 1964, 49 C.F.R. Part 21, and related statutes and regulations.

b. The Recipient will comply with all the requirements as imposed by the ADA, the regulations of the Federal Government issued thereunder, and assurance by the Recipient pursuant thereto.

c. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity; may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

d. In accordance with Section 287.134, Florida Statutes, an entity or affiliate who has been placed on the Discriminatory Vendor List, kept by the Florida Department of Management Services, may not submit a bid on a contract to provide goods or services to a public entity; may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor or consultant under a contract with any public entity; and may not transact business with any public entity.

e. An entity or affiliate who has had its Certificate of Qualification suspended, revoked, denied or have further been determined by the Department to be a non-responsible contractor may not submit a bid or perform work for the construction or repair of a public building or public work on a contract with the Recipient.

f. Neither the Recipient nor any of its contractors or their subcontractors shall enter into any contract, subcontract or arrangement in connection with the Project or any property included or planned to be included in the Project in which any member, officer or employee of the Recipient or the locality during tenure or for 2 years thereafter has any interest, direct or indirect. If any such present or former member, officer or employee involuntarily acquires or had acquired prior to the beginning of tenure any such interest, and if such interest is immediately disclosed to the Recipient, the Recipient, with prior approval of the Department, may waive the prohibition contained in this paragraph provided that any such present member, officer or employee shall not participate in any action by the Recipient or the locality relating to such contract, subcontract or arrangement. The Recipient shall insert in all contracts entered into in connection with the Project or any property included or planned to be included in any Project, and shall require its contractors to insert in each of their subcontracts, the following provision:

"No member, officer or employee of the Recipient or of the locality during his tenure or for 2 years thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof."

The provisions of this paragraph shall not be applicable to any agreement between the Recipient and its fiscal depositories or to any agreement for utility services the rates for which are fixed or controlled by a governmental agency.

g. No member or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or any benefit arising therefrom.

h. In accordance with Section 787.06(13), Florida Statutes, the Recipient must verify its contractors or subcontractors are not engaged in coercion for labor or services.

15. Indemnification and Insurance:

a. It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of any part of this Agreement to create in the public or any member thereof, a third-party beneficiary under this Agreement, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement. The

Recipient guarantees the payment of all just claims for materials, supplies, tools, or labor and other just claims against the Recipient or any subcontractor, in connection with this Agreement.

b. To the extent provided by law, Recipient shall indemnify, defend, and hold harmless the Department against any actions, claims, or damages arising out of, relating to, or resulting from negligent or wrongful act(s) of Recipient, or any of its officers, agents, or employees, acting within the scope of their office or employment, in connection with the rights granted to or exercised by Recipient hereunder, to the extent and within the limitations of Section 768.28, Florida Statutes. The foregoing indemnification shall not constitute a waiver of the Department's or Recipient's sovereign immunity beyond the limits set forth in Florida Statutes, Section 768.28, nor shall the same be construed to constitute agreement by Recipient to indemnify the Department for the negligent acts or omissions of the Department, its officers, agents, or employees, or for the acts of third parties. Nothing herein shall be construed as consent by Recipient to be sued by third parties in any manner arising out of this Agreement. This indemnification shall survive the termination of this Agreement.

c. Recipient agrees to include the following indemnification in all contracts with contractors, subcontractors, consultants, or subconsultants (each referred to as "Entity" for the purposes of the below indemnification) who perform work in connection with this Agreement:

"To the extent provided by law, [ENTITY] shall indemnify, defend, and hold harmless the [RECIPIENT] and the State of Florida, Department of Transportation, including the Department's officers, agents, and employees, against any actions, claims, or damages arising out of, relating to, or resulting from negligent or wrongful act(s) of [ENTITY], or any of its officers, agents, or employees, acting within the scope of their office or employment, in connection with the rights granted to or exercised by [ENTITY].

The foregoing indemnification shall not constitute a waiver of the Department's or [RECIPIENT']'s sovereign immunity beyond the limits set forth in Florida Statutes, Section 768.28. Nor shall the same be construed to constitute agreement by [ENTITY] to indemnify [RECIPIENT] for the negligent acts or omissions of [RECIPIENT], its officers, agents, or employees, or third parties. Nor shall the same be construed to constitute agreement by [ENTITY] to indemnify the Department for the negligent acts or omissions of the Department, its officers, agents, or employees, or third parties. This indemnification shall survive the termination of this Agreement."

d. The Recipient shall, or cause its contractor or consultant to carry and keep in force, during the term of this Agreement, a general liability insurance policy or policies with a company or companies authorized to do business in Florida, affording public liability insurance with combined bodily injury limits of at least $200,000 per person and $300,000 each occurrence, and property damage insurance of at least $200,000 each occurrence, for the services to be rendered in accordance with this Agreement. The Recipient shall also, or cause its contractor or consultant to carry and keep in force Workers' Compensation Insurance as required by the State of Florida under the Workers' Compensation Law. With respect to any general liability insurance policy required pursuant to this Agreement, all such policies shall be issued by companies licensed to do business in the State of Florida. The Recipient shall provide to the Department certificates showing the required coverage to be in effect with endorsements showing the Department to be an additional insured prior to commencing any work under this Agreement. Policies that include Self Insured Retention will not be accepted. The certificates and policies shall provide that in the event of any material change in or cancellation of the policies reflecting the required coverage, thirty days advance notice shall be given to the Department or as provided in accordance with Florida law.

16. Maintenance Obligations: In the event the Project includes construction then the following provisions are incorporated into this Agreement:

a. The Recipient agrees to maintain any portion of the Project not located on the State Highway System constructed under this Agreement for its useful life. If the Recipient constructs any improvement on Department right-of-way, the Recipient

☐ shall

☒ shall not

☐ N/A

maintain the improvements located on the Department right-of-way for their useful life. If the Recipient is required to maintain Project improvements located on the Department right-of-way beyond final acceptance, then Recipient shall, prior to any disbursement of the state funding provided under this Agreement, also execute a Maintenance Memorandum of Agreement in a form that is acceptable to the Department. The Recipient has agreed to the foregoing by resolution, and such resolution is attached and incorporated into this Agreement as **Exhibit "D"**. This provision will survive termination of this Agreement.

17. Miscellaneous Provisions:

a. The Recipient will be solely responsible for compliance with all applicable environmental regulations, for any liability arising from non-compliance with these regulations, and will reimburse the Department for any loss incurred in connection therewith. The Recipient will be responsible for securing any applicable permits. The Recipient shall include in all contracts and subcontracts for amounts in excess of $150,000, a provision requiring compliance with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387).

b. The Department shall not be obligated or liable hereunder to any individual or entity not a party to this Agreement.

c. In no event shall the making by the Department of any payment to the Recipient constitute or be construed as a waiver by the Department of any breach of covenant or any default which may then exist on the part of the Recipient and the making of such payment by the Department, while any such breach or default shall exist, shall in no way impair or prejudice any right or remedy available to the Department with respect to such breach or default.

d. If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected. In such an instance, the remainder would then continue to conform to the terms and requirements of applicable law.

e. By execution of the Agreement, the Recipient represents that it has not paid and, also agrees not to pay, any bonus or commission for the purpose of obtaining an approval of its application for the financing hereunder.

f. Nothing in the Agreement shall require the Recipient to observe or enforce compliance with any provision or perform any act or do any other thing in contravention of any applicable state law. If any of the provisions of the Agreement violate any applicable state law, the Recipient will at once notify the Department in writing in order that appropriate changes and modifications may be made by the Department and the Recipient to the end that the Recipient may proceed as soon as possible with the Project.

g. In the event that this Agreement involves constructing and equipping of facilities, the Recipient shall submit to the Department for approval all appropriate plans and specifications covering the Project. The Department will review all plans and specifications and will issue to the Recipient a written approval with any approved portions of the Project and comments or recommendations covering any remainder of the Project deemed appropriate. After resolution of these comments and recommendations to the Department's satisfaction, the Department will issue to the Recipient a written approval with said remainder of the Project. Failure to obtain this written approval shall be sufficient cause of nonpayment by the Department.

h. Upon completion of right-of-way activities on the Project, the Recipient must certify compliance with all applicable federal and state requirements. Certification is required prior to authorization for advertisement for or solicitation of bids for construction of the Project, including if no right-of-way is required.

i. The Recipient will certify in writing, prior to Project closeout that the Project was completed in accordance with applicable plans and specifications, is in place on the Recipient's facility, adequate title is in the Recipient's name, and the Project is accepted by the Recipient as suitable for the intended purpose.

j. The Recipient agrees that no federally-appropriated funds have been paid, or will be paid by or on behalf of the Recipient, to any person for influencing or attempting to influence any officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement. If any funds other than federally-appropriated funds have been paid by the Recipient to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this Agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. The Recipient shall require that the language of this paragraph be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. No funds received pursuant to this contract may be expended for lobbying the Legislature, the judicial branch or a state agency.

k. The Recipient may not permit the Engineer of Record to perform Construction, Engineering and Inspection services on the Project.

l. The Recipient shall comply with all applicable federal guidelines, procedures, and regulations. If at any time a review conducted by Department and or FHWA reveals that the applicable federal guidelines, procedures, and regulations were not followed by the Recipient and FHWA requires reimbursement of the funds, the Recipient will be responsible for repayment to the Department of all funds awarded under the terms of this Agreement.

m. The Recipient shall:

i. utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by Recipient during the term of the contract; and

ii. expressly require any contractor and subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.

n. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute the same Agreement. A facsimile or electronic transmission of this Agreement with a signature on behalf of a party will be legal and binding on such party.

o. The Parties agree to comply with s.20.055(5), Florida Statutes, and to incorporate in all subcontracts the obligation to comply with s.20.055(5), Florida Statutes.

p. If the Project is procured pursuant to Chapter 255, Florida Statutes, for construction services and the cost of the Project is to be paid from state-appropriated funds, then the Recipient must comply with the requirements of Section 255.0991, Florida Statutes.

18. Exhibits:

a. **Exhibits "A"**, **"B"**, **"C", "D"**, **"E", "F" and "H"** are attached to and incorporated into this Agreement.

b. ☒ If this Project includes Phase 58 (construction) activities, then **Exhibit "G"**, FHWA FORM 1273, is attached and incorporated into this Agreement.

c. ☐ State funds are used on this Project. If state funds are used on this Project, then **Exhibit "I"**, State Funds Addendum, is attached and incorporated into this Agreement. **Exhibit "J"**, State Financial Assistance (Florida Single Audit Act), is attached and incorporated into this Agreement.

d. ☐ This Project utilizes Advance Project Reimbursement. If this Project utilizes Advance Project Reimbursement, then **Exhibit "K"**, Advance Project Reimbursement is attached and incorporated into this Agreement.

e. ☐ This Project includes funding for landscaping. If this Project includes funding for landscaping, then **Exhibit "L",** Landscape Maintenance, is attached and incorporated into this Agreement.

f. ☐ This Project includes funding for a roadway lighting system. If the Project includes funding for roadway lighting system, **Exhibit "M"**, Roadway Lighting Maintenance is attached and incorporated into this Agreement.

g. ☐ This Project includes funding for traffic signals and/or traffic signal systems. If this Project includes funding for traffic signals and/or traffic signals systems, **Exhibit "N"**, Traffic Signal Maintenance is attached and incorporated into this Agreement.

h. ☒ A portion or all of the Project will utilize Department right-of-way and, therefore, **Exhibit "O"**, Terms and Conditions of Construction in Department Right-of-Way, is attached and incorporated into this Agreement.

i. ☐ The following Exhibit(s) are attached and incorporated into this Agreement: N/A.

j. Exhibit and Attachment List

Exhibit A: Project Description and Responsibilities
Exhibit B: Schedule of Financial Assistance
Exhibit C: Title VI Assurances
Exhibit D: Recipient Resolution
Exhibit E: Federal Financial Assistance (Single Audit Act)
Exhibit F: Contract Payment Requirements
* Exhibit G: FHWA Form 1273
Exhibit H: Alternative Advance Payment Financial Provisions
* Exhibit I: State Funds Addendum
* Exhibit J: State Financial Assistance (Florida Single Audit Act)
* Exhibit K: Advance Project Reimbursement
* Exhibit L: Landscape Maintenance
* Exhibit M: Roadway Lighting Maintenance
* Exhibit N: Traffic Signal Maintenance
* Exhibit O: Terms and Conditions of Construction in Department Right-of-Way

* Additional Exhibit(s): N/A.

*** Indicates that the Exhibit is only attached and incorporated if applicable box is selected.**

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year written above.

RECIPIENT CITY OF PORT ORANGE

By: _____

Name: Scott Stiltner
Title: Mayor

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

STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION

By: _____

Name: James S. Stroz, Jr. P.E.
Title: Director of Transportation Development

Legal Review:

_____

EXHIBIT A

PROJECT DESCRIPTION AND RESPONSIBILITIES

FPN: 444033-2-58-01

This exhibit forms an integral part of the Agreement between the State of Florida, Department of Transportation and the City of Port Orange (the Recipient)

PROJECT LOCATION:

☐ The project is on the National Highway System.

☐ The project is on the State Highway System.

PROJECT LENGTH AND MILE POST LIMITS: See Project Description Below

PROJECT DESCRIPTION:

The Port Orange Sidewalk Gaps project is with the City of Port Orange (Recipient). This is a sidewalk project to enhance pedestrian connectivity along Taylor Branch Road from State Route 421 (Dunlawton Avenue) to Taylor Road/Journey's End Way, Herbert Street from west of Terrace Village Drive to east of City Center Drive, Ravenwood Drive from west of Woodlake Drive to Clyde Morris Boulevard, and Woodlake Drive from 345 feet west of Clyde Morris Boulevard to Clyde Morris Boulevard. Total project length is approximately 2,007 feet (0.38 miles).

Proposed improvements on Taylor Branch Road include constructing a minimum six-foot-wide sidewalk, Type F and E curb and gutter, detectable warnings, concrete pole removal, crosswalk, and milling and resurfacing of the affected crosswalk.

Proposed improvements on Herbert Street include constructing a minimum five-foot-wide sidewalk, drainage, turnout construction, Type B stabilization, pipe handrail, Type F and E curb and gutter, detectable warnings, gravity wall, conduit, pull box, power service relocation, installation of a pedestal pole, pole removal, crosswalk, and milling and resurfacing of the affected crosswalk. Drainage improvements include inlets, pipe culvert, and mitered end section

Proposed improvements on Ravenwood Drive include constructing a minimum six-foot-wide sidewalk, Type F and E curb and gutter, detectable warnings, crosswalk, and milling and resurfacing of the affected crosswalk,

Proposed improvements on Woodlake Drive include constructing a minimum five-foot-wide sidewalk, Type F curb and gutter, detectable warnings, crosswalk, and milling and resurfacing of the affected crosswalks.

Other construction elements include mobilization, maintenance of traffic, erosion control, clearing and grubbing, removal of existing concrete, signing, pavement markings, mailbox replacement, embankment, excavation, tree protection, root barrier, and sod.

Proposed work within Florida Department of Transportation (Department) Right-of-Way at State Route 421 (Dunlawton Avenue) includes sidewalk and curb ramp construction at the intersection of Taylor Branch Road

The following items are not eligible for reimbursement and will be locally funded:

- Item 0107-1 Litter Removal
- Item 0107-2 Mowing

- Proposed improvements on Ravenwood Drive and Woodlake Drive as the roads are not on the Federal Aid list.
    - 0327-70-6 Milling Existing Asphalt Pavement 1 ½ inch Average Depth (294 SY)
    - 0337-7-81 Asphalt Concrete Friction Course, Traffic B FC 12.5, PG 76-22 (24.3 TN)

All pedestrian facilities shall adhere to current Americans with Disabilities Act (ADA) standards. Utility coordination is required and has been coordinated. Utility coordination will be required during construction and utility work schedules have been developed. The City of Port Orange (Recipient) is coordinating permitting requirements with the St. Johns River Water Management District. Right-of-way acquisition is underway and is to be completed by the City of Port Orange (Recipient) prior to construction. The City of Port Orange (Recipient) shall construct the project within the limits of the existing right-of-way of the City of Port Orange and Volusia County or easements.

SPECIAL CONSIDERATIONS BY RECIPIENT:

Exhibit O – Terms and Conditions of Construction in Department Right-of-Way is included in all agreements. This exhibit is only applicable if the Project involves construction on, under, or over the Department's right-of-way.

Completion of the consultation with the Florida Department of Environmental Protection (FDEP) has resulted in Project Commitments for this project. The Project Commitments have been added as Attachment "A", Project Description and Responsibilities attached hereto and incorporated herein.

Upon project completion, the City must report to the District Five Environmental Management Office (D5-EnvironmentalManagement@dot.state.fl.us) detailing when and how each of the commitments were met prior to submission of the project close-out package. The Project Commitment completion information can be submitted via memo or email.

Based on the Recipient's High financial risk level, this project requires submission and review of the "Project Monitoring Status Report," invoices and supporting documentation monthly. The initial invoice and progress report will be submitted within 180 days of the Department's Notice to Proceed and monthly thereafter. Required documents should be submitted via email to D5-ConstructionSpecialProjects@dot.state.fl.us.

The Recipient shall commence the project's activities subsequent to the execution of this Agreement and shall perform in accordance with the following schedule:

a) Construction contract to be let (Bid Opening) by July 09, 2025.
b) Construction Duration of 120 days.
c) Construction to be completed (Final Acceptance) by December 20, 2025.

If this schedule cannot be met, the Recipient will notify the Department in writing with a revised schedule or the project is subject to the withdrawal of funding.

SPECIAL CONSIDERATIONS BY DEPARTMENT:

CEI services for this project are being provided through the District's Continuing Services CEI contract (CSC). Federal funds in the amount of $152,705.00, representing the negotiated CEI contract amount, have been programmed on the project (444033-3-62-01). Should costs for federally eligible items exceed the programmed amount and additional federal funding is not available, the Recipient will be solely responsible to provide the additional funds that are necessary to complete the Project. Federal funds utilized on the District CSC are not subject to Exhibit "E" - Federal Financial Assistance (Single Audit Act). The Recipient will be solely responsible for CEI costs for federally ineligible items that require CEI services.

The Volusia Flager TPO requires a 10% local match for this project. The total project cost for the phases of Design and Construction Services equals $999,353.00, yielding a required 10% match of $97,868.00. The Recipient's prior design contribution of $14,596.00 leaves a balance of $83,272.00 for the Recipient to contribute to meet the match requirements. Invoice payments will be pro-rated to account for this match requirement.

In the event the Project costs exceed the cost included in Exhibit "B", Schedule of Financial Assistance, the Recipient will

be solely responsible for providing the additional funds that are necessary to complete the Project.

The project funding may be reduced to an amount equal to the award amount and/or the actual contract costs.

The remainder of this page intentionally left blank.

Attachment A

State of Florida Department of Transportation

PSEE

Project Commitments Record

FM:	444033-2	**FAP#:**	D524-061-B
Project Name:	PORT ORANGE SIDEWALK GAPS		
Environmental Document Type:		**Environmental Document Approval Date:**	

Commitment Title:	Contamination		
Commitment Made To:	FDEP	**Environmental Commitment:**	Yes
Status:	Commitment Added	**Affects Any Other Environmental Commitment:**	No
Implementation Discipline:		**Commitment Approval Date:**	
Transmittal Date:			
Commitment Description:	Level II Assessment is needed when soil is disturbed or dewatered in the area of SQRL Service Station - Jax 7 / Spruce Creek Amoco.		
Comments/Notes: *(Most Recent Comment Shown)*			

Projects Linked to the Commitment

There are no other projects linked to this commitment.

LOCAL AGENCY PROGRAM AGREEMENT

EXHIBIT B
SCHEDULE OF FINANCIAL ASSISTANCE

RECIPIENT NAME & BILLING ADDRESS:	FINANCIAL PROJECT NUMBER:
City of Port Orange 1000 City Center Circle Port Orange, Florida 32129	444033-2-58-01

PHASE OF WORK By Fiscal Year	MAXIMUM PARTICIPATION (1) TOTAL PROJECT FUNDS	(2) LOCAL FUNDS	(3) STATE FUNDS	(4) FEDERAL FUNDS
Design- Phase 38				
FY: (Insert Program Name)	$ _____	$ _____	$ _____	$ _____
FY: (Insert Program Name)	$ _____	$ _____	$ _____	$ _____
FY: (Insert Program Name)	$	$	$	$
Total Design Cost	$ 0.00	$ 0.00	$ 0.00	$ 0.00
Right-of-Way- Phase 48				
FY: (Insert Program Name)	$ _____	$ _____	$ _____	$ _____
FY: (Insert Program Name)	$ _____	$ _____	$ _____	$ _____
FY: (Insert Program Name)	$	$	$	$
Total Right-of-Way Cost	$ 0.00	$ 0.00	$ 0.00	$ 0.00
Construction- Phase 58				
FY: 2024-2025 (LAP)	$ 696,693.00	$ 99,954.00	$ 0.00	$ 596,739.00
FY: (Insert Program Name)	$ _____	$ _____	$ _____	$ _____
FY: (Insert Program Name)	$	$	$	$
Total Construction Cost	$ 696,693.00	$ 99,954.00	$ 0.00	$ 596,739.00
Construction Engineering and Inspection (CEI)- Phase 68				
FY: (Insert Program Name)	$ _____	$ _____	$ _____	$ _____
FY: (Insert Program Name)	$ _____	$ _____	$ _____	$ _____
FY: (Insert Program Name)	$	$	$	$
Total CEI Cost	$ 0.00	$ 0.00	$ 0.00	$ 0.00
(Insert Phase)				
FY: (Insert Program Name)	$ _____	$ _____	$ _____	$ _____
FY: (Insert Program Name)	$ _____	$ _____	$ _____	$ _____
FY: (Insert Program Name)	$	$	$	$
Total Phase Costs	$ 0.00	$ 0.00	$ 0.00	$ 0.00
TOTAL COST OF THE PROJECT	$ 696,693.00	$ 99,954.00	$ 0.00	$ 596,739.00

COST ANALYSIS CERTIFICATION AS REQUIRED BY SECTION 216.3475, FLORIDA STATUTES:
I certify that the cost for each line item budget category has been evaluated and determined to be allowable, reasonable, and necessary as required by Section 216.3475, F.S. Documentation is on file evidencing the methodology used and the conclusions reached.

Precious L. Lewis
District Grant Manager Name

Signature Date

EXHIBIT C

TITLE VI ASSURANCES

During the performance of this contract, the consultant or contractor, for itself, its assignees and successors in interest (hereinafter collectively referred to as the "contractor") agrees as follows:

(1.) **Compliance with REGULATIONS:** The contractor shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the U.S. Department of Transportation (hereinafter, "USDOT") ***Title 49, Code of Federal Regulations, Part 21,*** as they may be amended from time to time, (hereinafter referred to as the ***REGULATIONS***), which are herein incorporated by reference and made a part of this contract.

(2.) **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the basis of race, color, national origin, or sex in the selection and retention of sub-contractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by ***Section 21.5*** of the ***REGULATIONS,*** including employment practices when the contract covers a program set forth in ***Appendix B*** of the ***REGULATIONS.***

(3.) **Solicitations for Sub-contractors, including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under sub-contract, including procurements of materials or leases of equipment, each potential sub-contractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the ***REGULATIONS*** relative to nondiscrimination on the basis of race, color, national origin, or sex.

(4.) **Information and Reports:** The contractor shall provide all information and reports required by the ***REGULATIONS*** or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the *Florida Department of Transportation* or the *Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, and Federal Motor Carrier Safety Administration* to be pertinent to ascertain compliance with such ***REGULATIONS,*** orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the *Florida Department of Transportation,* or the *Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, or Federal Motor Carrier Safety Administration* as appropriate, and shall set forth what efforts it has made to obtain the information.

(5.) Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the Florida Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, or

Federal Motor Carrier Safety Administration may determine to be appropriate, including, but not limited to:

a. withholding of payments to the contractor under the contract until the contractor complies, and/or
b. cancellation, termination or suspension of the contract, in whole or in part.

(6.) **Incorporation of Provisions:** The contractor shall include the provisions of paragraphs (1) through (7) in every sub-contract, including procurements of materials and leases of equipment, unless exempt by the ***REGULATIONS,*** or directives issued pursuant thereto. The contractor shall take such action with respect to any sub-contract or procurement as the *Florida Department of Transportation* or the *Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, or Federal Motor Carrier Safety Administration* 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 sub-contractor or supplier as a result of such direction, the contractor may request the *Florida Department of Transportation* to enter into such litigation to protect the interests of the *Florida Department of Transportation,* and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

(7.) **Compliance with Nondiscrimination Statutes and Authorities**: Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21; The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects); Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex); Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27; The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age); Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex); The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not); Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 -- 12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38; The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex); Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations; Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100); Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

EXHIBIT D

RECIPIENT RESOLUTION

The Recipient's Resolution authorizing entry into this Agreement is attached and incorporated into this Agreement.

EXHIBIT E

FEDERAL FINANCIAL ASSISTANCE (SINGLE AUDIT ACT)

FEDERAL RESOURCES AWARDED PURSUANT TO THIS AGREEMENT ARE AS FOLLOWS:

ALN No.:	20.205
ALN Title:	Highway Planning and Construction Federal-Aid Highway Program, Federal Lands Highway Program
ALN Program Site:	**https://sam.gov/fal/a122e57ebdd94c6b95d87450afeda1aa/view**
Award Amount:	**$596,739.00**
Awarding Agency:	Florida Department of Transportation
Award is for R&D:	No
Indirect Cost Rate:	N/A

FEDERAL RESOURCES AWARDED PURSUANT TO THIS AGREEMENT ARE SUBJECT TO THE FOLLOWING:

2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles & Audit Requirements for Federal Awards
http://www.ecfr.gov/cgi-bin/text-idx?node=2:1.1.2.2.1

FEDERAL RESOURCES AWARDED PURSUANT TO THIS AGREEMENT MAY ALSO BE SUBJECT TO THE FOLLOWING:

Title 23 – Highways, United States Code
http://uscode.house.gov/browse/prelim@title23&edition=prelim

Title 49 – Transportation, United States Code
http://uscode.house.gov/browse/prelim@title49&edition=prelim

Infrastructure Investment and Jobs Act (IIJA) (Public Law 117-58, also known as the “Bipartisan Infrastructure Law”)
https://www.congress.gov/117/bills/hr3684/BILLS-117hr3684enr.pdf

Federal Highway Administration – Florida Division
http://www.fhwa.dot.gov/fldiv/

Federal Funding Accountability and Transparency Act (FFATA) Sub-award Reporting System (FSRS)
https://www.fsrs.gov/

EXHIBIT F

CONTRACT PAYMENT REQUIREMENTS
Florida Department of Financial Services, Reference Guide for State Expenditures
Cost Reimbursement Contracts

Invoices for cost reimbursement contracts must be supported by an itemized listing of expenditures by category (salary, travel, expenses, etc.). Supporting documentation shall be submitted for each amount for which reimbursement is being claimed indicating that the item has been paid. Documentation for each amount for which reimbursement is being claimed must indicate that the item has been paid. Check numbers may be provided in lieu of copies of actual checks. Each piece of documentation should clearly reflect the dates of service. Only expenditures for categories in the approved agreement budget may be reimbursed. These expenditures must be allowable (pursuant to law) and directly related to the services being provided.

Listed below are types and examples of supporting documentation for cost reimbursement agreements:

Salaries: Timesheets that support the hours worked on the project or activity must be kept. A payroll register, or similar documentation should be maintained. The payroll register should show gross salary charges, fringe benefits, other deductions and net pay. If an individual for whom reimbursement is being claimed is paid by the hour, a document reflecting the hours worked times the rate of pay will be acceptable.

Fringe benefits: Fringe benefits should be supported by invoices showing the amount paid on behalf of the employee, e.g., insurance premiums paid. If the contract specifically states that fringe benefits will be based on a specified percentage rather than the actual cost of fringe benefits, then the calculation for the fringe benefits amount must be shown. Exception: Governmental entities are not required to provide check numbers or copies of checks for fringe benefits.

Travel: Reimbursement for travel must be in accordance with s. 112.061, F.S., which includes submission of the claim on the approved state travel voucher along with supporting receipts and invoices.

Other direct costs: Reimbursement will be made based on paid invoices/receipts and proof of payment processing (cancelled/processed checks and bank statements). If nonexpendable property is purchased using state funds, the contract should include a provision for the transfer of the property to the State when services are terminated. Documentation must be provided to show compliance with DMS Rule 60A-1.017, F.A.C., regarding the requirements for contracts which include services and that provide for the contractor to purchase tangible personal property as defined in s. 273.02, F.S., for subsequent transfer to the State.

Indirect costs: If the contract stipulates that indirect costs will be paid based on a specified rate, then the calculation should be shown. Indirect costs must be in the approved agreement budget and the entity must be able to demonstrate that the costs are not duplicated elsewhere as direct costs. All indirect cost rates must be evaluated for reasonableness and for allowability and must be allocated consistently.

Contracts between state agencies may submit alternative documentation to substantiate the reimbursement request, which may be in the form of FLAIR reports or other detailed reports.

The Florida Department of Financial Services, online Reference Guide for State Expenditures can be found at this web address https://www.myfloridacfo.com/docs-sf/accounting-and-auditing-libraries/state-agencies/reference-guide-for-state-expenditures.pdf.

EXHIBIT G

FHWA FORM 1273
FEDERAL RESOURCES AWARDED PURSUANT TO THIS AGREEMENT ARE AS FOLLOWS:

LEGAL REQUIREMENTS AND RESPONSIBILITY TO THE PUBLIC – COMPLIANCE WITH FHWA 1273.

The FHWA-1273 version dated October 23, 2023 is appended in its entirety to this Exhibit. FHWA-1273 may also be referenced on the Department's website at the following URL address:
http://www.fhwa.dot.gov/programadmin/contracts/1273/1273.pdf

Sub-recipients of federal grants awards for Federal-Aid Highway construction shall take responsibility to obtain this information and comply with all provisions contained in FHWA-1273.

EXHIBIT H

ALTERNATIVE ADVANCE PAYMENT FINANCIAL PROVISIONS

If payments are authorized by the Chief Financial Officer of the State of Florida under Chapters 215 and 216, Florida Statutes or the Department's Comptroller under Section 334.044(29), Florida Statutes:

1. The invoiced amount to the Department for contractor(s) and consultant(s) cannot exceed the amount of the invoice received from the Recipient's contractor(s) or consultant(s).

2. All of the Recipient's costs must have been incurred and paid prior to the date of the invoice.

3. All invoices received from the Recipient shall clearly separate the cost of the contractor(s) or consultant(s) from the Recipient's costs billed to the Department.

4. All invoices submitted to the Department must provide complete documentation, including a copy of the contractor's or consultant's invoice(s), to substantiate the cost on the invoice.

5. The Recipient must certify on each invoice that the costs from the contractor(s) or consultant(s) are valid and have been incurred by the contractor(s) or consultant(s).

6. Each monthly invoice subsequent to the first invoice from the Recipient must contain a statement from the Recipient that the previous month's cost incurred by the contractor(s) or consultant(s) has been paid by the Recipient to the contractor(s) or consultant(s).

EXHIBIT O

TERMS AND CONDITIONS OF CONSTRUCTION IN DEPARTMENT RIGHT OF WAY

Section 17.g. of the Agreement is amended as follows for Construction on the Department's Right of Way.

1. If the Project involves construction on, under, or over the Department's right-of-way, the design work for all portions of the Project to be constructed on, under, or over the Department's right-of-way shall be submitted to the Department for review prior to any work being commenced, and the following provisions shall apply:

a. The Project shall be designed and constructed in accordance with the latest edition of the Department's Standard Specifications for Road and Bridge Construction and Department Design Standards and Manual of Uniform Traffic Control Devices ("MUTCD"). The following guidelines shall apply as deemed appropriate by the Department: the Department Structures Design Manual, AASHTO Guide Specifications for the Design of Pedestrian Bridges, AASHTO LRFD Bridge Design Specifications, the Florida Department of Transportation Design Manual ("FDM") and the Department Traffic Engineering Manual.

Designs that do not meet Department standards may be rejected by the Department at its sole discretion. The Department may allocate Department-managed resources to facilitate compliance with applicable design standards. If changes to the Department approved plans are required, the Recipient shall notify the Department of the changes and receive approval from the Department prior to the changes being constructed. The Recipient shall maintain the area of the Project, at all times, and coordinate any work needs of the Department during construction of the Project.

b. The Recipient shall notify the Department a minimum of 48 hours before beginning construction within, under, or over Department right-of-way. The Recipient shall notify the Department should construction be suspended for more than 5 working days. The Department contact person for construction is D5-ConstructionSpecialProjects@dot.state.fl.us.

c. The Recipient shall be responsible for monitoring construction operations and the maintenance of traffic ("MOT") throughout the course of the Project in accordance with the latest edition of the Department Standard Specifications, section 102. The Recipient is responsible for the development of a MOT plan and making any changes to that plan as necessary. The MOT plan shall be in accordance with the latest version of the Department Design Standards, Index 600 series. Any MOT plan developed by the Recipient that deviates from the Department Design Standards must be signed and sealed by a professional engineer. MOT plans will require approval by the Department prior to implementation.

d. The Recipient shall be responsible for locating all existing utilities, both aerial and underground, and for ensuring that all utility locations be accurately documented on the construction plans. All utility conflicts shall be fully resolved directly with the applicable utility.

e. The Recipient will be responsible for obtaining all permits that may be required by other agencies or local governmental entities.

f. It is hereby agreed by the Parties that this Agreement creates a permissive use only and all improvements located on, under, or over the Department's right-of-way resulting from this Agreement shall become the property of the Department. Neither the granting of the permission to use the Department right-of-way nor the placing of facilities upon the Department property shall operate to create or vest any property right to or in the Recipient, except as may otherwise be provided in separate agreements. The Recipient shall not acquire any right, title, interest or estate in Department right-of-way, of any nature or kind whatsoever, by virtue of the execution, operation, effect, or performance of this Agreement including, but not limited to, the Recipient's use, occupancy or possession of Department right-of-way. The Parties agree that this Agreement does not, and shall not be construed to, grant credit for any future transportation concurrency requirements pursuant to Chapter 163, Florida Statutes.

g. The Recipient shall not cause any liens or encumbrances to attach to any portion of the Department's property, including but not limited to, the Department's right-of-way.

h. The Recipient shall perform all required testing associated with the design and construction of the Project. Testing results shall be entered into the department's Materials Testing and Certification database application and the department must provide the final Materials Certification for the Project. The Department shall have the right to perform its own independent testing during the course of the Project.

i. The Recipient shall exercise the rights granted herein and shall otherwise perform this Agreement in a good and workmanlike manner, with reasonable care, in accordance with the terms and provisions of this Agreement and all applicable federal, state, local, administrative, regulatory, safety and environmental laws, codes, rules, regulations, policies, procedures, guidelines, standards and permits, as the same may be constituted and amended from time to time, including, but not limited to, those of the Department, applicable Water Management District, Florida Department of Environmental Protection, Environmental Protection Recipient, the Army Corps of Engineers, the United States Coast Guard and local governmental entities.

j. If the Department determines a condition exists which threatens the public's safety, the Department may, at its discretion, cause construction operations to cease and immediately have any potential hazards removed from on, under, or over its right-of-way at the sole cost, expense, and effort of the Recipient. The Recipient shall bear all construction delay costs incurred by the Department.

k. The Recipient shall be responsible to maintain and restore all features that might require relocation within the Department right-of-way.

l. The Recipient will be solely responsible for clean up or restoration required to correct any environmental or health hazards that may result from construction operations.

m. The acceptance procedure will include a final "walk-through" by Recipient and Department personnel. Upon completion of construction, the Recipient will be required to submit to the Department final as-built plans and an engineering certification that construction was completed in accordance to the plans. Submittal of the final as-built plans shall include one complete set of the signed and sealed plans on 11" X 17" plan sheets and an electronic copy prepared in Portable Document Format (PDF). Prior to the termination of this Agreement, the Recipient shall remove its presence, including, but not limited to, all of the Recipient's property, machinery, and equipment from Department right-of-way and shall restore those portions of Department right of way disturbed or otherwise altered by the Project to substantially the same condition that existed immediately prior to the commencement of the Project.

n. If the Department determines that the Project is not completed in accordance with the provisions of this Agreement, the Department shall deliver written notification of such to the Recipient. The Recipient shall have thirty (30) days from the date of receipt of the Department's written notice, or such other time as the Recipient and the Department mutually agree to in writing, to complete the Project and provide the Department with written notice of the same (the "Notice of Completion"). If the Recipient fails to timely deliver the Notice of Completion, or if it is determined that the Project is not properly completed after receipt of the Notice of Completion, the Department, within its discretion may: 1) provide the Recipient with written authorization granting such additional time as the Department deems appropriate to correct the deficiency(ies); or 2) correct the deficiency(ies) at the Recipient's sole cost and expense, without Department liability to the Recipient for any resulting loss or damage to property, including, but not limited to, machinery and equipment. If the Department elects to correct the deficiency(ies), the Department shall provide the Recipient with an invoice for the costs incurred by the Department and the Recipient shall pay the invoice within thirty (30) days of the date of the invoice.

o. The Recipient shall implement best management practices for erosion and pollution control to prevent violation of state water quality standards. The Recipient shall be responsible for the correction of any erosion, shoaling, or water quality problems that result from the construction of the Project.

p. Portable Traffic Monitoring Site (PTMS) or a Telemetry Traffic Monitoring Site (TTMS) may exist within the vicinity of your proposed work. It is the responsibility of the Recipient to locate and avoid damage to these sites. If a PTMS or TTMS is encountered during construction, the Department must be contacted immediately.

q. During construction, highest priority must be given to pedestrian safety. If permission is granted to temporarily close a sidewalk, it should be done with the express condition that an alternate route will be provided, and shall continuously maintain pedestrian features to meet Americans Disability Act (ADA) standards.

r. Restricted hours of operation will be from TO BE DETERMINED PRIOR TO CONSTRUCTION, (DAYS OF THE WEEK FOR RESTRICTED OPERATION TO BE DETERMINED), unless otherwise approved by the Operations Engineer, or designee.

s. Lane closures on the state road system must be coordinated with the Public Information Office at least two weeks prior to the closure. The contact information for the Department's Public Information Office is:

D5-PIO@dot.state.fl.us

Note: (Highlighted sections indicate need to confirm information with District Office or appropriate DOT person managing the Agreement)

CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 4/15/2025

SUBJECT: (C10) Resolution No. 25-09 - Approval of FDOT Locally Funded Agreement 444033-3-62-02 Construction Engineering Inspection for Port Orange Sidewalk Gaps

DEPARTMENT: Community Development

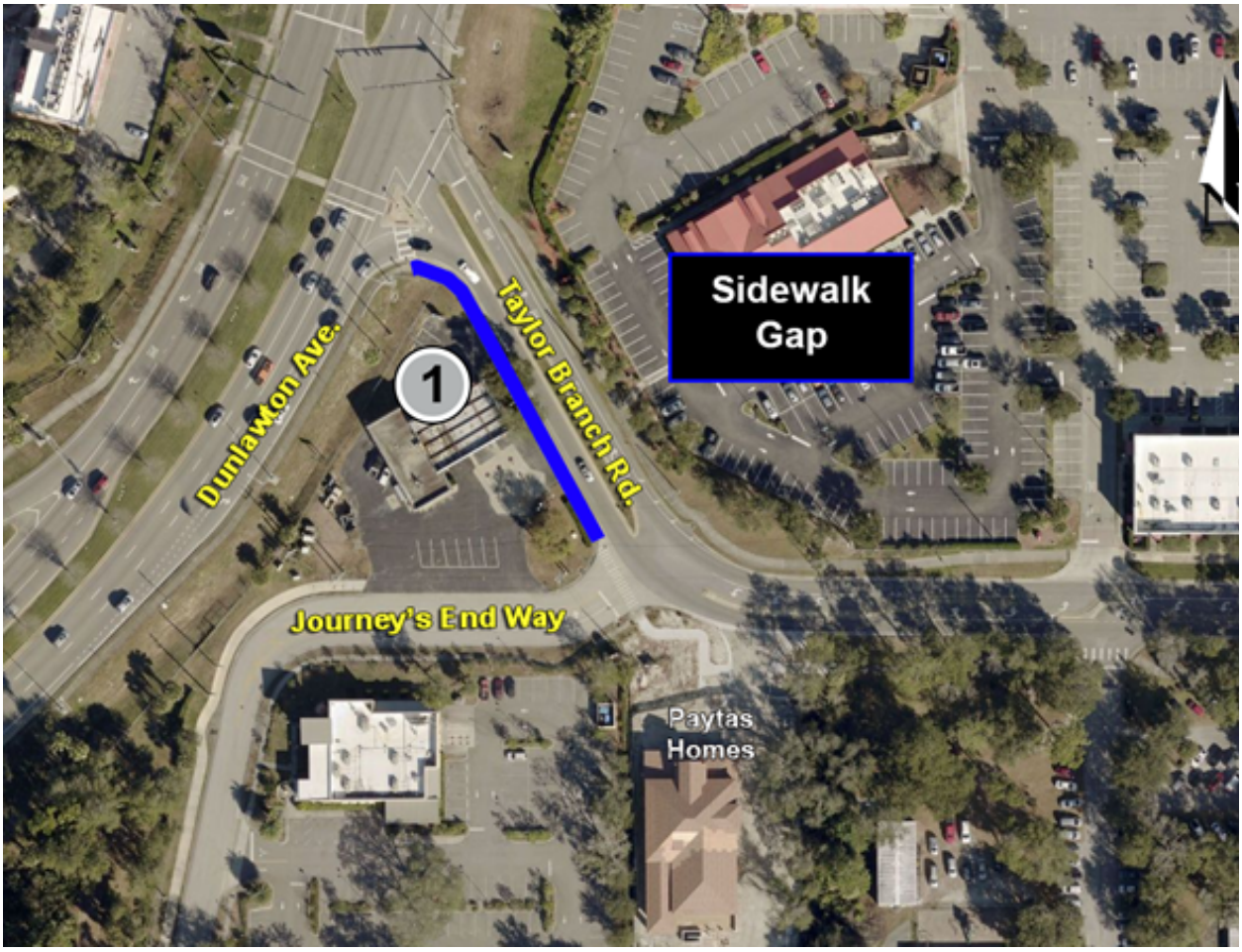
GOAL: 1 - Public Safety
2 - Infrastructure
3 - Quality of Life

RECOMMENDED MOTION: Move to approve Resolution No. 25-09, approving the Locally Funded Agreement for 444033-3-62-02 for Construction Engineering Inspection (CEI) for the Port Orange Sidewalk Gaps Project and authorizing the Mayor and City Clerk to execute the Agreement and Resolution.

SUMMARY: The Florida Department of Transportation (FDOT) Local Funding Agreement (LFA) is for the Construction Engineering Inspection (CEI) services for the Port Orange Sidewalk Gaps project (FDOT #444033). CEI is required for this project to ensure that the contractor adheres to the safety standards and regulatory requirements and completes the project according to the approved plans. For this project, the City will utilize DRMP, FDOT District 5's contract Construction Engineering Inspection (CEI) consultant.

On September 18, 2024, as part of the FY 25-29 Capital Improvements Program (CIP), the City approved the proposed budget to include funds for constructing sidewalks to complete sidewalk gaps identified in Port Orange Project #CD184. The project consists of filling in sidewalk gaps at four locations within Port Orange:

1) West side of Taylor Branch Road from Dunlawton Avenue to Journey's End Way
2) North and South sides of Woodlake Drive from Clyde Morris Boulevard to existing sidewalks
3) North and South sides of Ravenwood Drive from Clyde Morris Boulevard to Woodlake Drive
4) South side of Herbert Street between City Center Drive and Gulfstream Village driveway


Sidewalk Gap
1
Dunlawton Ave.
Taylor Branch Rd.
Journey's End Way
Paytas Homes


3
Sun Retreats Daytona Beach
Woodlake Dr.
Sidewalk Gaps
2
4
Ravenwood Dr.
Clyde Morris Blvd.
Herbert St.
City Center Dr.
City Center Sports Complex
Gulf Stream Village

The negotiated CEI fee for this project is $152,705. Initially, the City was responsible for funding the CEI but now it will be funded with federal funds. The City is responsible for a 15% CEI Contingency amount of $22,906. The agreement stipulates that the City shall furnish the FDOT with an advance deposit in the amount of $22,906 within 14 calendar days of the execution of this Agreement. Funds are budgeted and available in Project #CD184 for this purpose. Approval of this Resolution and Locally Funded Agreement will facilitate the issuance of a Notice to Proceed to the CEI consultant in summer 2025, which aligns with the project construction schedule. The City's overall contribution toward construction and CEI costs is $122,860, or 14% of the $872,304 estimated project cost.

PRESENTER: Tim Burman

ATTACHMENTS:

1.	Resolution No. 25-09	Resolution No. 25-09.pdf
2.	444033-3-62-02 Contingency LFA	444033-3-62-02 Contingency LFA w city names.pdf
3.	444033-3-62-02 Three Party Escrow Agreement	444033-3-62-02 Three Party Escrow Agreement w city names & attest.pdf

Margaret Tomlinson	Created/Initiated - 1/17/2025
Tim Burman	Approved - 1/19/2025
Linda Truitt	Approved - 1/22/2025
Shannon Balmer	Approved - 4/3/2025
Wayne Clark	Final Approval - 4/4/2025

RESOLUTION NO. 25-09

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, APPROVING A LOCALLY FUNDED AGREEMENT AND ASSOCIATED THREE PARTY ESCROW AGREEMENT BETWEEN THE CITY OF PORT ORANGE, FLORIDA AND THE FLORIDA DEPARTMENT OF TRANSPORTATION FOR FPN 444033-3-62-02 FOR CONSTRUCTION ENGINEERING INSPECTION SERVICES FOR THE PORT ORANGE SIDEWALK GAPS PROJECT (VARIOUS LOCATIONS); AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE ALL NECESSARY AGREEMENTS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the State of Florida Department of Transportation and the City of Port Orange desire to enter into a Locally Funded Agreement for construction engineering inspection services (CEI) for the Port Orange Sidewalk Gaps Project (various locations identified in Port Orange Project #CD184); and

WHEREAS, the State of Florida Department of Transportation has requested the City of Port Orange to execute and deliver to the State of Florida Department of Transportation the Locally Funded Agreement and the associated Three Party Escrow Agreement for the aforementioned project, FPN 444033-3-62-02. `

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA:

Section 1. The City Council of the City of Port Orange, Florida, hereby approves and authorizes the Mayor and City Clerk to make, execute, and deliver to the State of Florida Department of Transportation the Locally Funded Agreement, and the related Three Party Escrow Agreement, and any Supplemental Agreements to the Locally Funded Agreement for the aforementioned project, Financial Project Number (FPN) 444033-3-62-02.

Section 2. This resolution shall become effective immediately upon adoption.

_____
MAYOR SCOTT STILTNER

ATTEST:

_____
Robin L. Fenwick, MMC, City Clerk

Adopted on the day of

Reviewed and Approved: _____
Shannon K. Balmer, Senior Assistant City Attorney

Agency: City of Port Orange Vendor No: F596000412003	Fund: LF Contract Amount: $22,906.00	Financial Project No.: 444033-3-62-02

LOCALLY FUNDED AGREEMENT
BETWEEN
THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
AND
THE CITY OF PORT ORANGE

This **AGREEMENT**, made and entered into _____, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION (hereinafter referred to as the "DEPARTMENT") and the CITY OF PORT ORANGE (hereinafter referred to as the "LOCAL GOVERNMENT"),

WITNESSETH:

WHEREAS, the Parties have been granted specific legislative authority to enter into this Agreement pursuant to Section 339.12, Florida Statutes; and

WHEREAS, the LOCAL GOVERNMENT, by Resolution, a copy of which is attached hereto, as Exhibit "B", and made apart hereof, has authorized its officers to execute this Agreement on its behalf; and

WHEREAS, the DEPARTMENT is prepared, in accordance with its Adopted Five Year Work Program, to undertake the Construction Engineering and Inspection (CEI) services for the project described as: "Port Orange Sidewalk Gaps", said project being known as Financial Project Number (FPN) 444033-3-62-01, hereinafter referred to as the "Project"; and

WHEREAS, the Project is not revenue producing and is contained in the Adopted Work Program; and

WHEREAS, the implementation of the Project is in the interests of both the DEPARTMENT and the LOCAL GOVERNMENT and it would be most practical, expeditious, and economical for the LOCAL GOVERNMENT to provide a portion of the funds for the CEI services of the Project in Fiscal Year 2024/2025, said portion of the Project being known as FPN 444033-3-62-02, and said costs hereinafter referred to as "Federal-Aid Non-Participating Costs;" and

WHEREAS, in order to maintain uniformity throughout the Project and to provide for the Federal-Aid Non-Participating Costs in a cost effective manner, the LOCAL GOVERNMENT desires to provide funding to the DEPARTMENT to be used for the Federal-Aid Non-Participating Costs, as described in "Exhibit A".

NOW, THEREFORE, in consideration of the mutual benefits to be derived from the joint participation of this Agreement, the parties agree as follows:

1. The term of this Agreement shall begin upon the date of signature of the last party to sign and shall remain in full force and effect through completion of all services required of the LOCAL GOVERNMENT. The DEPARTMENT may, at any time and at any stage, amend or terminate the Project in whole or in part if the DEPARTMENT determines that such action is in the best interests of the public.

2. The DEPARTMENT shall undertake and complete the CEI services for the Project using the Federal-Aid Non-Participating Costs described in Exhibit "A".

3. The DEPARTMENT shall perform the CEI services for the Project. Nothing herein shall be construed as requiring the DEPARTMENT to perform any activity which is outside the scope of the Project as previously defined. Except as specifically stated otherwise in this Agreement, all such activities shall be performed by such entities, at such times, in such manner, under such conditions, and pursuant to such standards as the DEPARTMENT, in its sole discretion, deems appropriate. The LOCAL GOVERNMENT shall not have any jurisdiction or control over the DEPARTMENT'S activities, except as specifically stated in this Agreement. The LOCAL GOVERNMENT shall be entitled to be advised of the progress of the Project at reasonable intervals upon request.

4. Contribution by the LOCAL GOVERNMENT of the funds for the CEI phase of the Project shall be made as follows:

(A) The LOCAL GOVERNMENT and the DEPARTMENT agree to share the cost for CEI services of the Project. The LOCAL GOVERNMENT agrees to provide 100% of the Federal-Aid Non-Participating Costs required for the CEI services and the DEPARTMENT agrees to provide the federal funds for the federal participating share of the CEI services, up to **$152,705.00 (One Hundred Fifty-Two Thousand Seven Hundred Five Dollars and No/100).**

(B) The share of the LOCAL GOVERNMENT shall be, at a minimum, the stated percentage of the actual Federal-Aid Non-Participating Costs of the project. However, in the event the federal government fails to provide an amount which is equal to the anticipated federal participating share, the LOCAL GOVERNMENT shall be responsible for 100% of the funds required to make up the shortfall, including cost overruns and/or supplemental agreements not paid by federal funds. The DEPARTMENT is only responsible for the stated federal participating share as described in paragraph 4(A). The Project is off the "State Highway System", therefore, in

accordance with Section 339.08(1), F.S., State funding cannot be used for payments of non-participating costs on this Project.

(C) Should such shortfalls occur, due to a determination that said costs are non-participating, the LOCAL GOVERNMENT agrees to provide, without delay adequate funds to ensure that cash on deposit with the DEPARTMENT is sufficient to fully fund the shortfall. The DEPARTMENT shall notify the LOCAL GOVERNMENT as soon as it becomes apparent there is a shortfall; however, failure of the DEPARTMENT to so notify the LOCAL GOVERNMENT shall not relieve the LOCAL GOVERNMENT from its obligation to pay for its full participation of Federal-Aid Non-Participating Costs during the project and on final accounting, as provided herein below.

(D) The estimated total cost as set forth in the DEPARTMENT'S adopted work program for this Project is **$152,705.00 (One Hundred Fifty-Two Thousand Seven Hundred Five Dollars and No/100)**. The estimated LOCAL GOVERNMENT share for 100% of the non-federal portion of the project is **$22,906.00 (Twenty-Two Thousand Nine Hundred Six Dollars and No/100)**.

(E) The LOCAL GOVERNMENT agrees that it will, **within at least 14 calendar days of the execution of this Agreement**, furnish the DEPARTMENT an advance deposit in the amount of **$22,906.00 (Twenty-Two Thousand Nine Hundred Six Dollars and No/100).** The deposit shall be the total estimated Federal-Aid Non-Participating Costs.

(F) If the Federal-Aid Non-Participating Costs are in excess of the advance deposit amount, the LOCAL GOVERNMENT will provide, without delay, an additional deposit within fourteen (14) calendar days of notification from the DEPARTMENT, so that the total deposit is equal to the Federal-Aid Non-Participating Costs. The DEPARTMENT will notify the LOCAL GOVERNMENT as soon as it becomes apparent the Federal-Aid Non-Participating Costs are in excess of the advance deposit amount. However, failure of the DEPARTMENT to so notify the LOCAL GOVERNMENT shall not relieve the LOCAL GOVERNMENT from its obligation to pay for its full participation on final accounting as provided herein below. If the LOCAL GOVERNMENT cannot provide the additional deposit within fourteen (14) days, a letter must be submitted to and approved by the DEPARTMENT's project manager indicating when the deposit will be made. The LOCAL GOVERNMENT understands the request and approval of the additional time could delay the project, and additional costs may be incurred due to delay of the project.

(G) If the Federal-Aid Non-Participating Costs are less than the advance deposit amount, the DEPARTMENT will refund the amount that the advance deposit exceeds the LOCAL GOVERNMENT's share of the Federal-Aid Non-Participating Costs if such refund is requested by the LOCAL GOVERNMENT in writing.

(H) Should project modifications occur that increase the Federal-Aid Non-Participating Costs, the LOCAL GOVERNMENT will be notified by the District accordingly. The LOCAL GOVERNMENT agrees to provide, without delay, adequate funds to ensure that cash on deposit with the DEPARTMENT is sufficient to fully fund the Federal-Aid Non-Participating Costs. The DEPARTMENT shall notify the LOCAL GOVERNMENT as soon as it becomes apparent the Federal-Aid Non-Participating Costs will overrun the advance deposit amount. However, failure of the DEPARTMENT to so notify the LOCAL GOVERNMENT shall not relieve the LOCAL GOVERNMENT from its obligation to pay for its full participation on final accounting as provided herein below.

(I) The DEPARTMENT intends to have its final and complete accounting of all costs incurred in connection with the work performed hereunder within three-hundred and sixty (360) calendar days of final payment to the Consultant. All project cost records and accounts shall be subject to audit by a representative of the LOCAL GOVERNMENT for a period of three (3) years after final close out of the project. The LOCAL GOVERNMENT will be notified of the final cost. The parties agree that in the event the final accounting of total project costs pursuant to the terms of this agreement is less than the total deposits to date, a refund of the excess will be made by the DEPARTMENT to the LOCAL GOVERNMENT. If the final accounting is not performed within three-hundred and sixty (360) calendar days, the LOCAL GOVERNMENT is not relieved from its obligation to pay.

(J) In the event said final accounting of total project costs is greater than the total deposits to date, the LOCAL GOVERNMENT will pay the additional amount within forty (40) calendar days from the date of the invoice. The LOCAL GOVERNMENT agrees to pay interest at a rate as established pursuant to Section 55.03, Florida Statutes (F.S.), on any invoice not paid within the forty (40) calendar days until the invoice is paid.

(K) The payment of funds under this Locally Funded Agreement will be made directly to the DEPARTMENT for deposit and as provided in the attached escrow agreement between LOCAL GOVERNMENT, DEPARTMENT and the State of Florida, Department of Financial Services, Division of Treasury.

(L) Contact Persons:

DEPARTMENT

District 5 Local Programs
719 South Woodland Boulevard, M.S. 4-520
DeLand, Florida 32720
(386) 943-5452
D5-LocalPrograms@dot.state.fl.us

District 5 Construction Special Projects
719 South Woodland Boulevard, M.S. 3-506
DeLand, Florida 32720
(386) 943-5406
D5-ConstructionSpecialProjects@dot.state.fl.us

LOCAL GOVERNMENT

Lisa Epstein
Engineering Project Manager
City of Port Orange
1000 City Center Circle
Port Orange, Florida 32129
(386) 506-5667
lepstein@port-orange.org

5. All tracings, plans, specifications, maps, models, reports, or other work product prepared or obtained under this Agreement shall be considered works made for hire for the DEPARTMENT and shall at all times be and remain the property of the DEPARTMENT without restriction or limitation on their use. The LOCAL GOVERNMENT may, however, inspect those materials upon providing reasonable advance notice to the DEPARTMENT.

6. In the event this Agreement is in excess of TWENTY FIVE THOUSAND DOLLARS ($25,000.00) or has a term for a period of more than one (1) year, the provisions of Chapter 339.135(6)(a), Florida Statutes, are hereby incorporated as follows:

> "The DEPARTMENT, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The DEPARTMENT shall require a statement from the Comptroller of the Department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding one (1) year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for

in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the DEPARTMENT which are for an amount in excess of $25,000.00 and which have a term for a period of more than one (1) year."

7. The DEPARTMENT may unilaterally cancel this Agreement for refusal by the LOCAL GOVERNMENT to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by such party in conjunction with this Agreement.

8. This Agreement constitutes the complete and final expression of the parties with respect to the subject matter hereof, and incorporates and includes all proper negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein. The parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representation or agreements whether oral or written.

9. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Florida. Any provision herein determined by a court of competent jurisdiction, or any other legally constituted body having jurisdiction, to be invalid or unenforceable shall be severable and the remainder of this Agreement shall remain in full force and effect, provided that the invalidated or unenforceable provision is not material to the intended operation of this Agreement.

10. The DEPARTMENT and the LOCAL GOVERNMENT acknowledge and agree to the following:

(A) The LOCAL GOVERNMENT shall utilize the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of all new employees hired by the LOCAL GOVERNMENT during the term of the contract; and

(B) The LOCAL GOVERNMENT shall expressly require any contractors and subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of all new employees hired by the contractor/subcontractor during the contract term.

The remainder of this page intentionally left blank.

IN WITNESS WHEREOF, the LOCAL GOVERNMENT has executed this Agreement on _____, and the DEPARTMENT has executed this Agreement on _____.

CITY OF PORT ORANGE

By: _____

Name: Scott Stiltner

Title: Mayor

Attest:

_____

Robin L. Fenwick, MMC, City Clerk

Legal Review:

_____

LOCAL GOVERNMENT Attorney

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

By: _____

Name: James S. Stroz, Jr. P.E.

Title: Director of Transportation Development

Attest:

_____

Executive Secretary

Legal Review:

_____

DEPARTMENT Attorney

Financial Provisions Approval by
Department of Comptroller on:

October 5, 2020

EXHIBIT "A"

SCOPE OF SERVICES

The Port Orange Sidewalk Gaps project is with the City of Port Orange (LOCAL GOVERNMENT). This is a sidewalk project to enhance pedestrian connectivity along Taylor Branch Road from State Route 421 (Dunlawton Avenue) to Taylor Road/Journey's End Way, Herbert Street from west of Terrace Village Drive to east of City Center Drive, Ravenwood Drive from west of Woodlake Drive to Clyde Morris Boulevard, and Woodlake Drive from 345 feet west of Clyde Morris Boulevard to Clyde Morris Boulevard. Total project length is approximately 2,007 feet (0.38 miles).

Proposed improvements on Taylor Branch Road include constructing a minimum six-foot-wide sidewalk, Type F and E curb and gutter, detectable warnings, concrete pole removal, crosswalk, and milling and resurfacing of the affected crosswalk.

Proposed improvements on Herbert Street include constructing a minimum five-foot-wide sidewalk, drainage, turnout construction, Type B stabilization, pipe handrail, Type F and E curb and gutter, detectable warnings, gravity wall, conduit, pull box, power service relocation, installation of a pedestal pole, pole removal, crosswalk, and milling and resurfacing of the affected crosswalk. Drainage improvements include inlets, pipe culvert, and mitered end section

Proposed improvements on Ravenwood Drive include constructing a minimum six-foot-wide sidewalk, Type F and E curb and gutter, detectable warnings, crosswalk, and milling and resurfacing of the affected crosswalk,

Proposed improvements on Woodlake Drive include constructing a minimum five-foot-wide sidewalk, Type F curb and gutter, detectable warnings, crosswalk, and milling and resurfacing of the affected crosswalks.

Other construction elements include mobilization, maintenance of traffic, erosion control, clearing and grubbing, removal of existing concrete, signing, pavement markings, mailbox replacement, embankment, excavation, tree protection, root barrier, and sod.

Proposed work within Florida Department of Transportation (DEPARTMENT) Right-of-Way at State Route 421 (Dunlawton Avenue) includes sidewalk and curb ramp construction at the intersection of Taylor Branch Road

The following items are not eligible for reimbursement and will be locally funded:

- Item 0107-1 Litter Removal
- Item 0107-2 Mowing
- Proposed improvements on Ravenwood Drive and Woodlake Drive as the roads are not on the Federal Aid list.
    - 0327-70-6 Milling Existing Asphalt Pavement 1 ½ inch Average Depth (294 SY)
    - 0337-7-81 Asphalt Concrete Friction Course, Traffic B FC 12.5, PG 76-22 (24.3 TN)

All pedestrian facilities shall adhere to current Americans with Disabilities Act (ADA) standards. Utility coordination is required and has been coordinated. Utility coordination will be required during construction and utility work schedules have been developed. The City of Port Orange (LOCAL GOVERNMENT) is coordinating permitting requirements with the St. Johns River Water Management District. Right-of-way acquisition is underway and is to be completed by the City of Port Orange (LOCAL GOVERNMENT) prior to construction. The City of Port Orange (LOCAL GOVERNMENT) shall construct the project within the limits of the existing right-of-way of the City of Port Orange and Volusia County or easements.

The LOCAL GOVERNMENT will be responsible for providing funds for any shortfalls, including but not limited to cost over runs, Federal-Aid Ineligible Costs and Federal-Aid Non-Participating Costs including the initial amount of **$22,906.00 (Twenty-Two Thousand Nine Hundred Six Dollars and No/100).**

The remainder of this page intentionally left blank.

EXHIBIT “B”

RESOLUTION

The Resolution, or other official authorization, authorizing entry into this Agreement is attached and incorporated into this Agreement.

THREE PARTY ESCROW AGREEMENT

THIS AGREEMENT is made and entered into by and between the State of Florida, Department of Transportation ("FDOT"), the City of Port Orange (“Participant”), and the State of Florida, Department of Financial Services, Division of Treasury (“Escrow Agent”), and shall become effective upon the Agreement’s execution by Escrow Agent.

WHEREAS, FDOT and Participant are engaged in the following project (“Project”):

Project Name: Port Orange Sidewalk Gaps
Project #: 444033-3-62-02
County: Volusia

WHEREAS, FDOT and Participant desire to establish an escrow account for the project.

NOW THEREFORE, in consideration of the premises and the covenants contained herein, the parties agree to the following:

1. An initial deposit will be made into an interest bearing escrow account established hereunder for the purposes of the Project. The escrow account will be opened with the Escrow Agent on behalf of FDOT upon Escrow Agent’s receipt and execution of this Agreement.

2. Other deposits to the escrow account may be made during the life of this agreement.

3. Deposits will be delivered in accordance with instructions provided by the Escrow Agent to the FDOT for deposit into the escrow account. A wire transfer or ACH deposit is the preferred method of payment and should be used whenever possible.

4. FDOT's Comptroller or designee shall be the sole signatory on the escrow account with the Escrow Agent and shall have sole authority to authorize withdrawals from the account. Withdrawals will only be made to FDOT or the Participant in accordance with the instructions provided to the Escrow Agent by FDOT’s Comptroller or designee.

5. Moneys in the escrow account will be invested in accordance with section 17.61, Florida Statutes. The Escrow Agent will invest the moneys expeditiously. Income is only earned on the moneys while invested. There is no guaranteed rate of return. Investments in the escrow account will be assessed a fee in accordance with Section 17.61(4)(b), Florida Statutes. All income of the investments shall accrue to the escrow account.

6. Unless instructed otherwise by FDOT, all interest accumulated in the escrow account shall remain in the account for the purposes of the Project.

7. The Escrow Agent agrees to provide written confirmation of receipt of funds to FDOT. FDOT agrees to provide a copy of such written confirmation to Participant upon request.

8. The Escrow Agent further agrees to provide quarterly reports to FDOT concerning the escrow account. FDOT agrees to provide a copy of such quarterly reports to Participant upon request.

9. The Escrow Agent shall not be liable for any error of judgment or for any act done or omitted by it in good faith, or for anything which it may in good faith do or refrain from doing in connection herewith.

10. Escrow Agent shall have no liability for any claim, cost, expense, damage or loss due to the acts or omissions of FDOT and Participant, nor from any separate agreements between FDOT and Participant and shall have no responsibility to monitor or enforce any responsibilities herein or in any separate agreements associated with this Agreement between FDOT and Participant.

11. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Florida.

12. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

13. This Agreement shall terminate upon disbursement by the Escrow Agent of all money held by it in the escrow account in accordance with the instructions given by FDOT's Comptroller or designee and notification from FDOT to Escrow Agent that the account is to be closed.

The remainder of this page is blank.

IN WITNESS WHEREOF, the parties have duly executed the Agreement on the date(s) below.

For FDOT-OOC (signature)	For PARTICIPANT (signature)
	Scott Stiltner, Mayor
Name and Title	Name and Title
59-3024028	
Federal Employer I.D. Number	Federal Employer I.D. Number
Date	Date

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

FDOT Legal Review:

For Escrow Agent (signature)

Name and Title

Date

CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 4/15/2025

SUBJECT: (C11) Resolution No. 25-21 - Approval of FDOT Local Agency Program (LAP) Funding Agreement for Right-of-Way Phase of 449770 Dunlawton Turn Lanes (#CD215)

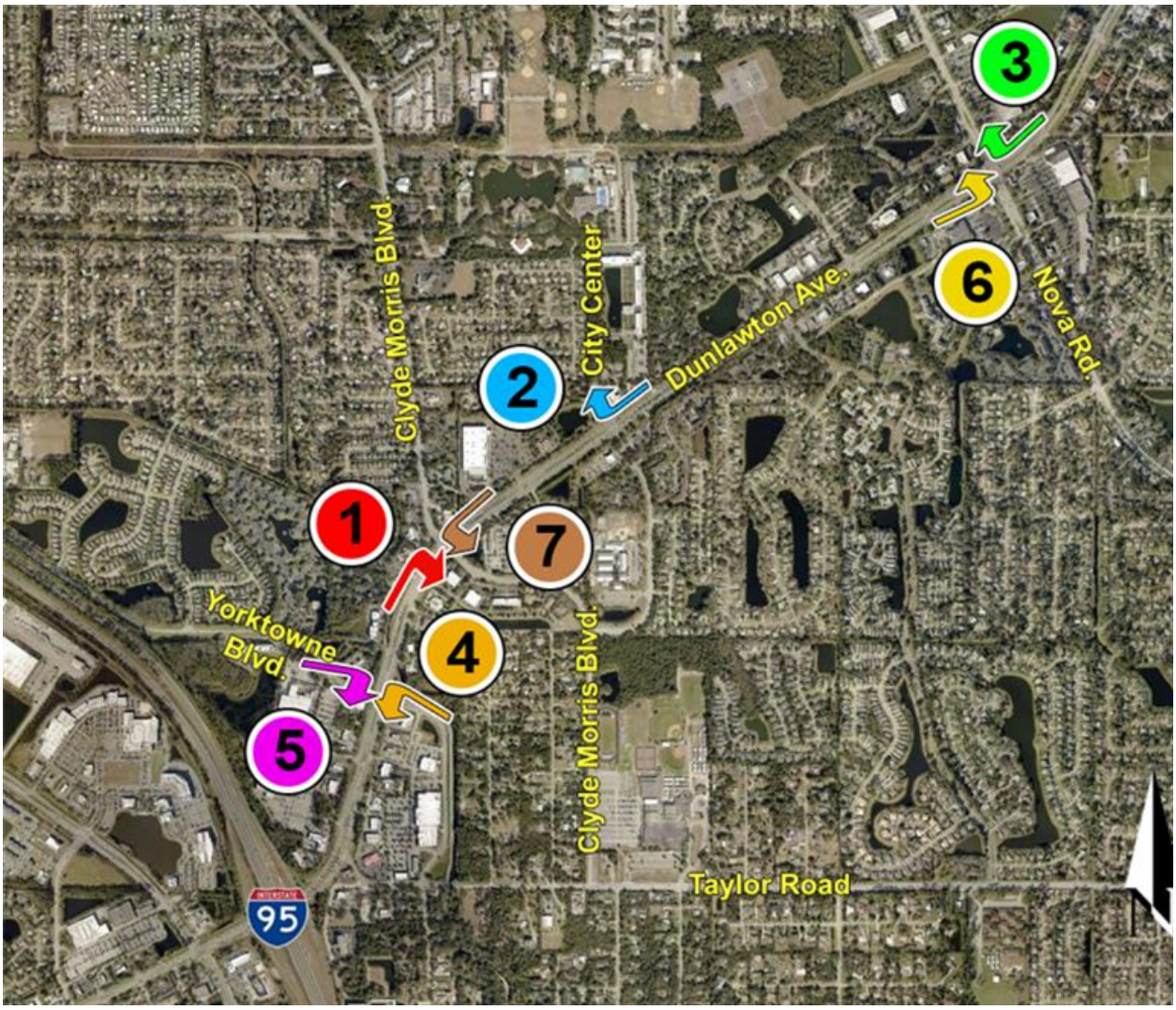
DEPARTMENT: Community Development

GOAL: 1 - Public Safety
2 - Infrastructure
3 - Quality of Life

RECOMMENDED MOTION: Move to approve Resolution No. 25-21, approving the Local Agency Program (LAP) Funding Agreement for Right-of-Way Phase of Dunlawton Turn Lanes and authorizing the Mayor and City Clerk to execute the agreement and Resolution.

SUMMARY: In 2023, the City entered into a Locally Funded Agreement (LFA) with the Florida Department of Transportation (FDOT) for design services associated with the Dunlawton Avenue Turn Lanes Bundle. The design consultant, Dewberry Consultants, completed design and permitting of the turn lanes, along with pedestrian improvements at the intersections, in February 2025. Currently, this project is in the FDOT Adopted Five-Year Work Program, with right-of-way acquisition programmed for 2025 and construction programmed for late 2026. The general location of the seven (7) turn lane projects are described and shown below.

1. Eastbound right turn lane on Dunlawton Avenue at the intersection with Clyde Morris Boulevard.
2. Westbound right turn lane on Dunlawton Avenue at the intersection with City Center Parkway.
3. Westbound right turn lane on Dunlawton Avenue to the intersection with Nova Road.
4. Eastbound right-turn lane on Yorktowne Boulevard at the intersection with Dunlawton Avenue.
5. Extension of the existing westbound left-turn lane on Yorktowne Boulevard at the intersection with Dunlawton Avenue.
6. Extension of the existing eastbound left-turn lane on Dunlawton Avenue at the intersection with Nova Road.
7. Extension of the existing westbound left-turn lane on Dunlawton Avenue at the intersection with Clyde Morris Boulevard.



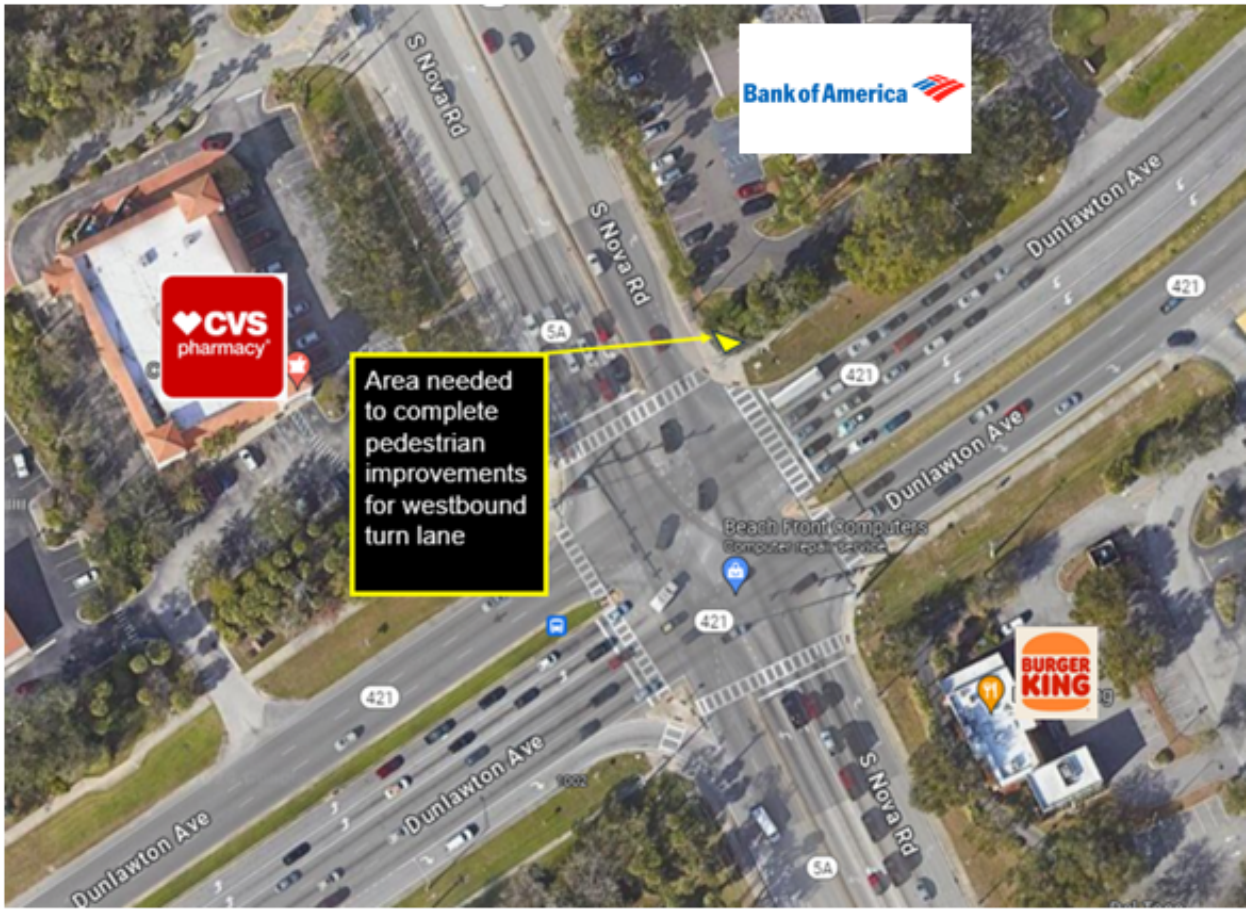
These turn lane improvements and pedestrian improvements at the intersections are anticipated to add roadway capacity at certain intersections along the Dunlawton Avenue corridor, reduce travel delays, reduce damage and maintenance costs of the medians, and improve pedestrian access and compliance with ADA requirements at the intersections.

As part of the design process, areas of right-of-way were identified at the northeast corner of Dunlawton Avenue and Nova Road and on the east side of southbound Clyde Morris Boulevard. The project engineer design consultant prepared the required Title Searches and Right-of-Way Maps for these areas.

This Agreement with FDOT allows a right-of-way consultant to contact the property owners regarding the acquisition of right-of-way or easements, negotiate settlements, and complete the acquisitions. FDOT LAP funds typically cover 90% of the consultant fees and acquisition costs. The City will need to provide a 10% match. At this time, the estimated cost for a consultant and to acquire the right-of-way or easement areas is approximately $222,000. This phase is anticipated to take approximately 9-12 months to complete. The consultant selected will work to obtain right-of-way or an easement at the

two following locations:

1) A 50-square-foot triangular area at the northeast corner of Dunlawton Avenue and Nova Road: The 50-square-foot area needed to relocate the pedestrian crosswalk approaches to accommodate the right turn lane being added. Acquiring right-of-way or easement at this intersection was anticipated in the Feasibility Study for the project. Once this area is obtained, it will either be an easement granted to FDOT or part of FDOT's right-of-way.



2) A 1,836 square-foot strip of property (+/- 11 feet by 175 feet) along the east side of Clyde Morris Boulevard between Dunlawton Avenue and the shared driveway for Walgreens and the Social Security Administration Office. This area is needed to construct a 6-foot wide sidewalk to complete a sidewalk gap between the existing sidewalk on Clyde Morris Boulevard and Dunlawton Avenue sidewalk. This area is not required to construct the turn lane at this intersection, but it will allow for an existing sidewalk gap to be connected and provide connectivity for pedestrians. Since Clyde Morris Boulevard is a County-maintained right-of-way, the County has stated that they do not want any additional right-of-way; therefore, a pedestrian easement will be obtained.



Construction funds are scheduled for this project in late 2026/early 2027. The right-of-way phase will not impact the timing of construction. If right-of-way or easement acquisitions are unsuccessful, the Turn Lane Bundle project can still move forward with the construction of three (3) new turn lanes and three (3) extensions to existing turn lanes in late 2026/early 2027, less the westbound Dunlawton Avenue turn lane at Nova Road (Project #1 on the Map above) and/or the sidewalk along Clyde Morris Boulevard.

PRESENTER: Tim Burman

ATTACHMENTS:

1.	Resolution No. 25-21	Resolution No. 25-21.pdf
2.	449770-1-48-01 (FY26) FDOT LAP Funding Agmt - Dunlawton Ave Turn Lanes (various locations)- Port Orange	449770-1-48-01 (FY26) FDOT LAP Funding Agmt - Dunlawton Ave Turn Lanes - Port Orange (2).pdf
3.	Sketch & Legal Description for Dunlawton at Nova	Sketch and Legal for Dunlawton at Nova.pdf
4.	Sketch & Legal Description for Clyde Morris	Sketch and Legal for Clyde Morris.pdf

Lisa Epstein	Created/Initiated - 3/7/2025
Tim Burman	Approved - 3/26/2025
Linda Truitt	Approved - 3/26/2025
Shannon Balmer	Approved - 4/1/2025
Wayne Clark	Final Approval - 4/3/2025

RESOLUTION NO. 25-21

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, APPROVING A LOCAL AGENCY PROGRAM AGREEMENT FOR FPN 449770-1-48-01 FOR DUNLAWTON AVE TURN LANES (VARIOUS LOCATIONS) PROJECT FOR RIGHT-OF-WAY CONSULTANT AND ACQUISITION SERVICES; AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE THE AGREEMENT WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the State of Florida Department of Transportation and the City of Port Orange desire to facilitate the Local Agency Program (LAP) Agreement for the 449770-1-48-01 Dunlawton Avenue Turn Lanes (various locations) Project for right-of-way consultant and acquisition services; and

WHEREAS, the State of Florida Department of Transportation has requested the City of Port Orange to execute and deliver to the State of Florida Department of Transportation the Local Agency Program Agreement for the aforementioned project, FPN 449770-1-48-01.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA:

Section 1. The City Council of the City of Port Orange, Florida, hereby approves and authorizes the Mayor and City Clerk to make, execute, and deliver to the State of Florida Department of Transportation the Local Agency Program Agreement, and any Supplemental Agreements to the Local Agency Program Agreement for the aforementioned project, Financial Project Number (FPN) 449770-1-48-01.

Section 2. This resolution shall become effective immediately upon adoption.

_____
MAYOR SCOTT STILTNER

ATTEST:

_____
Robin L. Fenwick, MMC, City Clerk

Adopted on the day of

Reviewed and Approved: _____
Shannon K. Balmer, Senior Assistant City Attorney

LOCAL AGENCY PROGRAM AGREEMENT

FPN: 449770-1-48-01	FPN:	FPN:
Federal No (FAIN): D524 083 B	Federal No (FAIN):	Federal No (FAIN):
Federal Award Date:	Federal Award Date:	Federal Award Date:
Fund: SU/LF	Fund:	Fund:
Org Code: 55053010541	Org Code:	Org Code:
FLAIR Approp: 088777	FLAIR Approp:	FLAIR Approp:
FLAIR Obj: 780000	FLAIR Obj:	FLAIR Obj:

County No: 79 Contract No:
Recipient Vendor No: F596000412003 Recipient Unique Entity ID (UEI) No: LV8ZD1LYF3H4

Catalog of Federal Domestic Assistance (CFDA): 20.205 Highway Planning and Construction

THIS LOCAL AGENCY PROGRAM AGREEMENT ("Agreement"), is entered into on _____, by and between the State of Florida Department of Transportation, an agency
(This date to be entered by DOT only)
of the State of Florida ("Department"), and the City of Port Orange ("Recipient").

NOW, THEREFORE, in consideration of the mutual benefits to be derived from joint participation on the Project, the Parties agree to the following:

1. **Authority:** The Department is authorized to enter into this Agreement pursuant to Section 339.12, Florida Statutes. The Recipient by Resolution or other form of official authorization, a copy of which is attached as **Exhibit "D"** and made a part of this Agreement, has authorized its officers to execute this Agreement on its behalf.

2. **Purpose of Agreement:** The purpose of this Agreement is to provide for the Department's participation in the Dunlawton Avenue Turn Lanes (Various Locations) project, as further described in **Exhibit "A",** Project Description and Responsibilities attached to and incorporated in this Agreement ("Project"), to provide Department financial assistance to the Recipient; state the terms and conditions upon which Department funds will be provided; and to set forth the manner in which the Project will be undertaken and completed.

3. **Term of Agreement:** The Recipient agrees to complete the Project on or before May 31, 2026. If the Recipient does not complete the Project within this time period, this Agreement will expire on the last day of the scheduled completion as provided in this paragraph unless an extension of the time period is requested by the Recipient and granted in writing by the Department prior to the expiration of this Agreement. Expiration of this Agreement will be considered termination of the Project. The cost of any work performed after the term of this Agreement will not be reimbursed by the Department.

4. **Project Cost:**

   a. The estimated cost of the Project is $ 222,000.00 (Two Hundred Twenty-Two Thousand Dollars and No/100). This amount is based upon the Schedule of Financial Assistance in **Exhibit "B"**, attached to and incorporated in this Agreement. **Exhibit "B"** may be modified by mutual execution of an amendment as provided for in paragraph 5.i.

   b. The Department agrees to participate in the Project cost up to the maximum amount of $199,800.00 (One Hundred Ninety-Nine Thousand Eight Hundred Dollars and No/100) and as more fully described in **Exhibit "B"**. This amount includes Federal-aid funds which are limited to the actual amount of Federal-aid participation. The Department's participation may be increased or reduced upon determination of the actual bid amounts of the Project by the mutual execution of an amendment. The Recipient agrees to bear all expenses in excess of the total cost of the Project and any deficits incurred in connection with the completion of the Project.

   c. Project costs eligible for Department participation will be allowed only from the date of this Agreement. It is understood that Department participation in eligible Project costs is subject to:

i. Legislative approval of the Department's appropriation request in the work program year that the Project is scheduled to be committed;

ii. Availability of funds as stated in paragraphs 5.l. and 5.m. of this Agreement;

iii. Approval of all plans, specifications, contracts or other obligating documents and all other terms of this Agreement; and

iv. Department approval of the Project scope and budget at the time appropriation authority becomes available.

5. Requisitions and Payments

a. The Recipient shall provide quantifiable, measurable, and verifiable units of deliverables. Each deliverable must specify the required minimum level of service to be performed and the criteria for evaluating successful completion. The Project and the quantifiable, measurable, and verifiable units of deliverables are described more fully in **Exhibit "A"**.

b. Invoices shall be submitted by the Recipient in detail sufficient for a proper pre-audit and post-audit based on the quantifiable, measurable and verifiable units of deliverables as established in **Exhibit "A"**. Deliverables must be received and accepted in writing by the Department's Project Manager prior to payments. Requests for reimbursement by the Recipient shall include an invoice, progress report and supporting documentation for the period of services being billed that are acceptable to the Department. The Recipient shall use the format for the invoice and progress report that is approved by the Department.

c. The Recipient shall charge to the Project account all eligible costs of the Project except costs agreed to be borne by the Recipient or its contractors and subcontractors. Costs in excess of the programmed funding or attributable to actions which have not received the required approval of the Department shall not be considered eligible costs. All costs charged to the Project, including any approved services contributed by the Recipient or others, shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers evidencing in proper detail the nature and propriety of the charges.

d. Supporting documentation must establish that the deliverables were received and accepted in writing by the Recipient and must also establish that the required minimum level of service to be performed based on the criteria for evaluating successful completion as specified in **Exhibit "A"** was met. All costs invoiced shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers evidencing in proper detail the nature and propriety of charges as described in **Exhibit "F",** Contract Payment Requirements.

e. Bills for travel expenses specifically authorized in this Agreement shall be submitted on the Department's Contractor Travel Form No. 300-000-06 and will be paid in accordance with Section 112.061, Florida Statutes and the most current version of the Disbursement Handbook for Employees and Managers.

f. Payment shall be made only after receipt and approval of goods and services unless advance payments are authorized by the Chief Financial Officer of the State of Florida under Chapters 215 and 216, Florida Statutes or the Department's Comptroller under Section 334.044(29), Florida Statutes.

☐ If this box is selected, advance payment is authorized for this Agreement and **Exhibit "H"**, Alternative Advance Payment Financial Provisions is attached and incorporated into this Agreement.

If the Department determines that the performance of the Recipient is unsatisfactory, the Department shall notify the Recipient of the deficiency to be corrected, which correction shall be made within a time-frame to be specified by the Department. The Recipient shall, within thirty (30) days after notice from the Department, provide the Department with a corrective action plan describing how the Recipient will address all issues of contract non-performance, unacceptable performance, failure to meet the minimum performance levels,

deliverable deficiencies, or contract non-compliance. If the corrective action plan is unacceptable to the Department, the Recipient will not be reimbursed to the extent of the non-performance. The Recipient will not be reimbursed until the Recipient resolves the deficiency. If the deficiency is subsequently resolved, the Recipient may bill the Department for the unpaid reimbursement request(s) during the next billing period. If the Recipient is unable to resolve the deficiency, the funds shall be forfeited at the end of the Agreement's term.

g. Agencies providing goods and services to the Department should be aware of the following time frames. Inspection and approval of goods or services shall take no longer than 20 days from the Department's receipt of the invoice. The Department has 20 days to deliver a request for payment (voucher) to the Department of Financial Services. The 20 days are measured from the latter of the date the invoice is received or the goods or services are received, inspected, and approved.

If a payment is not available within 40 days, a separate interest penalty at a rate as established pursuant to ***Section 55.03(1), F.S.***, will be due and payable, in addition to the invoice amount, to the Recipient. Interest penalties of less than one (1) dollar will not be enforced unless the Recipient requests payment. Invoices that have to be returned to an Recipient because of Recipient preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the Department.

A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for Agencies who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 413-5516.

h. The Recipient shall maintain an accounting system or separate accounts to ensure funds and projects are tracked separately. Records of costs incurred under the terms of this Agreement shall be maintained and made available upon request to the Department at all times during the period of this Agreement and for five years after final payment is made. Copies of these documents and records shall be furnished to the Department upon request. Records of costs incurred include the Recipient's general accounting records and the project records, together with supporting documents and records, of the contractor and all subcontractors performing work on the project, and all other records of the Contractor and subcontractors considered necessary by the Department for a proper audit of costs.

i. Prior to the execution of this Agreement, a Project schedule of funding shall be prepared by the Recipient and approved by the Department. The Recipient shall maintain said schedule of funding, carry out the Project, and shall incur obligations against and make disbursements of Project funds only in conformity with the latest approved schedule of funding for the Project. The schedule of funding may be revised by execution of a Local Agency Program ("LAP") Supplemental Agreement between the Department and the Recipient. The Recipient acknowledges and agrees that funding for this project may be reduced upon determination of the Recipient's contract award amount.

j. If, after Project completion, any claim is made by the Department resulting from an audit or for work or services performed pursuant to this Agreement, the Department may offset such amount from payments due for work or services done under any agreement which it has with the Recipient owing such amount if, upon demand, payment of the amount is not made within 60 days to the Department. Offsetting any amount pursuant to this paragraph shall not be considered a breach of contract by the Department.

k. The Recipient must submit the final invoice on the Project to the Department within 120 days after the completion of the Project. Invoices submitted after the 120-day time period may not be paid.

l. The Department's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. If the Department's funding for this Project is in multiple fiscal years, funds approval from the Department's Comptroller must be received each fiscal year prior to costs being incurred. See **Exhibit "B"** for funding levels by fiscal year. Project costs utilizing these fiscal year funds are not eligible for reimbursement if incurred prior to funds approval being received. The Department will notify the Recipient, in writing, when funds are available.

m. In the event this Agreement is in excess of $25,000 and has a term for a period of more than one year, the provisions of Section 339.135(6)(a), Florida Statutes, are hereby incorporated:

> "The Department, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The Department shall require a statement from the comptroller of the Department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding 1 year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years, and this paragraph shall be incorporated verbatim in all contracts of the Department which are for an amount in excess of $25,000 and which have a term for a period of more than 1 year."

6. Department Payment Obligations:

Subject to other provisions of this Agreement, the Department will honor requests for reimbursement to the Recipient pursuant to this Agreement. However, notwithstanding any other provision of this Agreement, the Department may elect by notice in writing not to make a payment if:

a. The Recipient shall have made misrepresentation of a material nature in its application, or any supplement or amendment to its application, or with respect to any document or data furnished with its application or pursuant to this Agreement;

b. There is any pending litigation with respect to the performance by the Recipient of any of its duties or obligations which may jeopardize or adversely affect the Project, the Agreement or payments to the Project;

c. The Recipient shall have taken any action pertaining to the Project which, under this Agreement, requires the approval of the Department or has made a related expenditure or incurred related obligations without having been advised by the Department that same are approved;

d. There has been any violation of the conflict of interest provisions contained in paragraph 14.f.; or

e. The Recipient has been determined by the Department to be in default under any of the provisions of the Agreement.

The Department may suspend or terminate payment for that portion of the Project which the Federal Highway Administration ("FHWA"), or the Department acting in lieu of FHWA, may designate as ineligible for Federal-aid.

In determining the amount of the payment, the Department will exclude all Project costs incurred by the Recipient prior to the Department's issuance of a Notice to Proceed ("NTP"), costs incurred after the expiration of the Agreement, costs which are not provided for in the latest approved schedule of funding in **Exhibit "B"** for the Project, costs agreed to be borne by the Recipient or its contractors and subcontractors for not meeting the Project commencement and final invoice time lines, and costs attributable to goods or services received under a contract or other arrangements which have not been approved in writing by the Department.

7. General Requirements:

The Recipient shall complete the Project with all practical dispatch, in a sound, economical, and efficient manner, and in accordance with the provisions in this Agreement, and all applicable laws. The Project will be performed in accordance with all applicable Department procedures, guidelines, manuals, standards, and directives as described in the Department's **Local Agency Program Manual** (FDOT Topic No. 525-010-300), which by this reference is made a part of this Agreement. Time is of the essence as to each and every obligation under this Agreement.

a. A full time employee of the Recipient, qualified to ensure that the work being pursued is complete, accurate, and consistent with the terms, conditions, and specifications of this Agreement shall be in responsible charge of the Project, which employee should be able to perform the following duties and functions:

i. Administers inherently governmental project activities, including those dealing with cost, time, adherence to contract requirements, construction quality and scope of Federal-aid projects;

ii. Maintains familiarity of day to day Project operations, including Project safety issues;

iii. Makes or participates in decisions about changed conditions or scope changes that require change orders or supplemental agreements;

iv. Visits and reviews the Project on a frequency that is commensurate with the magnitude and complexity of the Project;

v. Reviews financial processes, transactions and documentation to ensure that safeguards are in place to minimize fraud, waste, and abuse;

vi. Directs Project staff, agency or consultant, to carry out Project administration and contract oversight, including proper documentation;

vii. Is aware of the qualifications, assignments and on-the-job performance of the Recipient and consultant staff at all stages of the Project.

b. Once the Department issues the NTP for the Project, the Recipient shall be obligated to submit an invoice or other request for reimbursement to the Department no less than once every 90 days (quarterly), beginning from the day the NTP is issued. If the Recipient fails to submit quarterly invoices to the Department, and in the event the failure to timely submit invoices to the Department results in the FHWA removing any unbilled funding or the loss of state appropriation authority (which may include the loss of state and federal funds, if there are state funds programmed to the Project), then the Recipient will be solely responsible to provide all funds necessary to complete the Project and the Department will not be obligated to provide any additional funding for the Project. The Recipient waives the right to contest such removal of funds by the Department, if the removal is related to FHWA's withdrawal of funds or if the removal is related to the loss of state appropriation authority. In addition to the loss of funding for the Project, the Department will also consider the de-certification of the Recipient for future LAP Projects. No cost may be incurred under this Agreement until after the Recipient has received a written NTP from the Department. The Recipient agrees to advertise or put the Project out to bid thirty (30) days from the date the Department issues the NTP to advertise the Project. If the Recipient is not able to meet the scheduled advertisement, the Department District LAP Administrator should be notified as soon as possible.

c. If all funds are removed from the Project, including amounts previously billed to the Department and reimbursed to the Recipient, and the Project is off the State Highway System, then the Department will have to request repayment for the previously billed amounts from the Recipient. No state funds can be used on off-system projects, unless authorized pursuant to **Exhibit "I",** State Funds Addendum, which will be attached to and incorporated in this Agreement in the event state funds are used on the Project.

d. In the event that any election, referendum, approval, permit, notice or other proceeding or authorization is required under applicable law to enable the Recipient to enter into this Agreement or to undertake the Project or to observe, assume or carry out any of the provisions of the Agreement, the Recipient will initiate and consummate, as provided by law, all actions necessary with respect to any such matters.

e. The Recipient shall initiate and prosecute to completion all proceedings necessary, including Federal-aid requirements, to enable the Recipient to provide the necessary funds for completion of the Project.

f. The Recipient shall submit to the Department such data, reports, records, contracts, and other documents relating to the Project as the Department and FHWA may require. The Recipient shall make such submissions using Department-designated information systems.

g. Federal-aid funds shall not participate in any cost which is not incurred in conformity with applicable federal and state laws, the regulations in 23 Code of Federal Regulations (C.F.R.) and 49 C.F.R., and policies and procedures prescribed by the Division Administrator of FHWA. Federal funds shall not be paid on account

of any cost incurred prior to authorization by FHWA to the Department to proceed with the Project or part thereof involving such cost (23 C.F.R. 1.9 (a)). If FHWA or the Department determines that any amount claimed is not eligible, federal participation may be approved in the amount determined to be adequately supported and the Department shall notify the Recipient in writing citing the reasons why items and amounts are not eligible for federal participation. Where correctable non-compliance with provisions of law or FHWA requirements exists federal funds may be withheld until compliance is obtained. Where non-compliance is not correctable, FHWA or the Department may deny participation in parcel or Project costs in part or in total. For any amounts determined to be ineligible for federal reimbursement for which the Department has advanced payment, the Recipient shall promptly reimburse the Department for all such amounts within 90 days of written notice.

h. For any project requiring additional right-of-way, the Recipient must submit to the Department an annual report of its real property acquisition and relocation assistance activities on the project. Activities shall be reported on a federal fiscal year basis, from October 1 through September 30. The report must be prepared using the format prescribed in 49 C.F.R. Part 24, Appendix B, and be submitted to the Department no later than October 15 of each year.

8. Audit Reports:

The administration of resources awarded through the Department to the Recipient by this Agreement may be subject to audits and/or monitoring by the Department. The following requirements do not limit the authority of the Department to conduct or arrange for the conduct of additional audits or evaluations of federal awards or limit the authority of any state agency inspector general, the State of Florida Auditor General, or any other state official. The Recipient shall comply with all audit and audit reporting requirements as specified below.

a. In addition to reviews of audits conducted in accordance with 2 CFR Part 200, Subpart F – Audit Requirements, monitoring procedures may include, but not be limited to, on-site visits by Department staff and/or other procedures including, reviewing any required performance and financial reports, following up, ensuring corrective action, and issuing management decisions on weaknesses found through audits when those findings pertain to federal awards provided through the Department by this Agreement. By entering into this Agreement, the Recipient agrees to comply and cooperate fully with any monitoring procedures/processes deemed appropriate by the Department. The Recipient further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Department, State of Florida Chief Financial Officer ("CFO"), or State of Florida Auditor General.

b. The Recipient, a non-federal entity as defined by 2 CFR Part 200, as a subrecipient of a federal award awarded by the Department through this Agreement is subject to the following requirements:

i. In the event the Recipient expends a total amount of federal awards equal to or in excess of the threshold established by 2 CFR Part 200, Subpart F – Audit Requirements, the Recipient must have a federal single or program-specific audit for such fiscal year conducted in accordance with the provisions of 2 CFR Part 200, Subpart F – Audit Requirements. **Exhibit "E"** to this Agreement provides the required federal award identification information needed by the Recipient to further comply with the requirements of 2 CFR Part 200, Subpart F – Audit Requirements. In determining federal awards expended in a fiscal year, the Recipient must consider all sources of federal awards based on when the activity related to the federal award occurs, including the federal award provided through the Department by this Agreement. The determination of amounts of federal awards expended should be in accordance with the guidelines established by 2 CFR Part 200, Subpart F – Audit Requirements. An audit conducted by the State of Florida Auditor General in accordance with the provisions of 2 CFR Part 200, Subpart F – Audit Requirements, will meet the requirements of this part.

ii. In connection with the audit requirements, the Recipient shall fulfill the requirements relative to the auditee responsibilities as provided in 2 CFR Part 200, Subpart F – Audit Requirements.

iii. In the event the Recipient expends less than the threshold established by 2 CFR Part 200, Subpart F – Audit Requirements, in federal awards, the Recipient is exempt from federal audit requirements for that fiscal year. However, the Recipient must provide a single audit exemption statement to the Department at FDOTSingleAudit@dot.state.fl.us no later than nine months after the end of the Recipient's audit period for each applicable audit year. In the event the Recipient expends less than the threshold established by 2 CFR Part 200, Subpart F – Audit Requirements, in federal awards in a fiscal year and elects to have an audit conducted in accordance with the provisions of 2 CFR Part 200, Subpart F – Audit Requirements, the cost of the audit must be paid from non-federal resources (*i.e.*, the cost of such an audit must be paid from the Recipient's resources obtained from other than federal entities).

iv. The Recipient must electronically submit to the Federal Audit Clearinghouse ("FAC") at https://harvester.census.gov/facweb/ the audit reporting package as required by 2 CFR Part 200, Subpart F – Audit Requirements, within the earlier of 30 calendar days after receipt of the auditor's report(s) or nine months after the end of the audit period. The FAC is the repository of record for audits required by 2 CFR Part 200, Subpart F – Audit Requirements, and this Agreement. However, the Department requires a copy of the audit reporting package also be submitted to FDOTSingleAudit@dot.state.fl.us within the earlier of 30 calendar days after receipt of the auditor's report(s) or nine months after the end of the audit period as required by 2 CFR Part 200, Subpart F – Audit Requirements.

v. Within six months of acceptance of the audit report by the FAC, the Department will review the Recipient's audit reporting package, including corrective action plans and management letters, to the extent necessary to determine whether timely and appropriate action on all deficiencies has been taken pertaining to the federal award provided through the Department by this Agreement. If the Recipient fails to have an audit conducted in accordance with 2 CFR Part 200, Subpart F – Audit Requirements, the Department may impose additional conditions to remedy noncompliance. If the Department determines that noncompliance cannot be remedied by imposing additional conditions, the Department may take appropriate actions to enforce compliance, which actions may include but not be limited to the following:

1. Temporarily withhold cash payments pending correction of the deficiency by the Recipient or more severe enforcement action by the Department;
2. Disallow (deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance;
3. Wholly or partly suspend or terminate the federal award;
4. Initiate suspension or debarment proceedings as authorized under 2 C.F.R. Part 180 and federal awarding agency regulations (or in the case of the Department, recommend such a proceeding be initiated by the federal awarding agency);
5. Withhold further federal awards for the Project or program;
6. Take other remedies that may be legally available.

vi. As a condition of receiving this federal award, the Recipient shall permit the Department or its designee, the CFO, or State of Florida Auditor General access to the Recipient's records including financial statements, the independent auditor's working papers, and project records as necessary. Records related to unresolved audit findings, appeals, or litigation shall be retained until the action is complete or the dispute is resolved.

vii. The Department's contact information for requirements under this part is as follows:

Office of Comptroller, MS 24
605 Suwannee Street
Tallahassee, Florida 32399-0450
FDOTSingleAudit@dot.state.fl.us

c. The Recipient shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of five years from the date the audit report is issued and shall allow the Department or its designee, the CFO, or State of Florida Auditor General access to such records upon request. The Recipient shall ensure that the audit working papers are made available to the Department or its designee, the CFO, or State of Florida Auditor General upon request for a period of five years from the date the audit report is issued, unless extended in writing by the Department.

9. Termination or Suspension of Project:

The Department may, by written notice to the Recipient, suspend any or all of the Department's obligations under this Agreement for the Recipient's failure to comply with applicable law or the terms of this Agreement until such time as the event or condition resulting in such suspension has ceased or been corrected.

a. If the Department intends to terminate the Agreement, the Department shall notify the Recipient of such termination in writing at least thirty (30) days prior to the termination of the Agreement, with instructions to the effective date of termination or specify the stage of work at which the Agreement is to be terminated.

b. The Parties to this Agreement may terminate this Agreement when its continuation would not produce beneficial results commensurate with the further expenditure of funds. In this event, the Parties shall agree upon the termination conditions.

c. If the Agreement is terminated before performance is completed, the Recipient shall be paid only for that work satisfactorily performed for which costs can be substantiated. Such payment, however, may not exceed the equivalent percentage of the Department's maximum financial assistance. If any portion of the Project is located on the Department's right-of-way, then all work in progress on the Department right-of-way will become the property of the Department and will be turned over promptly by the Recipient.

d. In the event the Recipient fails to perform or honor the requirements and provisions of this Agreement, the Recipient shall promptly refund in full to the Department within thirty (30) days of the termination of the Agreement any funds that were determined by the Department to have been expended in violation of the Agreement.

e. The Department reserves the right to unilaterally cancel this Agreement for failure by the Recipient to comply with the Public Records provisions of Chapter 119, Florida Statutes.

10. Contracts of the Recipient:

a. Except as otherwise authorized in writing by the Department, the Recipient shall not execute any contract or obligate itself in any manner requiring the disbursement of Department funds, including consultant or construction contracts or amendments thereto, with any third party with respect to the Project without the written approval of the Department. Failure to obtain such approval shall be sufficient cause for nonpayment by the Department. The Department specifically reserves the right to review the qualifications of any consultant or contractor and to approve or disapprove the employment of such consultant or contractor.

b. It is understood and agreed by the parties to this Agreement that participation by the Department in a project with the Recipient, where said project involves a consultant contract for engineering, architecture or surveying services, is contingent on the Recipient's complying in full with provisions of Section 287.055, Florida Statutes, Consultants' Competitive Negotiation Act, the federal Brooks Act, 23 C.F.R. 172, and 23 U.S.C. 112. At the discretion of the Department, the Recipient will involve the Department in the consultant selection process for all projects funded under this Agreement. In all cases, the Recipient shall certify to the Department that selection has been accomplished in compliance with the Consultants' Competitive Negotiation Act and the federal Brooks Act.

c. The Recipient shall comply with, and require its consultants and contractors to comply with applicable federal law pertaining to the use of Federal-aid funds. The Recipient shall comply with the provisions in the FHWA-1273 form as set forth in **Exhibit "G",** FHWA 1273 attached to and incorporated in this Agreement. The Recipient shall include FHWA-1273 in all contracts with contractors performing work on the Project.

d. The Recipient shall require its consultants and contractors to take emergency steps to close any public road whenever there is a risk to life, health and safety of the travelling public. The safety of the travelling public is the Department's first priority for the Recipient. If lane or road closures are required by the LA to ensure the life, health, and safety of the travelling public, the LA must notify the District Construction Engineer and District Traffic Operations Engineer immediately once the travelling public are not at imminent risk. The Department expects professional engineering judgment be applied in all aspects of locally

delivered projects. Defect management and supervision of LAP project structures components must be proactively managed, monitored, and inspected by department prequalified structures engineer(s). The District Construction Engineer must be notified immediately of defect monitoring that occurs in LAP project construction, whether or not the defects are considered an imminent risk to life, health, or safety of the travelling public. When defects, including but not limited to, structural cracks, are initially detected during bridge construction, the engineer of record, construction engineering inspector, design-build firm, or local agency that owns or is responsible for the bridge construction has the authority to immediately close the bridge to construction personnel and close the road underneath. The LA shall also ensure compliance with the CPAM, Section 9.1.8 regarding actions for maintenance of traffic and safety concerns.

11. Disadvantaged Business Enterprise (DBE) Policy and Obligation:

It is the policy of the Department that DBE's, as defined in 49 C.F.R. Part 26, as amended, shall have the opportunity to participate in the performance of contracts financed in whole or in part with Department funds under this Agreement. The DBE requirements of applicable federal and state laws and regulations apply to this Agreement.

The Recipient and its contractors agree to ensure that DBE's have the opportunity to participate in the performance of this Agreement. In this regard, all recipients and contractors shall take all necessary and reasonable steps in accordance with applicable federal and state laws and regulations to ensure that the DBE's have the opportunity to compete for and perform contracts. The Recipient and its contractors and subcontractors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of contracts, entered pursuant to this Agreement.

12. Compliance with Conditions and Laws:

The Recipient shall comply and require its contractors and subcontractors to comply with all terms and conditions of this Agreement and all federal, state, and local laws and regulations applicable to this Project. Execution of this Agreement constitutes a certification that the Recipient is in compliance with, and will require its contractors and subcontractors to comply with, all requirements imposed by applicable federal, state, and local laws and regulations, including the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions," in 49 C.F.R. Part 29, and 2 C.F.R. Part 200 when applicable.

13. Performance Evaluations:

Recipients are evaluated on a project-by-project basis. The evaluations provide information about oversight needs and provide input for the recertification process. Evaluations are submitted to the Recipient's person in responsible charge or designee as part of the Project closeout process. The Department provides the evaluation to the Recipient no more than 30 days after final acceptance.

a. Each evaluation will result in one of three ratings. A rating of Unsatisfactory Performance means the Recipient failed to develop the Project in accordance with applicable federal and state regulations, standards and procedures, required excessive District involvement/oversight, or the Project was brought in-house by the Department. A rating of Satisfactory Performance means the Recipient developed the Project in accordance with applicable federal and state regulations, standards and procedures, with minimal District involvement/oversight. A rating of Above Satisfactory Performance means the Recipient developed the Project in accordance with applicable federal and state regulations, standards and procedures, and the Department did not have to exceed the minimum oversight and monitoring requirements identified for the project.

b. The District will determine which functions can be further delegated to Recipients that continuously earn Satisfactory and Above Satisfactory evaluations.

14. Restrictions, Prohibitions, Controls, and Labor Provisions:

During the performance of this Agreement, the Recipient agrees as follows, and agrees to require its contractors and subcontractors to include in each subcontract the following provisions:

a. The Recipient will comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964, the regulations of the U.S. Department of Transportation issued thereunder, and the assurance by the Recipient pursuant thereto. The Recipient shall include the attached **Exhibit "C",** Title VI Assurances in all contracts

with consultants and contractors performing work on the Project that ensure compliance with Title VI of the Civil Rights Act of 1964, 49 C.F.R. Part 21, and related statutes and regulations.

b. The Recipient will comply with all the requirements as imposed by the ADA, the regulations of the Federal Government issued thereunder, and assurance by the Recipient pursuant thereto.

c. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity; may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

d. In accordance with Section 287.134, Florida Statutes, an entity or affiliate who has been placed on the Discriminatory Vendor List, kept by the Florida Department of Management Services, may not submit a bid on a contract to provide goods or services to a public entity; may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor or consultant under a contract with any public entity; and may not transact business with any public entity.

e. An entity or affiliate who has had its Certificate of Qualification suspended, revoked, denied or have further been determined by the Department to be a non-responsible contractor may not submit a bid or perform work for the construction or repair of a public building or public work on a contract with the Recipient.

f. Neither the Recipient nor any of its contractors or their subcontractors shall enter into any contract, subcontract or arrangement in connection with the Project or any property included or planned to be included in the Project in which any member, officer or employee of the Recipient or the locality during tenure or for 2 years thereafter has any interest, direct or indirect. If any such present or former member, officer or employee involuntarily acquires or had acquired prior to the beginning of tenure any such interest, and if such interest is immediately disclosed to the Recipient, the Recipient, with prior approval of the Department, may waive the prohibition contained in this paragraph provided that any such present member, officer or employee shall not participate in any action by the Recipient or the locality relating to such contract, subcontract or arrangement. The Recipient shall insert in all contracts entered into in connection with the Project or any property included or planned to be included in any Project, and shall require its contractors to insert in each of their subcontracts, the following provision:

"No member, officer or employee of the Recipient or of the locality during his tenure or for 2 years thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof."

The provisions of this paragraph shall not be applicable to any agreement between the Recipient and its fiscal depositories or to any agreement for utility services the rates for which are fixed or controlled by a governmental agency.

g. No member or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or any benefit arising therefrom.

15. Indemnification and Insurance:

a. It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of any part of this Agreement to create in the public or any member thereof, a third-party beneficiary under this Agreement, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement. The Recipient guarantees the payment of all just claims for materials, supplies, tools, or labor and other just claims against the Recipient or any subcontractor, in connection with this Agreement.

b. To the extent provided by law, Recipient shall indemnify, defend, and hold harmless the Department against any actions, claims, or damages arising out of, relating to, or resulting from negligent or wrongful act(s) of Recipient, or any of its officers, agents, or employees, acting within the scope of their office or employment, in connection with the rights granted to or exercised by Recipient hereunder, to the extent and within the limitations of Section 768.28, Florida Statutes. The foregoing indemnification shall not constitute a waiver of the Department's or Recipient's sovereign immunity beyond the limits set forth in Florida Statutes, Section 768.28, nor shall the same be construed to constitute agreement by Recipient to indemnify the Department for the negligent acts or omissions of the Department, its officers, agents, or employees, or for the acts of third parties. Nothing herein shall be construed as consent by Recipient to be sued by third parties in any manner arising out of this Agreement. This indemnification shall survive the termination of this Agreement.

c. Recipient agrees to include the following indemnification in all contracts with contractors, subcontractors, consultants, or subconsultants (each referred to as "Entity" for the purposes of the below indemnification) who perform work in connection with this Agreement:

"To the extent provided by law, [ENTITY] shall indemnify, defend, and hold harmless the [RECIPIENT] and the State of Florida, Department of Transportation, including the Department's officers, agents, and employees, against any actions, claims, or damages arising out of, relating to, or resulting from negligent or wrongful act(s) of [ENTITY], or any of its officers, agents, or employees, acting within the scope of their office or employment, in connection with the rights granted to or exercised by [ENTITY].

The foregoing indemnification shall not constitute a waiver of the Department's or [RECIPIENT']'s sovereign immunity beyond the limits set forth in Florida Statutes, Section 768.28. Nor shall the same be construed to constitute agreement by [ENTITY] to indemnify [RECIPIENT] for the negligent acts or omissions of [RECIPIENT], its officers, agents, or employees, or third parties. Nor shall the same be construed to constitute agreement by [ENTITY] to indemnify the Department for the negligent acts or omissions of the Department, its officers, agents, or employees, or third parties. This indemnification shall survive the termination of this Agreement."

d. The Recipient shall, or cause its contractor or consultant to carry and keep in force, during the term of this Agreement, a general liability insurance policy or policies with a company or companies authorized to do business in Florida, affording public liability insurance with combined bodily injury limits of at least $200,000 per person and $300,000 each occurrence, and property damage insurance of at least $200,000 each occurrence, for the services to be rendered in accordance with this Agreement. The Recipient shall also, or cause its contractor or consultant to carry and keep in force Workers' Compensation Insurance as required by the State of Florida under the Workers' Compensation Law. With respect to any general liability insurance policy required pursuant to this Agreement, all such policies shall be issued by companies licensed to do business in the State of Florida. The Recipient shall provide to the Department certificates showing the required coverage to be in effect with endorsements showing the Department to be an additional insured prior to commencing any work under this Agreement. Policies that include Self Insured Retention will not be accepted. The certificates and policies shall provide that in the event of any material change in or cancellation of the policies reflecting the required coverage, thirty days advance notice shall be given to the Department or as provided in accordance with Florida law.

16. **Maintenance Obligations:** In the event the Project includes construction then the following provisions are incorporated into this Agreement:

a. The Recipient agrees to maintain any portion of the Project not located on the State Highway System constructed under this Agreement for its useful life. If the Recipient constructs any improvement on Department right-of-way, the Recipient

☐ shall

☐ shall not

☒ N/A

maintain the improvements located on the Department right-of-way for their useful life. If the Recipient is required to maintain Project improvements located on the Department right-of-way beyond final acceptance, then Recipient shall, prior to any disbursement of the state funding provided under this Agreement, also execute a Maintenance Memorandum of Agreement in a form that is acceptable to the Department. The Recipient has agreed to the foregoing by resolution, and such resolution is attached and incorporated into this Agreement as **Exhibit "D"**. This provision will survive termination of this Agreement.

17. Miscellaneous Provisions:

a. The Recipient will be solely responsible for compliance with all applicable environmental regulations, for any liability arising from non-compliance with these regulations, and will reimburse the Department for any loss incurred in connection therewith. The Recipient will be responsible for securing any applicable permits. The Recipient shall include in all contracts and subcontracts for amounts in excess of $150,000, a provision requiring compliance with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387).

b. The Department shall not be obligated or liable hereunder to any individual or entity not a party to this Agreement.

c. In no event shall the making by the Department of any payment to the Recipient constitute or be construed as a waiver by the Department of any breach of covenant or any default which may then exist on the part of the Recipient and the making of such payment by the Department, while any such breach or default shall exist, shall in no way impair or prejudice any right or remedy available to the Department with respect to such breach or default.

d. If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected. In such an instance, the remainder would then continue to conform to the terms and requirements of applicable law.

e. By execution of the Agreement, the Recipient represents that it has not paid and, also agrees not to pay, any bonus or commission for the purpose of obtaining an approval of its application for the financing hereunder.

f. Nothing in the Agreement shall require the Recipient to observe or enforce compliance with any provision or perform any act or do any other thing in contravention of any applicable state law. If any of the provisions of the Agreement violate any applicable state law, the Recipient will at once notify the Department in writing in order that appropriate changes and modifications may be made by the Department and the Recipient to the end that the Recipient may proceed as soon as possible with the Project.

g. In the event that this Agreement involves constructing and equipping of facilities, the Recipient shall submit to the Department for approval all appropriate plans and specifications covering the Project. The Department will review all plans and specifications and will issue to the Recipient a written approval with any approved portions of the Project and comments or recommendations covering any remainder of the Project deemed appropriate. After resolution of these comments and recommendations to the Department's satisfaction, the Department will issue to the Recipient a written approval with said remainder of the Project. Failure to obtain this written approval shall be sufficient cause of nonpayment by the Department.

h. Upon completion of right-of-way activities on the Project, the Recipient must certify compliance with all applicable federal and state requirements. Certification is required prior to authorization for advertisement for or solicitation of bids for construction of the Project, including if no right-of-way is required.

i. The Recipient will certify in writing, prior to Project closeout that the Project was completed in accordance with applicable plans and specifications, is in place on the Recipient's facility, adequate title is in the Recipient's name, and the Project is accepted by the Recipient as suitable for the intended purpose.

j. The Recipient agrees that no federally-appropriated funds have been paid, or will be paid by or on behalf of the Recipient, to any person for influencing or attempting to influence any officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement. If any funds other than federally-appropriated funds have been paid by the Recipient to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this Agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. The Recipient shall require that the language of this paragraph be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. No funds received pursuant to this contract may be expended for lobbying the Legislature, the judicial branch or a state agency.

k. The Recipient may not permit the Engineer of Record to perform Construction, Engineering and Inspection services on the Project.

l. The Recipient shall comply with all applicable federal guidelines, procedures, and regulations. If at any time a review conducted by Department and or FHWA reveals that the applicable federal guidelines, procedures, and regulations were not followed by the Recipient and FHWA requires reimbursement of the funds, the Recipient will be responsible for repayment to the Department of all funds awarded under the terms of this Agreement.

m. The Recipient shall:

i. utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by Recipient during the term of the contract; and

ii. expressly require any contractor and subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.

n. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute the same Agreement. A facsimile or electronic transmission of this Agreement with a signature on behalf of a party will be legal and binding on such party.

o. The Parties agree to comply with s.20.055(5), Florida Statutes, and to incorporate in all subcontracts the obligation to comply with s.20.055(5), Florida Statutes.

p. If the Project is procured pursuant to Chapter 255, Florida Statutes, for construction services and the cost of the Project is to be paid from state-appropriated funds, then the Recipient must comply with the requirements of Section 255.0991, Florida Statutes.

18. Exhibits:

a. **Exhibits "A"**, **"B"**, **"C", "D"**, **"E"** and **"F"** are attached to and incorporated into this Agreement.

b. ☐ If this Project includes Phase 58 (construction) activities, then **Exhibit "G"**, FHWA FORM 1273, is attached and incorporated into this Agreement.

c. ☐ Alternative Advance Payment Financial Provisions are used on this Project. If an Alternative Pay Method is used on this Project, then **Exhibit "H"**, Alternative Advance Payment Financial Provisions, is attached and incorporated into this Agreement.

d. ☐ State funds are used on this Project. If state funds are used on this Project, then **Exhibit "I"**, State Funds Addendum, is attached and incorporated into this Agreement. **Exhibit "J"**, State Financial Assistance (Florida Single Audit Act), is attached and incorporated into this Agreement.

e. ☐ This Project utilizes Advance Project Reimbursement. If this Project utilizes Advance Project Reimbursement, then **Exhibit "K"**, Advance Project Reimbursement is attached and incorporated into this Agreement.

f. ☐ This Project includes funding for landscaping. If this Project includes funding for landscaping, then **Exhibit "L",** Landscape Maintenance, is attached and incorporated into this Agreement.

g. ☐ This Project includes funding for a roadway lighting system. If the Project includes funding for roadway lighting system, **Exhibit "M"**, Roadway Lighting Maintenance is attached and incorporated into this Agreement.

h. ☐ This Project includes funding for traffic signals and/or traffic signal systems. If this Project includes funding for traffic signals and/or traffic signals systems, **Exhibit "N"**, Traffic Signal Maintenance is attached and incorporated into this Agreement.

i. ☒ A portion or all of the Project will utilize Department right-of-way and, therefore, **Exhibit "O"**, Terms and Conditions of Construction in Department Right-of-Way, is attached and incorporated into this Agreement.

j. ☒ The following Exhibit(s) are attached and incorporated into this Agreement: Federal Right-of-Way Forms A-1 through A-27.

k. Exhibit and Attachment List

Exhibit A: Project Description and Responsibilities
Exhibit B: Schedule of Financial Assistance
Exhibit C: Title VI Assurances
Exhibit D: Recipient Resolution
Exhibit E: Federal Financial Assistance (Single Audit Act)
Exhibit F: Contract Payment Requirements
* Exhibit G: FHWA Form 1273
* Exhibit H: Alternative Advance Payment Financial Provisions
* Exhibit I: State Funds Addendum
* Exhibit J: State Financial Assistance (Florida Single Audit Act)
* Exhibit K: Advance Project Reimbursement
* Exhibit L: Landscape Maintenance
* Exhibit M: Roadway Lighting Maintenance
* Exhibit N: Traffic Signal Maintenance
* Exhibit O: Terms and Conditions of Construction in Department Right-of-Way

* Additional Exhibit(s): Federal Right-of-Way Forms A-1 through A-27.

*** Indicates that the Exhibit is only attached and incorporated if applicable box is selected.**

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year written above.

RECIPIENT CITY OF PORT ORANGE

By: _____

Name: Scott Stiltner
Title: Mayor

Attest: _____
Robin L. Fenwick, MMC City Clerk

STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION

By: _____

Name: James S. Stroz, Jr. P.E.
Title: Director of Transportation Development

Legal Review:

_____

EXHIBIT A

PROJECT DESCRIPTION AND RESPONSIBILITIES

FPN: 449770-1-48-01

This exhibit forms an integral part of the Agreement between the State of Florida, Department of Transportation and the City of Port Orange (the Recipient)

PROJECT LOCATION:

☐ The project is on the National Highway System.

☒ The project is on the State Highway System.

PROJECT LENGTH AND MILE POST LIMITS: See Project Description Below

PROJECT DESCRIPTION:

This project is the acquisition of Right-of-Way necessary to construct a Dunlawton Avenue westbound right-turn lane at Nova Road and associated intersection improvements. This location will consist of constructing a 390-foot long right-turn lane on westbound Dunlawton Avenue at Nova Road, associated intersection improvements, and associated drainage work. Additional improvements include reconstructing sidewalks, construction of a pedestrian refuge island, extending the crosswalk and pavement markings, modification to the adjacent bank property, and modification to the existing mast arm.

Additional acquisition of Right-of-Way is necessary to construct a 500-foot long right-turn lane on eastbound Dunlawton Avenue at Clyde Morris Boulevard, reconfiguring drainage ditches and inlets, reconstructing sidewalk, and extending the crosswalk and pavement markings improvements. Additional improvements include removal and replacement of the existing mast arm in the southwest quadrant.

The Right-of-Way acquisition, to include title searches, will include a corner clip at the northeast corner of the intersection of Dunlawton Avenue and Nova Road to accommodate a proposed westbound right turn lane on Dunlawton Avenue. Acquisition is to contain 50 square feet, more or less, within a portion of Government Lot 6, Section 9, Township 16 South, Range 33 East also being a portion of lands described in official Record Book 2227, Page 579, as recorded in the public records of Volusia County, Florida (Parcel ID: 630900060012).

In addition, perpetual easement acquisition and title searches are needed to accommodate the new sidewalk and extension of sidewalk on the west side of Clyde Morris Boulevard from the intersection of Dunlawton Avenue to the Walgreens entrance. The perpetual easement is to contain 1.854 square feet, more or less, within a portion of Tract 3A, the Pines, Plat Book 42, Page 16. Also, being a portion of lands described in official Record Book 7888, Page 731 as recorded in the public records of Volusia County, Florida, and lying in Section 17, Township 16 South, Range 33 East (Parcel ID # 63171900003A)

Right-of-Way acquisition for Dunlawton Avenue Turn Lanes (Various Locations) will be performed by the City of Port Orange (RECIPIENT) and/or their contracted consultants in compliance with federal requirements including, but not limited to: administration, cost estimates, design support, title work, appraisal, appraisal review, acquisition, relocation, property management, and legal support with oversight from the District Five (DEPARTMENT) Right-of-Way Office. The City of Port Orange (RECIPIENT) and/or their contracted consultants will provide a legal description of each property, a sketch of the property showing the acquisition area, a current title search, and updates as needed for each property via Design Support/Survey and Mapping, as well as an appraisal that allows the owner/representative to accompany the appraiser during site inspection.

The City of Port Orange (RECIPIENT) and/or their contracted consultants shall always supply any necessary legal assistance related to the acquisition of property. This includes creating the proposed acquisition document (i.e. deed, easement, etc.) as well as all documents necessary to clear any liens, encumbrances, subordinate interests or other matters, as would be necessary to acquire marketable title for the interest in question. All documents will designate the City of Port Orange (RECIPIENT) as the Grantee, where appropriate, and will state the name of the Florida attorney who prepared them.

SPECIAL CONSIDERATIONS BY RECIPIENT:

Exhibit O – Terms and Conditions of Construction in Department Right-of-Way is included in all agreements. This exhibit is only applicable if the Project involves construction on, under, or over the Department's right-of-way.

The Recipient is required to provide a copy of the design plans for the Department's review and approval to coordinate permitting with the Department, and notify the Department prior to commencement of any right-of-way activities.

If and when real property rights are to be acquired for a transportation facility, a scaled drawing must be prepared to clearly show the right-of-way to be acquired. It must show sufficient technical data, including land ties, to permit the preparation of legal descriptions for use in acquisition documents, and serve as an aid in appraisal and acquisition. It is supported by a Control Survey Map (certified survey) and does not purport to be a survey. This map provides the certified survey support for the preparation of right-of-way related maps and is a depiction of the right-of-way survey field work performed for a specific transportation project.

Right-of-Way forms are Exhibits A-1 through A-27, pages 19-74.

Worksheets (see attachments, Exhibits A-1 through A-5) are required to be submitted for each parcel purchased, as applicable. The LAP Certification form, Exhibit A-6 will need to be submitted upon completion of Right-of-Way, prior to the Notice to Proceed (NTP) of the construction phase.

Exhibit A-1: Local Agency Program Right-of-Way Acquisition Worksheet (2 pages)
Exhibit A-2: Local Agency Program Right-of-Way Appraisal and Appraisal Review Worksheet (2 pages)
Exhibit A-3: Local Agency Program Right-of-Way Personal Property or Sign Relocation Worksheet (3 pages)
Exhibit A-4: Local Agency Program Right-of-Way Property Management Worksheet (2 pages)
Exhibit A-5: Local Agency Program Right-of-Way Residential Relocation Worksheet (4 pages)
Exhibit A-6: Local Agency Program Certification Form (1 page)

Note: All of the following forms are referenced in the Worksheets listed above
Exhibit A-7: Notice to Owner (2 pages)
Exhibit A-7a: Owner Questionnaire (2 pages)
Exhibit A-8: Public Disclosure Notice (For Trust Only) (5 pages)
Exhibit A-9: Public Disclosure Notice (For All Persons and Entities Except Trusts) (5 pages)
Exhibit A-10: Statement of Offer (1 page)
Exhibit A-11: Purchase Agreement (4 pages)
Exhibit A-12: Notice to Business Owner (2 pages)
Exhibit A-12a: Business Owner Questionnaire (2 pages)
Exhibit A-13: Representative Authorization (2 pages)
Exhibit A-14: Closing Statement (1 page)
Exhibit A-15: Settlement Approval (2 pages)
Exhibit A-16: Request for Taxpayer Identification Number (2 pages)
Exhibit A-17: Notice of Eligibility (1 page)
Exhibit A-18: Statement of Eligibility for Supplementary Replacement Housing Payment for Owner (1 page)
Exhibit A-19: 90-Day Letter of Assurance (1 page)
Exhibit A-20: 30-Day Notice to Vacate (1 page)
Exhibit A-21: Replacement Housing Questionnaire/Certification (1 page)
Exhibit A-22: Replacement Housing Payment Determination Three Comparables Method (2 pages)
Exhibit A-23: Personal Property Inventory (1 page)
Exhibit A-24: Moving Expense Calculation and Payment Determination (1 page)
Exhibit A-25: Application and Claim for Replacement Housing Payment (1 page)
Exhibit A-26: Application and Claim for Reimbursement of Moving Costs (1 page)

Exhibit A-27: Direct Payment Agreement (1 page)

Based on the Recipient's High financial risk level, this project requires submission and review of the "Project Monitoring Status Report" on a monthly basis, and submission and review of invoices and supporting documentation on a quarterly basis. Required documents should be submitted via email to D5-LocalPrograms@dot.state.fl.us.

The Recipient shall commence the project's activities subsequent to the execution of this Agreement and shall perform in accordance with the following schedule:

a) Begin Right-of-Way Acquisition by June 18, 2025.
b) Right-of-Way Maps Submittal by N/A.
c) Right-of-Way to be Certified (Acquisition Final) by January 28, 2026.

If this schedule cannot be met, the Recipient will notify the Department in writing with a revised schedule or the project is subject to the withdrawal of funding.

SPECIAL CONSIDERATIONS BY DEPARTMENT:

Invoice payments will be made on a pro-rata basis as a percentage of the federal funding amount compared to the actual award amount.

In the event the Project costs exceed the cost included in Exhibit "B", Schedule of Financial Assistance, the Recipient will be solely responsible to provide the additional funds that are necessary to complete the Project.

The remainder of this page intentionally left blank.

EXHIBIT A-1

Local Agency Program Right of Way Acquisition Worksheet

Quality Assurance Review

Agency: _____ Project No.:_____ Parcel No.:_____ Consultant/Agent:_____
Project Description:_____
FDOT Item/Segment No.:_____ FAP No.:_____ Owner:_____ IN Date:_____
QA Review by:_____ QA Review Date:_____

I. Property Owner Notification	Yes	No	N/A	Comments
1. Was Notice to Owner (FDOT Form No. 575-030-031(32) or equivalent) delivered at or before Negotiations? *Date Delivered:*_____				
2. Was the Notice sent to the owner's last known address listed on the county ad valorem tax roll?				
3. Was the Notice personally delivered or sent certified mail, return receipt requested?				
4. Was ownership in the form of a representative capacity, i.e., corporation, partnership or trust?				
5. If answer to #4 is yes, was Public Disclosure Notice (FDOT Form No. 575-030-18 or equivalent), delivered to the owner?				
II. Offer(s)	**Yes**	**No**	**N/A**	**Comments**
1. Was Offer (FDOT Form No. 575-030-08 or equivalent) and Purchase Agreement (FDOT Form No. 575-030-07 or equivalent) delivered directly to the Property Owner?				
2. Did we obtain a written acknowledgement of the Property Owner's receipt of the Offer? *If property owner refused to sign, note in comment section.*				
3. Was the offer amount based on recommended compensation?				
4. Was use of Appraisal Waiver properly executed?				
5. If an uneconomic remnant was identified by the review appraiser, was an offer to purchase the uneconomic remnant made?				
III. Business Owner Notification	**Yes**	**No**	**N/A**	**Comments**
1. Are there any businesses located on this parcel?				
2. If answer to #1 is yes, was Notice to Business Owner (FDOT Form No. 575-030-033(34) or equivalent) delivered at or after I.N.? *Date Delivered:*_____				
3. Based on the Secretary of State, Division of Corporations, was the registered agent notified?				
4. Was the business eligible for business damages?				
5. Was a business damage claim paid?				
IV. Good Faith Negotiations	**Yes**	**No**	**N/A**	**Comments**
1. Were good faith negotiations carried out with representative after Representative Authorization (FDOT Form No. 575-030-02 or equivalent) was received? *If property owner was not represented, write "N/A" in the comment section.*				
2. Did property owner request copies of appraisal, maps or plans?				
3. If answer to #2 is yes, were copies provided within 15 days of owner's request?				
4. Were good faith negotiations conducted with current appraisal values?				
5. If real property was donated, was the owner informed of his/her right to have an appraisal performed and a right to compensation?				

6. Did the Agency provide any construction or regulatory elements in lieu of compensation that exceeded the value of the real estate?				
V. Suit	**Yes**	**No**	**N/A**	**Comments**
1. Did 30 days pass after offer was made before suit was filed?				
2. If applicable, was notice to business owner delivered prior to filing of suit?				
3. Was the Public Disclosure Affidavit returned within 48 hours after OT deposit was made for ownerships in the form of a representative capacity such as a corporation, partnership or trust?				
VI. Agreement	**Yes**	**No**	**N/A**	**Comments**
1. Was an Agreement reached?				
2. Was Agreement inclusive of Fees & Costs?				
3. Was Agreement reviewed by Legal?				
4. Was Final Agency Acceptance granted at least 30 days after agreement was signed by both parties? *FAA Date* _____				
VII. Closing	**Yes**	**No**	**N/A**	**Comments**
1. Was Closing Statement (FDOT Form No. 575-030-16 or equivalent) prepared? *Date of Closing* _____				
2. Did the closing take place within 60 days after Final Agency Acceptance?				
3. Were documents accurate and properly executed?				
4. Were all closing documents recorded no later than 48 hours after closing?				
5. Was the Public Disclosure Affidavit returned at least 10 days prior to closing for ownerships in the form of a representative capacity, such as a corporation, partnership or trust?				
VIII. Settlements	**Yes**	**No**	**N/A**	**Comments**
1. Was Settlement Approval (FDOT Form No. 575-030-24 or equivalent) approved by the proper authority?				
2. Was the settlement a justifiable expenditure based on settlement criteria?				
IX. Fees and Costs	**Yes**	**No**	**N/A**	**Comments**
1. Were fees and costs based on an invoice or statutory formula? *Method Used:* _____				
2. Were fees and costs identified on the Purchase Agreement/Supplemental Agreement?				
X. 1099S	**Yes**	**No**	**N/A**	**Comments**
1. Was Request for Taxpayer ID (FDOT Form No. 575-030-27 or equivalent) delivered to non-excluded property owners? (Excluded = de minimis transactions and exempt transferors)				
2. Was Form 1099S delivered to the property owner at closing or before December 31 of the calendar year in which the closing was held? *1099S Delivery Date:*				
XI. LAP Certification	**Yes**	**No**	**N/A**	**Comments**
1. Was the Right of Way Certification (FDOT Form No. 575-095-05 or equivalent) executed**,** accurate, and submitted to the Right of Way Office prior to letting? *Date Certified :*_____				
Additional Comments:				

Local Agency Program Appraisal and Appraisal Review Worksheet
Quality Assurance Review

Agency:_____ Project No.:_____ Parcel No.: _____ Appraiser:_____
Project Description: _____
Reviewer: _____ FDOT Item/Segment No.: _____ FAP No.: _____
QA Review By: _____ QA Review Date: _____

Note: This worksheet does not include all items for a technical review.

I. Appraisal Report – Before Value	**Yes**	**No**	**N/A**	**Comments**
1. Was the property owner given the opportunity to accompany the appraiser at the time of inspection?				
2. Did the appraiser correctly address zoning and land use issues, including the probability of rezoning?				
3. Are the highest and best conclusions for land and as improved reasonable?				
4. Did the appraiser correctly employ the approaches to value?				
5. Are adjustments adequate, correct, and reasonably supported (land & as improved)?				
6. Did the appraiser correctly address any F F & E or M & E items?				
8. Did the appraiser reasonably support the conclusions for land value and the property as improved?				
II. Part Taken	**Yes**	**No**	**N/A**	**Comments**
Did the appraiser correctly determine the contributory value of the improvements within the acquisition (as part of the whole)?				
III. Valuation of the Remainder (s)	**Yes**	**No**	**N/A**	**Comments**
1. Are the highest and best use conclusions for land and as improved credible?				
2. Did the appraiser correctly employ the approaches to value?				
3. Are adjustments adequate, correct, and reasonably supported (land & as improved)?				
4. Did the appraiser determine conclusions of value for both the uncured and cured remainder?				
5. Did the appraiser correctly address any F F & E or M & E items, including any damages?				
6. Did the appraiser explain and consider the effect of the acquisition on the remainder property?				

IV. Damages	Yes	No	N/A	Comments
1. Did the appraiser adequately support the conclusion of damages?				
2. Did the appraiser adequately support the conclusion of no damages?				
3. Is the cost to cure adequate, supported, and correctly calculated?				
4. Did the appraiser effectively address the impact of a cure on the remainder?				
V. Summary of Values	**Yes**	**No**	**N/A**	**Comments**
Did the appraiser correctly complete the Summary of Values, including Total Compensation?				
VI. Design Issues	**Yes**	**No**	**N/A**	**Comments**
Could the acquisition be better designed in order to offset or minimize damages?				
VII. Review Appraiser's Statement	**Yes**	**No**	**N/A**	**Comments**
1. Did the reviewer clearly communicate the major issues within the appraisal report?				
2. Did the reviewer adequately support a value conclusion if different from the appraiser's estimate of value?				
3. Was the issue of an Uneconomic Remnant adequately addressed?				
Additional Comments				

EXHIBIT A-3

Local Agency Program Right of Way Personal Property or Sign Relocation Worksheet
Quality Assurance Review

Agency: _____ Project No.: _____ Parcel No.: _____ Consultant/Agent: _____
Project Description: _____
FDOT Item/Segment No.: _____ FAP No.: _____ I.N. Date: _____
_____-day Owner or Tenant Occupancy Verified: _____ Survey in File: _____
QA Review By: _____ QA Review Date: _____

I. NOTICES	Yes	No	N/A	Comments
1. General Information Notice (FDOT Form No. 575-030-31(32) or equivalent) delivered? Date:_____				
2. Notice of Eligibility (FDOT Form No. 575-040-31 or equivalent) delivered to owner at I.N.? Date: _____				
3. Notice of Eligibility delivered or mailed to tenant within 14 days of I.N.? Date: _____				
4. Hazardous Waste Notice (Form 575-040-08) delivered? Date:_____				
5. 90 Day Notice (FDOT Form No. 575-040-09 or equivalent) delivered or mailed? Date: _____ Expires: _____				
6. 30 Day Notice to Vacate (FDOT Form No. 575-040-11 or equivalent) delivered or mailed? Date: _____ Expires _____				
II. MOVE COST REIMBURSEMENT	**Yes**	**No**	**N/A**	**Comments**
1. Commercial Move?				
2. Two estimates required? If Yes, the amount of each. 1. $_____ 2. $_____				
3. Lowest estimate paid? Amount Paid: $_____				
4. Self-Documented Move?				
5. Self-Documented Move supported by bills or receipts in file? If Yes, amount paid $_____				
6. Self-Move?				
7. Pre-Move Inventory Conducted? Date: _____				
8. Post-Move Inventory Conducted? Date: _____				
9. Move Expense Calculation & Payment Determination (FDOT Form 575-040-20 or equivalent) in file and approved by proper Authority?				
III. Direct Loss Payment	**Yes**	**No**	**N/A**	**Comments**
1. Tangible Personal Property Relocated?				
2. Proof of Attempt to Sale Personal Property documented in file?				

3. Item Replaced with Substitute Property. If No, go to # 9.				
4. Cost of Substitute Property Item: $ _____				
5. Less value of Sale/trade-in of item: ($ _____)				
6. Total: $ _____				
7. Estimated cost of moving item: $ _____				
8. Amount of Payment (lowest of 6 & 7) $ _____				
9. Documentation of Item Operation Discontinued or Personalty will not be replaced at Replacement Site in file?				
10. Fair Market Value of Item in file? $ _____				
11. Less Proceeds from sale ($ _____)				
12. Total $ _____				
13, Estimate cost of moving item. $ _____				
14. Amount of payment (lowest of 12 & 13) $ _____				
Comments:				
IV. On-Premise Sign	**Yes**	**No**	**N/A**	**Comments**
1. Was sign relocated?				
2. Documentation of Proof of attempt to sell sign in file?				
3. Sign in Conflict with Local Governing Regulations?				
4. Re-establishment Expenses paid? If Yes, Amount $ _____				
5. Depreciated Reprod. Cost(Documented) $_____				
6. Less Proceeds from Sale of Sign ($ _____)				
7. Total $ _____				
8. Estimated Cost of Moving Sign? $ _____				
9. Amount of Payment (lowest of 6 & 8) $ _____				
10. Calculated, reviewed and approved by proper authority?				
V. CLAIMS, PAYMENTS & WARRANT DELIVERY	**Yes**	**No**	**N/A**	**Comments**
1. Advanced Payment Documented in File?				
2. Application & Claim for Replacement Housing Payment (FDOT Form 575-040-14 or equivalent) documented in File? Amount Paid: $_____				
3. Delivered and date delivered _____				
4. Calculated correctly and by whom? _____				

5. Warrant delivered by proper individual? Delivered by: _____				
6. Application and Claim for reimbursement of Moving Cost (FDOT Form 575-040-23 or equivalent) in file?				
7. Date of Move: _____				
8. Amount of Move Claim Paid: $ _____				
9. Date Move Claim Delivered: _____				
10. Calculated correctly and by whom? _____				
11. Warrant delivered by: _____				
12. Payments made to Displacee?				
13. Multiple Claims Documented in File?				
14. Direct Payment to Third Party Authorized and Documented?				
15. Other Claims Paid? If Yes, what? _____				
16. Replacement Certified D.S.&S.? Date of Certification: _____				
17. Occupancy of replacement documented in File? Date of Occupancy _____				
18. Based on File Documentation, was Adequate Advisory Services Provided?				
19. Appeal anticipated thru documentation in file?				
20. Any Evidence of Discrimination in File?				
21. Could reviewer Logically track the relocation process in the file?				
Additional Comments:				

Local Agency Program Right of Way Property Management Worksheet
Quality Assurance Review

Agency:_____ **Project No.:** _____ **Parcel No:.**_____
Project Description:_____
FDOT Item/Segment No.:_____ **FAP No.:**_____ **Consultant/Agent:**_____
QA Review By:_____ **QA Review Date:**_____

I. Excess Property Inventory	Yes	No	N/A	Comments
1. Was the property routed through a review process prior to disposal?				
2. Was the property disposed of?				
3. If not disposed, was the reason documented?				
II. Demolition & Removal	**Yes**	**No**	**N/A**	**Comments**
1. Is demolition, removal or abatement required on this parcel?				
2. Was a survey conducted prior to demolition, removal or abatement? Survey Date: _____ Demolition Date: _____				
3. Was the NESHAP notice sent to DEP/Local Air Program 10 working days prior to demo/removal/abatement? NESHAP Sent Date: _____				
4. Was the renotification sent to DEP/Local Air Program prior to demo/removal/abatement or 10 working days prior (if the start date was moved up)?				
5. Did the demo/removal/abatement begin on the date stated in the NESHAP notice/renotification?				
6. For hand delivered notifications, was a signature of receipt provided & placed in the file?				
7. For notices sent via certified mail, were copies of the receipt (green card) in the file?				
8. For renotifications, were copies of the signature of receipt/green card/ fax confirmation in the file?				
9. Were the requirements of the Davis-Bacon Act followed?				
III. Inventory & Inspections	**Yes**	**No**	**N/A**	**Comments**
1. Was a property inventory completed?				
2. Physical Possession Date: _____ Inventory Date: _____				

3. Was the inventory completed within 10 working days of physical possession?				
4. Was the inventory updated every 120 days from the date of physical possession?				
5. Are inspections performed every 120 days?				
6. Was agreed purchase price paid or Order of Taking deposit amount deposited prior to taking possession?				
IV. Sales & Leasing	**Yes**	**No**	**N/A**	**Comments**
1. Was the property acquired on/after 5/11/06 & listed in a petition of condemnation? Acquisition Date: _____				
2. If yes to #1, was it offered to the previous owner?				
3. Was the Declaration of Surplus/Temporarily Surplus in the file along with Dept'l routing sheets?				
4. If a disposal, was the 1st right of refusal offered to the local government?				
5. If a public purpose disposal, was the executed deed with the reverter clause in the file for property acquired with federal funds?				
6. If negotiated sale, was it valued at < $10K? Or if negotiated lease, was it a leaseback or inequitable?				
7. If sealed bid, was ad & bid tabulation sheet in file?				
8. For sealed bids, was it advertised 14 days prior to the bid opening?				
9. If public purpose, was a copy of the resolution or letter from the Agency Head in the file?				
10. If FHWA Concurrence was needed, was a copy of the approval letter in the file?				
11. Is rental rate equal to or below fair market rent for extended possession?				
VI. Additional Comments				

Local Agency Program Right of Way Residential Relocation Worksheet
Quality Assurance Review

Agency: _____ Project No.: _____ Parcel No.: _____ Consultant/Agent: _____
Project Description: _____
FDOT Item/Segment No.: _____ FAP No.: _____ I.N. Date: _____
_____- day Owner or Tenant Occupancy Verified: _____ Survey in File: _____
QA Review By: _____ QA Review Date: _____

I. NOTICES	Yes	No	N/A	Comments
1. General Information Notice (FDOT Form No. 575-030-31(32) or equivalent) delivered? Date: _____				
2. Notice of Eligibility (FDOT Form No. 575-040-31 or equivalent) delivered to owner at I.N.? Date: _____				
3. Notice of Eligibility delivered or mailed to tenant within 14 days of I.N.? Date: _____				
4. Statement of Eligibility (FDOT Form No. 575-040-06 or equivalent) delivered or mailed? Date: _____ Expires: _____				
5. RHP Determination in file offering transportation? (Housing Analysis Method)				
6. 90 Day Notice (FDOT Form No. 575-040-09 or equivalent) delivered or mailed? Date: _____ Expires: _____				
7. 30 Day Notice to Vacate (FDOT Form No. 575-040-11 or equivalent) delivered or mailed? Date: _____ Expires: _____				
II. RHP DETERMINATION	**Yes**	**No**	**N/A**	**Comments**
Purchase Additive				
1. Three comparables made available? If no, see comments.				
2. Comparables offered Decent, Safe and Sanitary?				
3. Replacement Housing Questionnaire /Certification (FDOT Form No. 575-040-13 or equivalent) in file?				
4. Was purchase additive calculated correctly based on review of FDOT Form 575-040-05 or equivalent? Amount: $_____				
5. Calculated, Reviewed and Approved by proper authority?				
6. Were Incidental Expenses paid?				
7. Was Increased Interest paid?				
8. Does file documentation support actions?				

Rent Supplement	Yes	No	N/A	Comments
1. Was Household Income verified? Source: _____				
2. Is Household Income considered by HUD as Low Income? _____				
3. Was rent supplement calculated correctly? If complicated, attach a worksheet?				
4. Amount of supplement from reviewing FDOT Form 575-040-05 or equivalent? AMOUNT: $_____				
5. Calculated, Reviewed and Approved by proper authority?				
Additional Comments:				

Down Payment Supplement	Yes	No	N/A	Comments
1. Displacee Requested to convert Rent Supplement to Down Payment Supplement? Amount of Supplement: $_____				
2. If yes to #1, were incidental expenses paid?				
3. Revised Statement delivered?				
4. Down payment documented?				
5. Calculated, reviewed and approved by proper authority?				
Additional Comments:				

Last Resort Housing	Yes	No	N/A	Comments
1. Housing of Last Resort applicable?				
2. Documentation in file to support?				
3. Multiple occupants in dwelling? If yes, how many? _____				
4. SINGLE or SEPARATE households documented?				
5. Separate RHP required?				
6. Separate Move Cost requested				
7. Presence of Less than 90 Day Occupant?				
Additional Comments:				

III. MOVE COST REIMBURSEMENT	Yes	No	N/A	Comments
1. Residential Scheduled Move?				
2. Documentation in file to support number room count? _____ #rooms Amount Paid: $_____				
3. Self-Move supported by bills or receipts in file? If Yes, amount paid: $_____				
4. Commercial Move?				
5. Two estimates required? If Yes, the amount of each. 1. $_____ 2. $_____				
6. Lowest estimate paid?				
7. Pre-Move Inventory (FDOT Form No. 575-040-17 or equivalent) conducted?				
8. Post-Move Inventory conducted?				
9. Move Expense Calculation & Payment Determination (FDOT Form 575-040-20 or equivalent) in file?				
10. Submitted and Approved by proper Authority?				
IV. CLAIMS, PAYMENTS & WARRANT DELIVERY	**Yes**	**No**	**N/A**	**Comments**
1. Advanced Payment Documented in file?				
2. Application & Claim for Replacement Housing Payment (FDOT Form 575-040-14 or equivalent) documented in file? Amount Paid: $_____				
3. Delivered and date delivered _____				
4. Calculated correctly and by whom? _____				
5. Warrant delivered by proper individual? Delivered by: _____				
6. Application and Claim for Reimbursement of Moving Cost (FDOT Form 575-040-23 or equivalent) in file?				
7. Date of Move: _____				
8. Amount of Move Claim paid: $ _____				
9. Date Move Claim delivered: _____				
10. Calculated correctly and by whom? _____				
11. Warrant delivered by: _____				
12. Payments made to displacee?				

13. Multiple Claims Documented in file?				
14. Direct Payment to Third Party authorized and documented (FDOT Form No. 575-040-22 or equivalent)?				
15. Other Claims paid? If Yes, what? _____				
16. Replacement Certified D.S.&S. (FDOT Form No. 575-040-13 or equivalent)? Date of Certification: _____				
17. Occupancy of replacement documented in file (FDOT Form No. 575-040-13 or equivalent)? Date of Occupancy _____				
18. Based on file documentation, was adequate Advisory Services provided?				
19. Appeal anticipated thru documentation in file?				
20. Any evidence of discrimination in file?				
21. Could reviewer logically track the relocation process in the file?				
Additional Comments:				

EXHIBIT A-6

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

LAP CERTIFICATION

575-095-05
RIGHT OF WAY
01/17

R/W ITEM/SEGMENT NO.: _____ MANAGING DISTRICT: Five

CONSTRUCTION ITEM/SEGMENT NO.: _____ STATE ROAD: _____

F.A.P. NO. (Construction): _____ DESCRIPTION: _____

COUNTY: _____

LETTING DATE: _____

The undersigned hereby certifies as follows:

Title to all property and easements needed for the above construction project is vested in the Florida Department of Transportation (Department) or a state or local government. The Department has obtained sufficient authority to construct and maintain the proposed improvements on property and easements owned by state or local governments. Further:

Acquisition

☐ Right of way was not acquired for this project.

☐ Right of way was acquired for this project in compliance with applicable state and federal law.

Relocation

☐ No persons or businesses were required to move or move personal property from the project right of way.

☐ All persons and businesses that were required to move or move personal property from the project right of way have been provided relocation assistance in compliance with applicable state and federal law.

Demolition

☐ No structures or improvements, including encroachments, required removal from the project right of way.

☐ All structures and/or improvements, including encroachments, have been removed from the project right of way in compliance with applicable state and federal law, or will be included in the construction contract.

Asbestos Abatement

☐ No structures or improvements requiring asbestos abatement were located on the project right of way.

☐ Asbestos abatement of buildings and/or structures, including those to be removed by the construction contractor, has been completed in compliance with applicable state and federal law, or will be included in the construction contract.

Submitted by Local Agency: _____

Title: Date:

Certified by FDOT: _____

Title: D-5 District Right of Way Manager, C. Jack Adkins Date:

EXHIBIT A-7

NOTICE TO OWNER

ITEM/SEGMENT #:
MANAGING DISTRICT:
F.A.P. #: 05
STATE ROAD #:
COUNTY:
PARCEL #:

Dear ,

The Florida Department of Transportation is planning the following improvement of the above referenced transportation facility:

Our research shows you own property needed for this project. This letter, along with the enclosed pamphlet entitled **Acquisition Process**, explains your rights and options and the process we must follow by law in acquiring your property. The following enclosed documents identify the property that is needed:

If you no longer own this property, please refer to the enclosed questionnaire.

We recognize that a proposed transportation project, particularly one which requires the acquisition of private property, will usually result in many questions and concerns. Please be assured you will have sufficient time to have your questions answered, to consider and understand your rights, options and responsibilities, and make all necessary arrangements. Throughout this process, we will do our best to ensure your questions are answered, that you are treated fairly and receive all of the rights you are guaranteed by law, and that you receive a fair price for your property.

Under Federal and State law, you are entitled to certain rights and protections when the State must acquire real estate from you. The following is a summary of your rights:

- You may accompany the Department's appraiser when your property is inspected as part of the process for valuing your property.
- You may obtain copies of the Department's appraisal, right of way maps and construction plans.
- We will make a written offer to you to purchase your property and will negotiate with you, in good faith, to reach a mutually acceptable purchase price.
- If we cannot agree on a purchase price, we will not file a condemnation lawsuit until at least 30 days after you receive our initial written offer.
- You will receive no less than full compensation for the property acquired. Full compensation includes, the value of the real estate acquired together with damages, if any, to your remaining property.
- You may be eligible for relocation assistance benefits if you are required to move or move personal possessions from the property we acquire.
- Â· You may receive reimbursement for reasonable attorney fees and other reasonable costs you incur for appraisal and other services associated with the Department's acquisition.

Your rights and options are more fully explained in the enclosed pamphlet entitled **Acquisition Process**. We encourage you to read this pamphlet carefully and contact us if you have any questions.

You may be contacted by attorneys, appraisers or others requesting a commitment from you to use their services in dealing with the Department. As previously mentioned, the Department will pay for certain types of services. However, by law, there are limitations placed on what the Department can pay. We encourage you to contact us and allow us to fully explain our reimbursement process.

Over the coming months, you will be contacted by various Department representatives who will schedule property inspections, assess your relocation needs, and negotiate with you for the purchase of your property. If you have questions about any aspect of our acquisition process or if you have information that would help us to determine a fair value for your property or help us provide service to you, please let them know. Regardless of whether or not we reach an agreement on the purchase of your property, we will do our best to be sensitive and responsive to your needs.

I encourage you to fill out and return the enclosed questionnaire in the postage-paid envelope provided. This information will help us begin working with you to reach a mutually acceptable settlement for your property. If you experience any problems, please do not hesitate to contact:

Sincerely,

District Right of Way Manager
By:

Enclosures:

Questionnaire
Return Envelope
Legal Description (and/or right of way map)
Acquisition Process Pamphlet

CC: Records Management

Received by: _____

Certified Mail Number:

Date: _____

QUESTIONNAIRE

ITEM/SEGMENT NO:
MANAGING DIST: 05
F.A.P. NO:
STATE ROAD NO:
COUNTY:
PARCEL NO:
ATTENTION:

Dear Property Owner:

Please provide the following information and mail to this office.

1. Are you the owner of the property identified above? _____
2. I have sold all _____ or part _____ of the property to:

   Name: _____

   Address: _____

   Approximate Date Sold: _____
3. Other than my spouse, I share ownership of this property with:

   Name: _____

   Address: _____

   Telephone No.: _____
4. Please list the appropriate contact person for this property:

   Name and Title: _____

   Address: _____

   Telephone No.: _____
5. Is there an ongoing business on this site? _____
6. If yes, who owns the business?

   Name: _____

   Address: _____

   Telephone No.: _____

7. Additional Comments: _____

_____

_____

_____
Property Owner's Signature

_____
Printed Name and Title

_____
Date

EXHIBIT A-8

575-030-18
RIGHT OF WAY
OGC – 2/20

Florida Department of Transportation

RON DESANTIS
GOVERNOR

JARED W. PERDUE, P.E.
SECRETARY

Name & Address

ITEM/SEGMENT NO.: _____

MANAGING DISTRICT: 5

F.A.P. NO.: _____

STATE ROAD NO.: _____

COUNTY: _____

PARCEL NO.: _____

Enter Salutation

Subject: Public Disclosure Affidavit (For Trust Only)

Section 286.23, Florida Statutes, (F.S.) requires persons or entities holding real property in the form of a trust to disclose in writing, under oath, and subject to the penalties prescribed for perjury, his/her name and address and the names and addresses of every person having a beneficial interest in such property. The Department must receive disclosure at least 10 days prior to the real estate closing by which the Department acquires the property or within 48 hours after the Department deposits the required monies into the registry of the court pursuant to an Order of Taking in condemnation. To assist you in complying with the disclosure requirement, we have enclosed a copy of ***Section 286.23, F.S.*** and an affidavit for you to complete and return to this office at:

_____ .

Please Note:

You are not required to disclose a beneficial interest in an entity registered with the Federal Securities Exchange Commission or the Florida Department of Financial Services pursuant to Chapter 517, Florida Statutes, whose interest is for sale to the general public.

You are also not required to disclose if all of the following apply: (1) the property is being acquired by the Department by condemnation; and (2) the property is held in a trust created more than three years prior to the date the Department deposits the required sum into the registry of the court pursuant to an Order of Taking in condemnation; and (3) the trustee certifies within 48 hours after deposit that no public officer or public employee has any beneficial interest whatsoever in such trust; and (4) the trustee discloses any changes in the trust instrument or beneficiaries that occurred during the three years prior to the deposit into the court registry. The Department anticipates depositing the required monies by Enter Date.

If beneficial interests in the property are exempt from disclosure, please so indicate on the enclosed affidavit.

If you have any questions please contact _____.

Sincerely,

_____
District Right of Way Manager

By: _____
Agent's Signature

_____
Name (Please Print or Type)

Enclosures: Section 286.23, Florida Statutes, Public Disclosure Affidavit (For Trust Only)

Section 286.23, Florida Statutes

286.23 Real property conveyed to public agency; disclosure of beneficial interests; notice; exemptions.--

(1) Any person or entity holding real property in the form of a partnership, limited partnership, corporation, trust, or any form of representative capacity whatsoever for others, except as otherwise provided in this section, shall, before entering into any contract whereby such real property held in representative capacity is sold, leased, taken by eminent domain, or otherwise conveyed to the state or any local governmental unit, or an agency of either, make a public disclosure in writing, under oath and subject to the penalties prescribed for perjury, which shall state his or her name and address and the name and address of every person having a beneficial interest in the real property, however small or minimal. This written disclosure shall be made to the chief officer, or to his or her officially designated representative, of the state, local governmental unit, or agency of either, with which the transaction is made at least 10 days prior to the time of closing or, in the case of an eminent domain taking, within 48 hours after the time when the required sum is deposited in the registry of the court. Notice of the deposit shall be made to the person or entity by registered or certified mail before the 48-hour period begins.

(2) The state or local governmental unit, or an agency of either, shall send written notice by registered mail to the person required to make disclosures under this section, prior to the time when such disclosures are required to be made, which written request shall also inform the person required to make such disclosure that such disclosure must be made under oath, subject to the penalties prescribed for perjury.

(3)(a) The beneficial interest in any entity registered with the Federal Securities Exchange Commission or registered pursuant to chapter 517, whose interest is for sale to the general public, is hereby exempt from the provisions of this section. When disclosure of persons having beneficial interests in nonpublic entities is required, the entity or person shall not be required by the provisions of this section to disclose persons or entities holding less than 5 percent of the beneficial interest in the disclosing entity.

(b) In the case of an eminent domain taking, any entity or person other than a public officer or public employee, holding real property in the form of a trust which was created more than 3 years prior to the deposit of the required sum in the registry of the court, is hereby exempt from the provisions of this section. However, in order to qualify for the exemption set forth in this section, the trustee of such trust shall be required to certify within 48 hours after such deposit, under penalty of perjury, that no public officer or public employee has any beneficial interest whatsoever in such trust. Disclosure of any changes in the trust instrument or of persons having beneficial interest in the trust shall be made if such changes occurred during the 3 years prior to the deposit of said sum in the registry of the court.

(4) This section shall be liberally construed to accomplish the purpose of requiring the identification of the actual parties benefiting from any transaction with a governmental unit or agency involving the procurement of the ownership or use of property by such governmental unit or agency.

History.--ss. 1, 2, 3, 4, 5, ch. 74-174; s. 1, ch. 77-174; s. 72, ch. 86-186; s. 7, ch. 91-56; s. 212, ch. 95-148.

ITEM/SEGMENT NO.: _____

MANAGING DISTRICT: 5

F.A.P. NO.: _____

STATE ROAD NO.: _____

COUNTY: _____

PARCEL NO.: _____

Public Disclosure Affidavit (For Trust Only)

I, the undersigned, under penalty of perjury, affirm that I hold the title for, or represent

_____ in the capacity of
Name of Trust

_____ and; my full name
Affiant's Title (Trustee)

and address is _____

_____ ; and
Affiant's Name and Address

_____ holds legal title to
Name of Trust

the real estate described in ***Attachment "A"*** to this affidavit; and (select appropriate option)

☐ The names and addresses of all persons who hold a beneficial interest in the real estate are listed on ***Attachment "B"*** to this affidavit.

☐ All beneficial interests in the property are exempt from disclosure because the entity identified above as the owner of the real estate is an entity registered with the Federal Securities Exchange Commission or the Florida Department of Financial Services pursuant to ***Chapter 517, Florida Statutes***, whose interest is for sale to the general public.

☐ The above named trust is a trust created at least three years prior to _____. Said trust is exempt from disclosure pursuant to ***Section 286.23 (3)(b), Florida Statutes***. As trustee for said trust, I hereby certify, under penalty of perjury, that no public officer or employee has any beneficial interest in said trust. Further, I have disclosed on **Attachment "B"** to this affidavit all changes to the trust instruments and to persons having a beneficial interest in said trust that occurred during the three years prior to the above date. I further certify that this disclosure has been made within 48 hours of the deposit of money into the registry of the court.

_____
Affiant's Signature

_____
Print or Type Name of Affiant

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____ , _____ by _____ as
(name of person)

_____ for _____
(type of authority) (name of party on behalf of whom instrument was executed)

Signature of Notary Public – State of Florida: _____

_____
(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known _____ OR Produced Identification _____
Type of Identification Produced _____

Attachment A
Insert Legal Description

Attachment “B”

EXHIBIT A-9

575-030-18
RIGHT OF WAY
OGC – 5/19

Florida Department of Transportation

RON DESANTIS
GOVERNOR

JARED W. PERDUE, P.E.
SECRETARY

Name & Address

ITEM/SEGMENT NO.: _____

MANAGING DISTRICT: 5

F.A.P. NO.: _____

STATE ROAD NO.: _____

COUNTY: _____

PARCEL NO.: _____

Enter Salutation

Subject: Public Disclosure Notice (For All Persons and Entities Except Trusts)

Section 286.23, Florida Statutes, (F.S.) requires persons or entities holding real property in the form of a corporation or partnership to disclose in writing, under oath, and subject to the penalties prescribed for perjury, his/her name and address and the names and addresses of every person having a beneficial interest in such property. The Department must receive disclosure at least 10 days prior to the real estate closing by which the Department acquires the property or within 48 hours after the Department deposits the required monies into the registry of the court pursuant to an Order of Taking in condemnation. To assist you in complying with the disclosure requirement, we have enclosed a copy of ***Section 286.23, F.S.*** and an affidavit for you to complete and return to this office at:

_____ .

Please Note:

You are not required to disclose a beneficial interest in an entity registered with the Federal Securities Exchange Commission or the Florida Department of Financial Services pursuant to ***Chapter 517, Florida Statutes***, whose interest is for sale to the general public. For nonpublic entities, you are also not required to disclose persons or entities holding less than 5% of the beneficial interest in the disclosing entity.

If you have any questions please contact _____.

Sincerely,

_____
District Right of Way Manager

By: _____
Agent's Signature

_____
Name (Please Print or Type)

Enclosures: Section 286.23, Florida Statutes, Public Disclosure Affidavit (For All Persons and Entities Except Trusts)

Section 286.23, Florida Statutes

286.23 Real property conveyed to public agency; disclosure of beneficial interests; notice; exemptions.--

(1) Any person or entity holding real property in the form of a partnership, limited partnership, corporation, trust, or any form of representative capacity whatsoever for others, except as otherwise provided in this section, shall, before entering into any contract whereby such real property held in representative capacity is sold, leased, taken by eminent domain, or otherwise conveyed to the state or any local governmental unit, or an agency of either, make a public disclosure in writing, under oath and subject to the penalties prescribed for perjury, which shall state his or her name and address and the name and address of every person having a beneficial interest in the real property, however small or minimal. This written disclosure shall be made to the chief officer, or to his or her officially designated representative, of the state, local governmental unit, or agency of either, with which the transaction is made at least 10 days prior to the time of closing or, in the case of an eminent domain taking, within 48 hours after the time when the required sum is deposited in the registry of the court. Notice of the deposit shall be made to the person or entity by registered or certified mail before the 48-hour period begins.

(2) The state or local governmental unit, or an agency of either, shall send written notice by registered mail to the person required to make disclosures under this section, prior to the time when such disclosures are required to be made, which written request shall also inform the person required to make such disclosure that such disclosure must be made under oath, subject to the penalties prescribed for perjury.

(3)(a) The beneficial interest in any entity registered with the Federal Securities Exchange Commission or registered pursuant to chapter 517, whose interest is for sale to the general public, is hereby exempt from the provisions of this section. When disclosure of persons having beneficial interests in nonpublic entities is required, the entity or person shall not be required by the provisions of this section to disclose persons or entities holding less than 5 percent of the beneficial interest in the disclosing entity.

(b) In the case of an eminent domain taking, any entity or person other than a public officer or public employee, holding real property in the form of a trust which was created more than 3 years prior to the deposit of the required sum in the registry of the court, is hereby exempt from the provisions of this section. However, in order to qualify for the exemption set forth in this section, the trustee of such trust shall be required to certify within 48 hours after such deposit, under penalty of perjury, that no public officer or public employee has any beneficial interest whatsoever in such trust. Disclosure of any changes in the trust instrument or of persons having beneficial interest in the trust shall be made if such changes occurred during the 3 years prior to the deposit of said sum in the registry of the court.

(4) This section shall be liberally construed to accomplish the purpose of requiring the identification of the actual parties benefiting from any transaction with a governmental unit or agency involving the procurement of the ownership or use of property by such governmental unit or agency.

History.--ss. 1, 2, 3, 4, 5, ch. 74-174; s. 1, ch. 77-174; s. 72, ch. 86-186; s. 7, ch. 91-56; s. 212, ch. 95-148.

ITEM/SEGMENT NO.: _____

MANAGING DISTRICT: 5

F.A.P. NO.: _____

STATE ROAD NO.: _____

COUNTY: _____

PARCEL NO.: _____

Public Disclosure Affidavit (For All Persons and Entities Except Trust)

I, the undersigned, under penalty of perjury, affirm that I hold the title for, or represent

_____ in the capacity of
Name of Corporation, Partnership, etc.

_____ and; my full name
Affiant's Title (President, V.P., etc.)

and address is _____

_____ ; and
Affiant's Name and Address

_____ holds legal title to
Name of Corporation, Partnership, etc.

the real estate described in ***Attachment "A"*** to this affidavit; and (select appropriate option)

☐ The names and addresses of all persons who hold a beneficial interest in the real estate are listed on ***Attachment "B"*** to this affidavit.

☐ All beneficial interests in the property are exempt from disclosure because the entity identified above as the owner of the real estate is an entity registered with the Federal Securities Exchange Commission or the Florida Department of Financial Services pursuant to ***Chapter 517, Florida Statutes***, whose interest is for sale to the general public.

☐ This is a nonpublic entity, and I elect not to disclose the names of persons or entities holding less that 5% of the beneficial interest in this entity.

_____
Affiant's Signature

_____
Print or Type Name of Affiant

State of _____

County of _____

Sworn to and subscribed before me this day of _____ , day of _____ , _____

By _____ who is personally known to me or who has produced

_____ as identification.

Notary's Signature: _____
(Print, type or stamp name of notary public)

Attachment A
Insert Legal Description

Attachment “B”

EXHIBIT A-10

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

STATEMENT OF OFFER

575-030-08
RIGHT OF WAY
03/17

ITEM/SEGMENT NO.: _____
DISTRICT: _____
FEDERAL PROJECT NO.: _____
STATE ROAD NO.: _____
COUNTY: _____
PARCEL NO.: _____

Dear (Seller)

As you are probably aware, the State of Florida Department of Transportation is in the process of acquiring the needed right of way for the above referenced facility. A determination has been made that either a part or all of your property will be needed. A search of the Public Records of the County in which this property is situated has been made and it was determined that property is owned by you.

The interest being acquired in your property is:

In addition, the following list will identify the buildings, structures, fixtures, and other improvements which are considered to be a part of the real property acquired, or personal property being acquired, if any:

The following items were excluded:

You are further advised that the Department's offer of just compensation for the property required for the construction of this facility is based on the Fair Market Value of the property and that the Department's offer to you is not less than the approved appraised value of the property.

The following represents a summary of the Department's offer to you and the basis therefore:

Land	$ _____
Improvements	$ _____
Real Estate Damages	$ _____
Total	$ 0.00

This Statement of Offer is not a contract; if you agree to accept this offer, you will be required to sign a purchase agreement. Any additional information you may require can be obtained through the Department's Representative that contacted you. If that representative is not readily available, please contact:

_____

at _____.

Sincerely,

Type or Print Name
District Right of Way Manager
By:

Delivered By	Type or Print Name	Date
Receipt Acknowledged By	Type or Print Name	Date

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

PURCHASE AGREEMENT

ITEM SEGMENT NO.: _____
DISTRICT: _____
FEDERAL PROJECT NO.: _____
STATE ROAD NO.: _____
COUNTY: _____
PARCEL NO.: _____

Seller: _____

_____

Buyer: State of Florida, Department of Transportation

Buyer and Seller hereby agree that Seller shall sell and Buyer shall buy the following described property pursuant to the following terms and conditions:

I. Description of Property:

(a) Estate Being Purchased: ☐ Fee Simple ☐ Permanent Easement ☐ Temporary Easement ☐ Leasehold

(b) Real Property Described As: _____

_____

(c) Personal Property: _____

_____

(d) Outdoor Advertising Structure(s) Permit Number(s): _____

Buildings, Structures, Fixtures and Other Improvements Owned By Others: _____
These items are **NOT** included in this agreement. A separate offer is being, or has been, made for these items.

II. PURCHASE PRICE

(a)	**Real Property**		
	Land	1.	$ _____
	Improvements	2.	$ _____
	Real Estate Damages (Severance/Cost-to-Cure)	3.	$ _____
	Total Real Property	**4.**	**$ 0.00**
(b)	**Total Personal Property**	**5.**	**$** _____
(c)	**Fees and Costs**		
	Attorney Fees	6.	$ _____
	Appraiser Fees	7.	$ _____
	_____		
	_____		
	_____ Fee(s)	8.	$ _____
	Total Fees and Costs	**9.**	**$ 0.00**
(d)	**Total Business Damages**	**10.**	**$** _____
(e)	**Total of Other Costs**	**11.**	**$** _____
	List: _____		
	_____		

Total Purchase Price (Add Lines **4, 5, 9, 10** and **11**) **$ 0.00**

Total Global Settlement Amount

(f)	Portion of Total Purchase Price or Global Settlement Amount to be paid to Seller by Buyer at Closing	$ _____
(g)	Portion of Total Purchase Price or Global Settlement Amount to be paid to Seller by Buyer upon surrender of possession or _____	$ _____

III. Conditions and Limitations

(a) Seller is responsible for all taxes due on the property up to, but not including, the day of closing.

(b) Seller is responsible for delivering marketable title to Buyer. Marketable title shall be determined according to applicable title standards adopted by the Florida Bar in accordance with Florida Law subject only to those exceptions that are acceptable to Buyer. Seller shall be liable for any encumbrances not disclosed in the public records or arising after closing as a result of actions of the Seller.

(c) Seller shall maintain the property described in **Section I** of this agreement until the day of closing. The property shall be maintained in the same condition existing on the date of this agreement, except for reasonable wear and tear.

(d) Any occupancy of the property described in **Section I** of this agreement by Seller extending beyond the day of closing must be pursuant to a lease from Buyer to Seller.

(e) The property described in **Section I** of this agreement is being acquired by Buyer for transportation purposes under threat of condemnation pursuant to **Section 337.25 Florida Statutes**.

(f) Pursuant to **Rule 14-10.004, Florida Administrative Code,** Seller shall deliver completed **Outdoor Advertising Permit Cancellation Form(s), Form Number 575-070-12**, executed by the outdoor advertising permit holder(s) for any outdoor advertising structure(s) described in **Section I** of this agreement and shall surrender, or account for, the outdoor advertising permit tag(s) at closing.

(g) Seller agrees that the real property described in **Section I** of this agreement shall be conveyed to Buyer by conveyance instrument(s) acceptable to Buyer.

(h) Seller and buyer agree that this agreement represents the full and final agreement for the herein described sale and purchase and no other agreements or representations, unless incorporated into this agreement, shall be binding on the parties.

(i) Other: _____

_____

_____

(j) Seller and Buyer agree that a real estate closing pursuant to the terms of this agreement shall be contingent on delivery by Seller of an executed Public Disclosure Affidavit in accordance with **Section 286.23, Florida Statutes**.

IV. Closing Date

The closing will occur no later than 60 days after Final Agency Acceptance.

V. Typewritten or Handwritten Provisions

Any typewritten or handwritten provisions inserted into or attached to this agreement as addenda must be initialed by both Seller and Buyer.

☐ There is an addendum to this agreement. Page _____ is made a part of this agreement.
☐ There is not an addendum to this agreement.

VI. Seller and Buyer hereby acknowledge and agree that their signatures as Seller and Buyer below constitute their acceptance of this agreement as a binding real estate contract.

It is mutually acknowledged that this Purchase Agreement is subject to Final Agency Acceptance by Buyer pursuant to **Section 119.0711, Florida Statutes**. A closing shall not be conducted prior to 30 days from the date this agreement is signed by Seller and Buyer to allow public review of the transaction. Final Agency Acceptance shall not be withheld by Buyer absent evidence of fraud, coercion, or undue influence involving this agreement. Final Agency Acceptance shall be evidenced by the signature of Buyer in **Section VII** of this agreement.

Seller(s)

_____
Signature Date

_____
Type or Print Name

_____
Signature Date

_____
Type or Print Name

Buyer

State of Florida Department of Transportation

BY: _____
Signature Date

_____
Type or Print Name and Title

VII. FINAL AGENCY ACCEPTANCE

The Buyer has granted Final Agency Acceptance this _____ day of _____, _____.

BY: _____
Signature

_____
Type or Print Name and Title

Legal Review: _____
Date

_____
Type or Print Name and Title

ADDITIONAL SIGNATURES

SELLER(S):

Signature Date

Type or Print Name

Signature Date

Type or Print Name

Signature Date

Type or Print Name

Signature Date

Type or Print Name

Signature Date

Type or Print Name

Signature Date

Type or Print Name

Signature Date

Type or Print Name

Signature Date

Type or Print Name

Signature Date

Type or Print Name

Signature Date

Type or Print Name

Signature Date

Type or Print Name

NOTICE TO BUSINESS OWNER

ITEM/SEGMENT #:
MANAGING DISTRICT:
F.A.P. #: 05
STATE ROAD #:
COUNTY:
PARCEL #:

Dear ,

The Florida Department of Transportation is planning the following improvement of the above referenced transportation facility.

Our research shows you own a business located on property needed for this project. The following enclosed documents identify the property that is needed:

You may be eligible for compensation if your business is damaged as a result of this acquisition. However, there are several conditions your business must meet before you are eligible to receive a business damage payment. This letter, along with the enclosed pamphlet entitled **Business Damages Process**, explains the eligibility requirements, your rights and options, and the process you must follow in claiming business damages.

The Department recognizes that a proposed transportation project, particularly one which requires acquisition of private property, will usually result in many questions and concerns. Please be assured you will have sufficient time to have your questions answered, to consider and understand your rights, options and responsibilities, and to make all necessary arrangements. Throughout this process, we will do our best to ensure your questions are answered, that you are treated fairly and receive all of the rights you are guaranteed by law.

Your receipt of this notice does not entitle you to business damages. By law, in order to qualify for business damages, your business must meet the following conditions:

- You must hold a real property interest, in the form of a lease, deed, etc., in the portion of the property being acquired by the Department.
- The acquisition must be a partial acquisition of the property on which your business is located. If the Department acquires all of the real estate on which your business is located, your business will not qualify for payment of damages.
- Your business must have been in operation on the site for at least five years immediately prior to the Department's acquisition.
- You must be able to show that any damages you are claiming result directly from the loss of property. The effects of construction activities or other effects incidental to construction are not compensable.

If your business qualifies as described above and you wish to claim business damages, you must submit a good faith written offer to settle your business damage claim to the Department no later than 180 days after you receive this notice. Your written offer must be sent by certified mail, return receipt requested to the following address:

If you do not submit your offer to settle your business damage claim within the specified time your claim may not be allowed in future condemnation proceedings. If you share ownership of the business with others, you should coordinate with the other owners and provide only one business damage claim for the business.

Your business damage offer must include an explanation of the nature, extent and monetary amount of the damages you are claiming. The offer must be prepared by you as the business owner, a certified public accountant or a business damage expert familiar with the nature of the operations of your business. With your offer you must also provide copies of your business records substantiating your good faith offer.

You may be contacted by attorneys, accountants or others requesting a commitment from you to use their services in dealing with the Department. The Department will pay for certain types of services. However, by law there are limitations placed on what the Department can pay. We encourage you to contact us and allow us to fully explain our reimbursement process.

Your rights and options are more fully explained in the enclosed **Business Damages Process pamphlet**. We encourage you to read the pamphlet carefully. If you have questions about any aspect of our acquisition process, please give us an opportunity to answer them. Regardless of whether or not we reach an agreement on the amount of damages to your business, we will do our best to be sensitive and responsive to your needs.

I encourage you to fill out and return the enclosed questionnaire in the postage-paid envelope provided. This information will help us work with you if you decide to file a claim for business damages. If you experience any problems, please do not hesitate to contact:

Sincerely,

District Right of Way Manager
By:

Enclosures:

Questionnaire
Return Envelope
Legal Description (and/or right of way map)
Business Damages Process Pamphlet

CC: Records Management

Received by: _____

Certified Mail Number:

Date: _____

EXHIBIT A-12a

QUESTIONNAIRE

ITEM/SEGMENT NO:
MANAGING DIST: 05
F.A.P. NO:
STATE ROAD NO:
COUNTY:
PARCEL NO:
ATTENTION:

Dear Business Owner:

Please complete the following information and mail to this office.

1. Name of the business and a brief description of the business operation:

   _____

2. Are you the owner of the business operating at this site? _____

   If yes, how long have you been in business? _____

3. I have sold all _____ or part _____ of the business.

   Approximate Date Sold: _____. The business was sold to:

   Name: _____

   Address: _____

4. If you share ownership of this business, please list the other owners.

   (Use reverse side if necessary)

   Name: _____

   Address: _____

   Telephone No.: _____

5. Please identify the appropriate contact person for your business:

   Name and Title: _____

   Address: _____

   Telephone No.: _____

6. Do you anticipate filing a business damage claim? _____

7. Additional Comments: _____

(Use reverse side if necessary)

_____

Business Owner's Signature Date

_____

Printed Name and Title

EXHIBIT A-13

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

REPRESENTATIVE AUTHORIZATION

575-030-02
RIGHT OF WAY
2/20

Address of the District or Satellite Office where the completed form will be submitted.

ITEM/SEGMENT NO.: _____

MANAGING DISTRICT: _____

F.A.P. NO.: _____

STATE ROAD NO.: _____

COUNTY: _____

PARCEL NO.: _____

Attention: _____

Dear FDOT Right of Way Manager:

This is to advise you that I hereby authorize _____

of _____

who was hired by me as of _____ (date) to (indicate extent of authorization by marking one or both boxes as applicable):

☐ Represent me in all future dealings in the above referenced project and parcel(s).

☐ Accept service of process in my behalf concerning any legal proceedings in eminent domain which may ensue.

OWNER(S)/TENANT(S):

_____ _____ _____ _____

Signature Date Signature Date

_____ _____

Printed Name Printed Name

This is to advise you that I am authorized to represent _____

of _____ in the

capacity(ies) set forth above. I ☐ am ☐ am not a member of the Florida Bar. ☐ I will accept service of process.

NOTE: This document must be notarized if the agent **is not** a member of the Florida Bar but is authorized to accept service of process.

STATE OF FLORIDA

COUTY OF _____.

_____ _____

Representative Signature Date

_____

Representative Printed Name

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, _____ by _____ as _____ for

(Name of person) (Type of authority)

_____

(Name of party on behalf of whom instrument was executed)

_____

Signature of Notary Public – State of Florida

_____

Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known _____ OR Produced Identification _____

Type of Identification Produced _____

_____

_____

_____

Representative Address

Phone: _____

Email: _____

INSTRUCTIONS FOR COMPLETION OF THE REPRESENTATIVE AUTHORIZATION (FORM 575-030-02)

If a property owner or business owner chooses to be represented by an agent during negotiation, including service of legal process, a written authorization, to include the information on this form must be provided by the owner or the owner's agent to the Department prior to the Department's negotiation of the parcel with the authorized representative.

DATE AND INSIDE ADDRESS: Space is available for the form preparer to provide the inside address of the district or satellite office where the completed form will be submitted.

PROJECT/PARCEL IDENTIFICATION: The following information can be located in the legal documents and/or right of way maps for each project and is required on official Department forms:

Item/Segment No.
Managing District
F.A.P. No.
State Road No.
County
Parcel No.

ATTENTION: Provide the agent or individual's name responsible for negotiation of the parcel.

TOP PORTION OF THE FORM: The form provides space for the following information to be provided by the owner:

The name of representative and representative's firm name, if applicable.

Date representative was hired.

Check box for capacity of representation.

Owner/Tenant signature and date of authorization.

Owner/Tenant's printed or typed name.

LOWER PORTION OF FORM: The form provides space for the following information to be provided by the representative:

Name of property or business owner and firm name, if applicable.

Check box indicating whether representative is a member of the Florida Bar.

Check box indicating whether representative will accept service of process.

Representative's signature and date of acceptance.

Representative's address for negotiations and service of process.

Representative's telephone number.

NOTARY SECTION: If the representative is not a member of the Florida Bar, the notary section must be completed by a notary.

EXHIBIT A-14

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

CLOSING STATEMENT

575-030-16
RIGHT OF WAY
OGC – 03/20

ITEM/SEGMENT NO.: _____
MANAGING DISTRICT: _____
F.A.P. NO.: _____
STATE ROAD NO.: _____
COUNTY: _____
PARCEL NO.: _____

BUYER: STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION
SELLER(S):
REAL PROPERTY DESCRIBED AS:

Summary of Seller's Transaction

Credits		
Land	$	
Improvements	$	
Real Estate Damages/Cost-to-Cure	$	
Personal Property	$	
Business Damage	$	
Attorney Fees	$	
Appraiser Fees	$	
Other: _____	$	
Total Credits	$	0.00
Debits		
First Mortgage Payoff	$	
First Mortgage Pre-Payment Penalty	$	
Second Mortgage Payoff	$	
Second Mortgage Pre-Payment Penalty	$	
Attorney Fees	$	
Appraiser Fees	$	
Ad Valorem Taxes: _____	$	
Other: _____	$	
Total Debits	$	0.00
Credits Less Debits	$	0.00
Amount Withheld	$	
Amount Due to Seller at Closing	$	0.00

Warrant No.: _____

Received By: _____
Type or Print Name:

Date of Final Agency Acceptance: _____

Date of Closing.: _____

Closing Agent: _____
Type or Print Name:

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

SETTLEMENT APPROVAL

MANAGING DISTRICT: _____ PARCEL NO.: _____

ITEM/SEGMENT NO.: _____ LITIGANT NAME/NO.: _____

SUIT STYLE: _____ DOT SUIT NO.: _____

F.A.P. NO.: _____ COUNTY: _____

DOT ATTORNEY: _____ DEFENSE ATTORNEY: _____

JUDGE: _____ TRIAL DATE: _____

_____ COURT DOCKET NO.: _____

☐ ADMINISTRATIVE SETTLEMENT ☐ COURT ORDERED MEDIATION ☐ LEGAL SETTLEMENT
☐ OFFER OF JUDGMENT ☐ NON-COURT ORDERED MEDIATION ☐ OTHER SETTLEMENT

SETTLEMENT

Land		$ _____
Improvements		_____
Severance/Real Estate Damages		_____
Move Costs		_____
Business Damages		_____
Owner/Litigant Attorney Fee		_____
Based on Benefit of	$ _____	
Based on Nonmonetary Benefit of	$ _____	
Owner/Litigant Appraisal Fee		_____
Owner/Litigant Expert Fees		_____
Owner/Litigant Costs (Specify) _____		_____
Other _____		_____
TOTAL SETTLEMENT		$ 0.00

SUPPORT DATA

Owner Appraisal	$ _____	Appraiser	_____
Owner Claim	$ _____		
DOT Approved Appraisal	$ _____	Appraiser	_____
Unapproved Appraisal(s) (if relevant)	$ _____		_____
Owner/Tenant Business Damage Claim	$ _____		_____
DOT Business Damage Counteroffer	$ _____		

Justification:

SUBMITTED BY: _____ _____

☐ Right of Way Agent ☐ Trial Attorney Date

_____ _____

☐ District Acquisition Administrator Date
☐ Office of the General Counsel

APPROVED FOR SETTLEMENT: _____ _____

☐ District Right of Way Manager Date
☐ Assistant District Right of Way Manager

ADDITIONAL APPROVALS (as applicable)

☐ **APPROVED FOR SETTLEMENT:** _____

☐ Director, Office of Right of Way Date
☐ Deputy Director, Production

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

REQUEST FOR TAXPAYER IDENTIFICATION NUMBER

575-030-27
RIGHT OF WAY
10/16

Name & Address

ITEM/SEGMENT NO.: _____
MANAGING DISTRICT: _____
F.A.P. NO.: _____
STATE ROAD NO.: _____
COUNTY: _____
PARCEL NO.: _____

The Florida Department of Transportation will be acquiring, or has acquired property owned by you for a transportation project or will be processing a payment to you related to the above referenced parcel. Federal regulations require that we report this transaction to the Internal Revenue Service (IRS), therefore we must obtain your correct Taxpayer Identification Number (TIN).

If you fail to furnish your correct TIN you may be subject to an IRS penalty. Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

See the attached instruction for how to enter names and TINs. If you have any questions please let us know.

Name	**Phone Number**
Business Name, if different from above	**Phone Number**
Address (number, street, and apt. or suite no.)	**OWNERSHIP INTEREST** ☐ Sole Owner ☐ Part Owner with _____ % interest ☐ Not Applicable (Vendor Only)
City, State, and ZIP Code	

TAXPAYER IDENTIFICATION NUMBER (TIN)

For individuals, this is your social security number (SSN): __ __ __ - __ __ - __ __ __ __

For other entities, it is your employer identification number (EIN): __ __ - __ __ __ __ __ __ __

If you do not have a TIN, see attached instructions for **How to get a TIN.**

Below, choose one number that accurately describes the business or the individual.

☐ **1 - CORPORATION, PROFESSIONAL ASSOCIATION OR PROFESSIONAL CORPORATION**
(A corporation formed under the laws of any state within the United states.)

☐ **2 - NOT FOR PROFIT CORPORATION** (Section 501(c)(3) Internal Revenue Code)

☐ **3 - PARTNERSHIP, JOINT VENTURE, ESTATE, TRUST OR MULTIPLE MEMBER LLC**

☐ **4 - INDIVIDUAL, SOLE PROPRIETOR, SELF EMPLOYED OR SINGLE MEMBER LLC**

☐ **5 - NONCORPORATE RENTAL AGENT**

☐ **6 - GOVERNMENTAL ENTITY** (City, County, State or U.S. Government)

☐ **7 - FOREIGN CORPORATION OR ENTITY** (A foreign entity formed under the laws of a country other than the United States.) If YES is marked below, complete and attach Form W-8ECI.
Is income effectively connected with business in the United States? ☐ YES ☐ NO

☐ **8 - NONRESIDENT ALIEN** (An individual temporarily in the U.S. who is not a U.S. citizen or resident.)

CERTIFICATION

Under penalties of perjury, I certify that the number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me).

Sign Here _____ **Date** _____

Title _____ **Email (optional)** _____

Exhibit A-16

Instructions for

Names and Taxpayer Identification Numbers

1. Individuals should enter the name shown on your social security card. If you have changed your last name due to marriage without informing the Social Security Administration of the name change, enter your first name, the last name shown on your social security card, and your new last name.

2. Married Couples should give the name and SSN of either person.

3. Custodian Accounts (Guardianship) must give the ward's name and SSN. Do not furnish the TIN of the guardian.

4. For a **Trust Account that is not a legal or valid trust under state law,** give the name and SSN of the actual owner.

5. Limited Liability Company (LLC) - If a single-member LLC (including a foreign LLC with a domestic owner) disregarded as an entity separate from its owner under Treasury regulations section 301.7701-3, enter the owner's name on the "Name" line and enter the LLC name on the "Business Name" line. You may use either your SSN or EIN. If the LLC is a corporation, partnership, etc., enter the entity's EIN.

6. For a **Sole Proprietor or a Single-Owner LLC** enter your **individual** name as shown on your social security card. You may enter your business, trade, or "doing business as (DBA) name on the "Business name" line. You may enter either your SSN or EIN (if you have one). The IRS prefers that you use your SSN.

7. For a **Valid Trust**, name the trust and give the EIN for the trust. Do not furnish the TIN of the trustee.

8. For an **Estate**, the name should be shown as "The estate of (name of decedent)". Give the SSN of the decedent if he/she died in the calendar year of the closing. Give the EIN for the estate for any subsequent years following the death of the decedent. Do not furnish the TIN of the personal representative.

9. For an **Association, Club, Religious, Charitable, Educational, or other tax-exempt organization**, give the name and EIN of the organization.

10. For a **Partnership or Multi-Member LLC** give the name and EIN for the partnership, or LLC.

If you do not have a TIN, apply for one immediately. To apply for an SSN, get **Form SS-5**, Application for a Social Security Card, from your local Social Security Administration office or by calling 1-800-772-1213. Use **Form W-7**, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or **Form SS-4**, Application for Employer Identification Number, to apply for an EIN. You can get Forms W-7 and SS-4 from the IRS by calling 1-800-TAX-FORM (1-800-829-3676) or from the IRS Web Site at **www.irs.gov**.

If you do not have a TIN, write "Applied For" in the space for the TIN, sign and date the form. **Note:** Writing "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

EXHIBIT A-17

Form 575-040-31
Right of Way - 06/09

ITEM/SEGMENT #:
MANAGING DISTRICT:
F.A.P. #: 05
STATE ROAD #:
COUNTY:
PARCEL #:

NOTICE OF ELIGIBILITY

Dear

The Florida Department of Transportation is in the process of acquiring real property for the above referenced project in your area. We have determined you will be required to move from your dwelling located on the property being acquired to accommodate construction of this transportation facility.

This notice is to advise you of your eligibility for services and payments under the Relocation Assistance program. As a displaced person, you will receive advisory services and reimbursement for the actual, reasonable, and necessary costs incurred in moving your personal property to a replacement dwelling. You may also qualify for a replacement housing payment to assist your purchasing and/or renting of a replacement dwelling. Other forms detailing specific payment amounts will be provided to you in the near future.

As it is the Department's desire to provide assistance to you through the relocation process, we encourage you to speak with the Department's Relocation Agent assigned to help you. The agent is responsible for explaining the various payments and options available to you and will assist you at your convenience in answering questions, completing required forms and gathering necessary information.

NOTE: This notice is not directing you to immediately vacate the property. Your assigned agent will keep you informed of scheduled timeframes and, if necessary, provide you advance written notice specifying the date the property must be vacated.

If you have any questions contact our Relocation Assistance Office located at:

Sincerely,

District Right of Way Manager
By:

Receipt Acknowledged:_____ _____
Addressee Date

(1) Original to Property Owner/Tenant
(2) Copy to District Office Official Record File

EXHIBIT A-18

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

FORM 575-040-06
RIGHT OF WAY
04/03

STATEMENT OF ELIGIBILITY FOR SUPPLEMENTARY REPLACEMENT HOUSING PAYMENT FOR OWNER

ITEM/SEGMENT #:
MANAGING DISTRICT:
F.A.P. #: 05
STATE ROAD #:
COUNTY:
PARCEL #:

This is to certify that being
displaced from the residence located at ,

☐ will not be eligible for replacement housing because

☐ will be eligible for a purchase additive amount not to exceed $ 0.00 in order to purchase a decent, safe, and sanitary dwelling as an owner who elects to purchase. In order to receive the full purchase additive amount, you must purchase a decent, safe, and sanitary dwelling costing at least $ 0.00

The above amount is based upon the difference between the value of the comparable replacement dwelling offered by the Department ($ 0.00) and the value of the acquired dwelling on a typical homesite as determined by the Department ($ 0.00). The value of the acquired dwelling on a typical homesite represents 0 % of the approved appraisal amount for your property, which is $ 0.00 . If the actual price of the acquired dwelling changes or the displacee purchases a replacement dwelling with a different value, the amount of the purchase additive eligibility may change. This eligibility amount is subject to change if comparable dwellings similar to the property to be acquired are no longer available.

The displacee may also be eligible, when applicable, for compensation of the loss of favorable financing on an existing mortgage in the financing of replacement housing and reimbursement for costs incidental to the purchase of a replacement dwelling. The displacee must purchase and occupy decent, safe and sanitary replacement housing within one year from the later of the date he/she receives this Statement of Eligibility or the date he/she receives payment for the property the Department is acquiring. In condemnation cases, this is the date funds are deposited with the court.

The benefits will not be available until acquisition of the property to be acquired by the Office of Right of Way is complete or, in the case of condemnation, the owner has signed such agreements as are required by the Department of Transportation.

Payments will not be made to persons who purchase a replacement dwelling until they occupy the dwelling and provide a closing statement or other acceptable documentation of the price paid for the replacement unit.

If you are eligible for a replacement housing payment, please see attached Form Number 575-040-05 for location and further information on comparable replacement dwelling(s) offered to you and calculation of replacement housing payment.

Signed: _____

Title:

Dated: _____

Receipt Acknowledged by _____

on the _____ day of _____ , _____

EXHIBIT A-19

FORM 575-040-09
RIGHT OF WAY - 04/03

In reply refer to:

ITEM/SEGMENT #:
MANAGING DISTRICT:
F.A.P. #: 05
STATE ROAD #:
COUNTY:
PARCEL #:
Initiation of Negotiations:

90-DAY LETTER OF ASSURANCE

Dear

As you are aware, the State of Florida Department of Transportation is in the process of acquiring right of way for the above-referenced project in your area. It has been determined that you, your family, your business or farm operation, or personal property you may own will need to be relocated from this real property which is needed for the construction of this transportation facility.

To ensure that you receive adequate time to relocate, the Department hereby assures that you will not be required to move from the subject property before at least ninety (90) days have elapsed from the date of receipt of this letter. This assurance applies to you, your family, your business or farm operation, or personal property you may own. Further, you will be given a written notice which will specify the actual date by which the property must be vacated and surrendered to the Department. You will receive this latter notice at least thirty (30) days prior to the date specified.

If you are a residential occupant and have not been offered a comparable replacement dwelling with this letter, you are further assured that you will not be required to move in less than 90 days from the date such a dwelling is made available to you.

It is the sincere desire of the Department to assist you in your relocation necessitated by this acquisition and to answer any questions you may have. Should you desire further information, our Relocation Assistance Office is located at

Sincerely,

District Right of Way Manager

By:

Receipt Acknowledged:_____ _____
Addressee Date

(1) Original to Property Owner/Tenant
(2) Acknowledged Copy to District Office Official Record File

EXHIBIT A-20

FORM 575-040-11
RIGHT OF WAY
04/03

ITEM/SEGMENT #:
MANAGING DISTRICT:
F.A.P. #: 05
STATE ROAD #:
COUNTY:
PARCEL #:

30-DAY NOTICE TO VACATE

Dear

By previous notice you have been advised that the Department would provide you with a written thirty (30) day notice of the specific date by which you must vacate and surrender possession of the subject property.

This is to advise that you will be required to vacate and surrender possession of the above referenced property on

Thank you for your continued cooperation.

Yours very truly,

District Right of Way Manager

By:

Receipt Acknowledged:_____ _____
Addressee Date

(1) Original to Property Owner/Tenant
(2) Copy to District Office Official Record File

EXHIBIT A-21

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

REPLACEMENT HOUSING QUESTIONNAIRE/CERTIFICATION

575-040-13
RIGHT OF WAY
05/03

ITEM/SEGMENT #:
MANAGING DISTRICT:
F.A.P. #:
STATE ROAD #:
COUNTY:
PARCEL #:

DISPLACEE: ADDRESS:			**COMPARABLE NO.:**	
NUMBER BEING RELOCATED TO THIS UNIT:		DISPLACEE'S INCOME:		
ADDRESS OF PROPERTY:		LISTED BY:		
OWNER'S NAME & ADDRESS:	☐ SINGLE ☐ M/H ☐ MULTI ☐ OTHER	ADVERSE ENVIRONMENTAL FACTORS?		
ASKING PRICE:	RENTAL: MO.	% DOWN TO PURCHASE:	LOT SIZE:	☐ GARAGE ☐ CARPORT CAR(S)
TYPE OF NEIGHBORHOOD:	DISTANCE TO EMPLOYMENT:	DISTANCE TO TRANSPORTATION:		
DISTANCE TO SHOPPING:	DISTANCE TO SCHOOL ELEMENTARY: JR. HIGH: SR. HIGH:			
DISTANCE TO CHURCH OF CHOICE:	FAIR HOUSING ☐ YES ☐ NO	EXTERIOR APPURTENANCES:		

TOTAL FLOOR SPACE: SQ. FT. Total floor space includes all heated areas. In addition to habitable floor space, total floor space includes closets, baths, connecting corridors, pantries, if heated and considered part of the main body of the house.

TYPE OF CONSTRUCTION:	AGE:	# BEDROOMS:	# BATHS:	# TOTAL ROOMS:
☐ BRICK ☐ FRAME ☐ CONCRETE BLOCK ☐ OTHER				

HOUSING CODE:
-IS PROPERTY COVERED BY A LOCAL HOUSING CODE? ..... ☐ YES ☐ NO
-DOES PROPERTY CONFORM TO CODE? ..... ☐ YES ☐ NO EXCEPTION LIST ATTACHED

ELECTRICITY:
-IS THERE A PROVISION FOR ARTIFICIAL LIGHTING IN EACH ROOM? ..... ☐ YES ☐ NO

HEATING AND AIR CONDITIONING:
-IS THERE AN ADEQUATE HEATING SYSTEM MAINTAINING A 70° TEMPERATURE?
GIVE TYPE: ..... ☐ YES ☐ NO
-IS INSPECTION BY A HEATING EXPERT NEEDED? ..... ☐ YES ☐ NO
-IS THERE AN AIR CONDITIONING SYSTEM? ..... ☐ YES ☐ NO
GIVE TYPE: _____ # OF UNITS: _____

WATER SUPPLY:
-IS THERE A CONTINUING AND ADEQUATE SUPPLY OF POTABLE SAFE WATER?
GIVE SOURCE: _____ ..... ☐ YES ☐ NO
-IF WELL OR CISTERN, WHEN WAS IT LAST TESTED? _____ RESULTS: _____

KITCHEN:
-DOES KITCHEN CONTAIN A SINK WITH HOT & COLD WATER FAUCETS IN WORKING CONDITION? ..... ☐ YES ☐ NO
-DOES KITCHEN HAVE UTILITY CONNECTIONS & SPACE FOR RANGE AND REFRIGERATOR? ..... ☐ YES ☐ NO

BATHROOM:
-IS BATHROOM WELL-LIGHTED, VENTILATED & AFFORDING PRIVACY? ..... ☐ YES ☐ NO
-DOES BATHROOM CONTAIN LAVATORY BASIN, FLUSH CLOSET, AND BATHTUB OR STALL SHOWER? ..... ☐ YES ☐ NO
-ARE FACILITIES CONNECTED TO: ☐ SEWER ☐ SEPTIC TANK? ..... ☐ YES ☐ NO

STRUCTURE:
-IS STRUCTURE SOUND, WEATHER TIGHT & IN GOOD REPAIR? ..... ☐ YES ☐ NO
-IS STRUCTURE ADEQUATELY MAINTAINED? ..... ☐ YES ☐ NO
-IS THERE MEANS TO EGRESS TO SAFE OPEN SPACE AT GROUND LEVEL? ..... ☐ YES ☐ NO
-IS STRUCTURE THREE OR MORE STORIES HIGH? ..... ☐ YES ☐ NO
IF YES, HAS TWO OR MORE EXITS TO SAFE OPEN AREA AT GROUND LEVEL ..... ☐ YES ☐ NO
-DOES STRUCTURE APPEAR TO MEET DECENT, SAFE AND SANITARY LIVING REQUIREMENTS? ..... ☐ YES ☐ NO
REMARKS:

I HEREBY CERTIFY THAT I HAVE PERSONALLY INSPECTED THE ABOVE DESCRIBED PROPERTY, AND THE PROPERTY APPEARS TO MEET ALL DECENT, SAFE AND SANITARY REQUIREMENTS. ☐ YES ☐ NO

ANY DETERMINATION MADE BY THE DEPARTMENT THAT A DWELLING MEETS STANDARDS FOR DECENT, SAFE AND SANITARY HOUSING IS MADE SOLELY FOR THE PURPOSES OF DETERMINING ELIGIBILITY FOR REPLACEMENT HOUSING PAYMENTS AND IS NOT A REPRESENTATION OR WARRANTY FOR ANY OTHER PURPOSE.

INFORMATION OBTAINED FROM:	AGENT'S SIGNATURE:	DATE:

I HEREBY CERTIFY THE ABOVE PROPERTY OCCUPIED AS OF _____

AGENT'S SIGNATURE _____

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

REPLACEMENT HOUSING PAYMENT DETERMINATION
THREE COMPARABLES METHOD

OCCUPANT & ADDRESS:	ITEM/SEGMENT NO.:
	MANAGING DISTRICT:
	F.A.P. NO.:
	STATE ROAD NO.:
	COUNTY:
	PARCEL #:

DETERMINATION OF REPLACEMENT VALUE IS BASED ON THE FOLLOWING COMPARABLES WHICH ARE DECENT, SAFE AND SANITARY, FUNCTIONALLY EQUIVALENT AND SUBSTANTIALLY THE SAME AS THE ACQUIRED DWELLING, FAIR HOUSING (OPEN TO ALL PERSONS REGARDLESS OF RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN), REASONABLY ACCESSIBLE TO PUBLIC SERVICES AND THE DISPLACEE'S PLACE OF EMPLOYMENT, IN AN EQUAL OR BETTER NEIGHBORHOOD WHICH IS NOT SUBJECT TO UNREASONABLY ADVERSE ENVIRONMENTAL FACTORS, AND IS CURRENTLY AVAILABLE ON THE OPEN MARKET WITHIN THE FINANCIAL MEANS OF THE DISPLACEE. (SEE ATTACHED COPIES OF FORM 575-040-13 "REPLACEMENT HOUSING QUESTIONNAIRE/CERTIFICATION," FOR EACH COMPARABLE LISTED BELOW.) IF NEEDED, THE DEPARTMENT WILL PROVIDE TRANSPORTATION TO DISPLACEE TO INSPECT THE REPLACEMENT DWELLINGS BEING OFFERED.

COMPARABLE NO. 1:

ADDRESS OR LOCATION:	DISTANCE FROM SUBJECT:
OWNER:	REALTOR:
ASKING PRICE: $	MONTHLY RENTAL: $

COMPARABLE NO. 2:

ADDRESS OR LOCATION:	DISTANCE FROM SUBJECT:
OWNER:	REALTOR:
ASKING PRICE: $	MONTHLY RENTAL: $

COMPARABLE NO. 3:

ADDRESS OR LOCATION:	DISTANCE FROM SUBJECT:
OWNER:	REALTOR:
ASKING PRICE: $	MONTHLY RENTAL: $

A. TENURE:

SUBJECT PROPERTY:	☐ OWNER	☐ TENANT	
REPLACEMENT PROPERTY:	☐ OWNER	☐ TENANT	☐ RETENTION
ELIGIBILITY BASED UPON:	☐ 90 DAYS	☐ 90 DAYS	
	☐ LESS THAN 90-DAY OCCUPANT		

B. SUBJECT PROPERTY VALUATION:

☐ APPRAISAL ..... $ _____
- ☐ PARTIAL TAKING ..... $ _____
- ☐ HIGHEST AND BEST USE ..... $ _____

☐ ECONOMIC RENT (MONTHLY) INCLUDING UTILITIES ..... $ _____
☐ ACTUAL RENT (MONTHLY) INCLUDING UTILITIES ..... $ _____
TOTAL MONTHLY INCOME x 30% ($ _____ x 30%) ..... $ _____
BASE MONTHLY RENTAL ..... $ _____

C. COMPARABLE VALUE ANALYSIS: PURCHASE ADDITIVE

BASED UPON CURRENT SELLING PRICE OF:
COMPARABLE NO. 1 ..... $ _____
COMPARABLE NO. 2 ..... $ _____
COMPARABLE NO. 3 ..... $ _____

COMARABLE ANALYSIS FINDING (COMPARABLE NO. 1)..... $ _____
LESS: SUBJECT PROPERTY VALUATION..... $ _____
EQUALS: AMOUNT OF PURCHASE ADDITIVE PAYMENT..... $ _____

D. COMPARABLE VALUE ANALYSIS: RENTAL ASSISTANCE

BASED UPON CURRENT RENTAL PRICE INCLUDING UTILITIES OF:
COMPARABLE NO. 1 ..... $ _____
COMPARABLE NO. 2 ..... $ _____
COMPARABLE NO. 3 ..... $ _____

COMARABLE ANALYSIS FINDING (COMPARABLE NO. 1)..... $ _____
LESS: SUBJECT PROPERTY BASE MONTHLY RENTAL..... $ _____
EQUALS: RENT DIFFERENTIAL ..... $ _____
X 42
EQUALS: AMOUNT OF RENTAL ASSISTANCE PAYMENT ..... $ _____

E. DOWN PAYMENT COMPUTATION:

VALUE OF REPLACEMENT DWELLING..... $ _____
DOWN PAYMENT REQUIRED: _____ %
AMOUNT OF PAYMENT..... $ _____
(MORTGAGE AMOUNT _____; INTEREST RATE _____ %; # months _____)

I UNDERSTAND THAT THIS DETERMINATION OF A REPLACEMENT HOUSING PAYMENT IS TO BE USED IN CONNECTION WITH A DEPARTMENT TRANSPORTATION PROJECT AND I CERTIFY THAT I HAVE NO DIRECT OR INDIRECT, PRESENT OR CONTEMPLATED FUTURE PERSONAL INTEREST IN THIS PROPERTY OR IN ANY BENEFIT FROM THE ACQUISITION OF THIS PROPERTY.

	SIGNATURE	TITLE	DATE
SUBMITTED:	_____	_____	_____
REVIEWED:	_____	_____	_____
APPROVED:	_____	_____	_____

REMARKS: _____

EXHIBIT A-23

Rule 14-66, F.A.C.

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

PERSONAL PROPERTY INVENTORY

575-040-17
RIGHT OF WAY
05/03

☐ PRE-MOVE ☐ POST-MOVE

DISPLACEE NAME: _____

ITEM/SEGMENT #: _____
MANAGING DISTRICT: _____
F.A.P. #: _____
STATE ROAD #: _____
COUNTY: _____
PARCEL: _____

DISPLACEMENT SITE ADDRESS:	REPLACEMENT SITE ADDRESS:

This list of personal property is submitted in support of move cost expenses estimated and/or claimed. The undersigned certifies that it accurately reflects personal property ☐ **to be moved** ☐ **actually moved** in connection with this subject location. Further, the displacee certifies that all bills, receipts, invoices, etc. reflect the actual reasonable cost(s) involved in moving this inventory, and/or the actual reasonable charges made for services.

QUANTITY	DESCRIPTION	QUANTITY	DESCRIPTION

PRE-MOVE INVENTORY CONFIRMATION

POST MOVE INVENTORY

A post-move inventory relating to the above listed personal property has been performed. The inventory was found ☐ to correlate with the pre-move inventory, ☐ to need adjustments. Necessary adjustments are identified on this inventory or by separate attachment.

_____ _____ _____ _____
DISPLACEE'S SIGNATURE DATE DISPLACEE'S SIGNATURE DATE

_____ _____ _____ _____
SIGNATURE/TITLE, FDOT DATE SIGNATURE/TITLE, FDOT DATE

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

MOVING EXPENSE CALCULATION AND PAYMENT DETERMINATION

575-040-20
RIGHT OF WAY
OGC – 08/15

☐ BUSINESS
☐ FARM
☐ INDIVIDUAL OR FAMILY
☐ PERSONAL PROPERTY ONLY

CURRENT ADDRESS:

ITEM/SEGMENT #: _____
MANAGING DISTRICT: _____
F.A.P. #: _____
STATE ROAD #: _____
COUNTY: _____
PARCEL #: _____

NEW LOCATION ADDRESS:

DISTANCE OF MOVE:

DESCRIPTION OF MERCHANDISE AND/OR SERVICE RENDERED:

A. COMMERCIAL MOVE/SELF MOVE/MOVING RELATED EXPENSES:
RECEIPTED BILLS/INVOICES..... TOTAL AMOUNT $ _____

B. SCHEDULE AMOUNT:
1. FURNISHED: 1 ROOM @$750 2 ROOMS @$900 3 ROOMS @$1075 4 ROOMS @$1250
5 ROOMS @$1400 6 ROOMS @$1550 7 ROOMS @$1600 8 ROOMS @$1850
PLUS NUMBER ADD'L ROOMS _____ X $300 = $ _____
2. UNRNISHED: 1 ROOM @$500
PLUS NUMBER ADD'L ROOMS _____ X $150 = $ _____
3. COMBINATION: BEGIN WITH UNFURNISHED USING ABOVE APPROPRIATE AMOUNTS = $ _____
PLUS NUMBER FURNISHED ROOMS _____ X $150 = $ _____

C. ESTIMATE BY: ☐ COMMERCIAL MOVER OR ☐ DOT:
MAN HOURS _____ X RATE PER MAN HOURS $ _____ = $ _____
TYPE OF VEHICLE _____
OF HRS. _____ X RATE PER VEHICULAR HR. $ _____ = $ _____
C W T _____ @ $ _____ = $ _____
SUBCONTRACTED SERVICES: _____ = $ _____
_____ = $ _____
_____ = $ _____

D. DIR LOSS/SUB PROP/BULK-LOW VAL:
1. REPLACEMENT COST OF PERSONAL PROPERTY ..... = $ _____
2. NET PROCEEDS FROM SALE OF PERSONAL PROPERTY ..... = $ _____
MOVE ALLOWANCE IF LESS THAN "C" ABOVE..... = $ _____
(BUSINESS DISCONTINUED):
1. DEPRECIATED VALUE OF PROPERTY IN PLACE ..... = $ _____
2. NET PROCEEDS FROM SALE OF PERSONAL PROPERTY ..... = $ _____
MOVE ALLOWANCE IF LESS THAN "C" ABOVE ..... = $ _____

E. ADVERTISING SIGNS:
1. ESTIMATED COST TO MOVE (FROM SECTION "C" ABOVE) ..... = $ _____
2. DEPRECIATED REPRODUCTION COST, LESS SALE PROCEEDS, IF APPLICABLE ..... = $ _____
ALLOWANCE IF SIGN IS NOT MOVED ..... = $ _____

F. FIX PAYMENT IN LIEU OF MOVE COST ($40,000 LIMIT)
NET EARNINGS FOR 2 YEARS PRECEDING TAXABLE YEAR BUSINESS IS RELOCATED:
_____ $ _____
_____ $ _____
TOTAL $ _____
AVERAGE $ _____

LESS THAN 2 YEARS OPERATION (WITHIN 2 TAXABLE YEARS PERIOD):
NET EARNINGS: $ _____
DIVIDED BY MONTHS _____
EQUALS $ _____ X 12
EQUALS TOTAL $ _____

G. SEARCH EXPENSES ($2,500 LIMIT)
1. TRANSPORTATION AND MEALS ..... = $ _____
2. LODGING AWAY FROM HOME ..... = $ _____
3. TIME SPENT SEARCHING (REASONABLE SALARY) ..... = $ _____
4. FEES PAID TO REAL ESTATE AGENT/BROKER ..... = $ _____

H. REESTABLISHMENT EXPENSES ($25,000 LIMIT)
1. REPAIRS, MODIFICATION ..... = $ _____
2. UTILITIES ..... = $ _____
3. INCREASED OPERATING COSTS ..... = $ _____
4. OTHER ..... = $ _____

STORAGE CHARGES $ _____ TOTAL AMOUNT OF MOVE CLAIM $ _____

THE UNDERSIGNED CERTIFY THAT MOVING COSTS INCLUDE: DISMANTLING, DISCONNECTING, CRATING, LOADING, TRANSPORTING, UNLOADING, RECONNECTING, AND REINSTALLING OF PERSONAL PROPERTY, INCLUDING SERVICE CHARGES IN CONNECTION THEREWITH, IF APPLICABLE, EXCLUSIVE OF THE COST OF ANY ADDITIONS, IMPROVEMENTS, ALTERATIONS OR OTHER PHYSICAL CHANGES IN OR TO ANY STRUCTURE AT THE NEW LOCATION.

RELOCATEE SIGNATURE REQUIRED FOR FDOT ESTIMATE _____

SUBMITTED BY: _____ _____ _____

APPROVED BY: _____ _____ _____
SIGNATURE TITLE DATE

EXHIBIT A-25

Rule 14-66.007, F.A.C.

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

575-040-14
RIGHT OF WAY
OGC – 09/20

APPLICATION AND CLAIM FOR REPLACEMENT HOUSING PAYMENT

Displacee Address: _____
Make Warrant Payable to: _____
_____

Warrant Amount: _____

ITEM/SEGMENT #: _____
MANAGING DISTRICT: _____
F.A.P. #: _____
STATE ROAD #: _____
COUNTY: _____
PARCEL: _____

The undersigned, herein referred to as Claimant regardless of number, hereby makes application for replacement housing payment authorized by the Department of Transportation, State of Florida, County of _____, to wit in support of said application claimant, after first being duly sworn, deposed and says:

1. Claimant certifies that he/she is a legal resident of the United States, and upon Department request can provide documentation verifying legal residency.

2. That claimant ☐ owned and occupied ☐ rented and occupied the above referred to property for not less than ☐ 90 days prior to the initiation of negotiations by the State of Florida Department of Transportation for the acquisition of said property.

3. That claimant was required to move from the aforesaid property on _____, and purchased or rented a replacement dwelling on _____. The replacement dwelling located at _____ was occupied on _____.

4. That claimant believes and is satisfied that said dwelling meets the requirements of being decent, safe and sanitary.

5. That the total number of persons, including claimant, displaced by the acquisition of the former dwelling by the State of Florida, Department of Transportation is _____.

6. Claimant requests that the payment in the amount of _____, applied for herein be made to (check one) ☐ claimant ☐ other (if payment is to be made to a person or persons other than claimant, the name and address of said payee should be written in space provided below and the explanation for payment given).

_____
_____

7. That claimant will permit representatives of the State of Florida Department of Transportation to inspect the replacement dwelling at reasonable times.

8. Claimant agrees the amount of any settlement or final judgment rendered in claimant's behalf in any condemnation proceeding shall be reduced so ____%[1] of the final settlement or judgment amount for your property plus the replacement housing payment (RHP) herein claimed does not exceed $ _____.[2] Claimant hereby understands and agrees the amount reduced from any settlement or final judgment cannot be more than the total amount of the RHP claimed.

9. This Claim will be reviewed for approval of payment within ten (10) working days of receipt by the Department at its office located at:

_____
_____

_____
D.O.T. AGENT

_____
Claimant Signature

STATE OF FLORIDA
COUNTY OF: _____

Sworn to (or affirmed) and subscribed before me by means of ☐ physical presence or ☐ online notarization this _____ day of _____, _____, by _____.

_____
Signature of Notary Public – State of Florida

☐ Personally Known OR ☐ Produced Identification:

_____
(Type of Identification Produced)

_____
Print, Type, or Stamp Commissioned Name of Notary Public

[1] (Enter the percentage of the total appraised amount equal to the computed carve-out. If there is no carve-out, enter 100%.)

[2] (Enter the lesser of the cost of the number one comparable identified in the original Replacement Housing Payment Determination/Three Comp Method or the replacement dwelling selected.)

EXHIBIT A-26

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

APPLICATION AND CLAIM FOR REIMBURSEMENT OF MOVING COSTS

575-040-23
RIGHT OF WAY
04/03

☐ PERSONAL PROPERTY ONLY	ITEM/SEGMENT NO.:
☐ INDIVIDUAL OR FAMILY	MANAGING DISTRICT:
☐ BUSINESS	F.A.P. NO.:
☐ FARM	STATE ROAD NO.:
☐ NONPROFIT	COUNTY:
	PARCEL #:

CLAIM TYPE APPLIED FOR:	AMOUNT APPLIED FOR:
☐ COMMERCIAL MOVE	$ _____
☐ MOVING RELATED EXPENSES	$ _____
☐ SCHEDULE MOVE COSTS	$ _____
☐ SELF MOVE	$ _____
☐ DIR LOSS/SUB PROP/BULK-LOW VAL	$ _____
☐ SEARCH EXPENSES	$ _____
☐ FIX PAYMENT IN LIEU OF MOVE CST	$ _____
☐ REESTABLISHMENT EXPENSES	$ _____
☐ MOVE COST ESTIMATES	$ _____
TOTAL AMOUNT CLAIMED	$ _____
TOTAL AMOUNT ALLOWED	$ _____
DIFFERENCE	$ _____

PARCEL VACATE DATE _____ Relocation services complete with this claim? ☐ YES ☐ NO	Subject Address: _____
ADVANCED PAYMENT? ☐ YES ☐ NO	
SUIT STYLE: _____ DOT File # _____	Replacement Address: _____
LEASE/STORAGE FROM _____ TO _____	

MAKE CHECK PAYABLE TO _____

I HEREBY CERTIFY:

A. CLAIMANT CERTIFIES THAT HE/SHE IS A LEGAL RESIDENT OF THE UNITED STATES, AND UPON DEPARTMENTAL REQUEST CAN PROVIDE DOCUMENTATION VERIFYING LEGAL RESIDENCY.

B. THE ABOVE INFORMATION AND ALL OTHER INFORMATION SUBMITTED HEREWITH IS TRUE AND CORRECT AND ACCURATELY REFLECT MOVING SERVICES ACTUALLY PERFORMED;

C. THAT NO REIMBURSEMENT OR COMPENSATION HAS BEEN RECEIVED FOR THE AMOUNT OF THIS CLAIM OR ANY PART THEREOF; AND NONE IS CLAIMED OTHER THAN THE CLAIM HEREIN; AND

D. IF AN IN LIEU OF CLAIM IS SELECTED, THE CLAIMANT HAS NOT, NOR DOES HE/SHE INTEND TO AMEND OR REVISE THE INCOME TAX RETURNS SUBMITTED HEREWITH; AND FURTHER CERTIFIES THAT THE CLAIMANT HAS NOT RECEIVED NOTICE OR OTHER INDICATION THAT SAID RETURNS ARE OR MAY BE INCORRECT.

E. IF ADVANCE PAYMENT IS MADE PRIOR TO THE MOVE, THE CLAIMANT WILL COMPLY WITH FDOT RIGHT OF WAY RELOCATION PROCEDURE 575-000-000, SECTION 9.3, PAYMENT FOR MOVING AND RELATED EXPENSES, IN THE MOVING OF PERSONALTY FROM THE ACQUIRED PROPERTY. I FURTHER CERTIFY THAT THIS PAYMENT SATISFIES ALL CLAIMS FOR ITEMS LISTED ON THIS CLAIM.

F. THAT THIS PAYMENT SATISFIES ALL CLAIMS FOR REIMBURSEMENT FOR ITEMS, OR PARTS OF ITEMS, AS THEY ARE LISTED IN THIS CLAIM;

G. CLAIMANT HAS BEEN ADVISED THEIR CLAIM WILL BE REVIEWED FOR APPROVAL OF PAYMENT WITHIN 10 WORKING DAYS OF RECEIPT BY THE DEPARTMENT AT ITS OFFICE LOCATED AT: _____

CLAIMANT NAME _____

CLAIMANT SIGNATURE _____ DATE _____

ADDRESS _____

I HEREBY CERTIFY:
☐ THE PERSONAL PROPERTY HAS BEEN REMOVED, OR WORK HAS BEEN COMPLETED, AS STATED.
☐ THE CLAIMANT IS ELIGIBLE FOR RELOCATION MOVING EXPENSES CLAIMED.
SUBMITTED _____ DATE _____
D.O.T. AGENT SIGNATURE

REVIEWED: _____ _____ _____
SIGNATURE TITLE DATE

APPROVED: _____ _____ _____
SIGNATURE TITLE DATE

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

DIRECT PAYMENT AGREEMENT

575-040-22
RIGHT OF WAY
05/03

ITEM/SEGMENT #: _____
MANAGING DISTRICT: _____
F.A.P. #: _____
STATE ROAD #: _____
COUNTY: _____
PARCEL #: _____

THIS AGREEMENT IS MADE AND ENTERED INTO ON THIS _____ DAY OF _____ , _____ BY AND BETWEEN (DISPLACEE) _____, LOCATED AT _____, AND (MOVER/VENDOR) _____, WHOSE ADDRESS IS _____, AND THE FLORIDA DEPARTMENT OF TRANSPORTATION.

PRIOR TO, OR UPON SUBMISSION OF, AN ITEMIZED BILL FROM THE MOVER/VENDOR FOR SERVICES RENDERED (PLEASE SPECIFY): _____

_____

THE DISPLACEE WILL EXECUTE A CLAIM PREPARED BY THE DEPARTMENT. THE DEPARTMENT WILL PROCESS THE CLAIM AND A STATE WARRANT WILL BE ISSUED IN THE NAME OF THE MOVER/VENDOR, USUALLY WITHIN FOUR (4) TO SIX (6) WEEKS FROM EXECUTION OF THE CLAIM BY THE DISPLACEE. PAYMENT WILL BE MADE AFTER WORK IS COMPLETED TO THE SATISFACTION OF THE DISPLACEE AND THE DEPARTMENT.

_____
DISPLACEE'S SIGNATURE

_____
MOVER/VENDOR'S SIGNATURE

APPROVED BY:

_____
SIGNATURE/TITLE, FDOT

LOCAL AGENCY PROGRAM AGREEMENT

EXHIBIT B
SCHEDULE OF FINANCIAL ASSISTANCE

RECIPIENT NAME & BILLING ADDRESS:	FINANCIAL PROJECT NUMBER:
City of Port Orange 1000 City Center Circle Port Orange, Florida 32129	449770-1-48-01

PHASE OF WORK By Fiscal Year	MAXIMUM PARTICIPATION (1) TOTAL PROJECT FUNDS	(2) LOCAL FUNDS	(3) STATE FUNDS	(4) FEDERAL FUNDS
Design- Phase 38				
FY: (Insert Program Name)	$ _____	$ _____	$ _____	$ _____
FY: (Insert Program Name)	$ _____	$ _____	$ _____	$ _____
FY: (Insert Program Name)	$	$	$	$
Total Design Cost	$ 0.00	$ 0.00	$ 0.00	$ 0.00
Right-of-Way- Phase 48				
FY: 2024-2025 (LAP)	$ 222,000.00	$ 22,200.00	$ 0.00	$ 199,800.00
FY: (Insert Program Name)	$ _____	$ _____	$ _____	$ _____
FY: (Insert Program Name)	$	$	$	$
Total Right-of-Way Cost	$ 222,000.00	$ 22,200.00	$ 0.00	$ 199,800.00
Construction- Phase 58				
FY: (Insert Program Name)	$ _____	$ _____	$ _____	$ _____
FY: (Insert Program Name)	$ _____	$ _____	$ _____	$ _____
FY: (Insert Program Name)	$	$	$	$
Total Construction Cost	$ 0.00	$ 0.00	$ 0.00	$ 0.00
Construction Engineering and Inspection (CEI)- Phase 68				
FY: (Insert Program Name)	$ _____	$ _____	$ _____	$ _____
FY: (Insert Program Name)	$ _____	$ _____	$ _____	$ _____
FY: (Insert Program Name)	$	$	$	$
Total CEI Cost	$ 0.00	$ 0.00	$ 0.00	$ 0.00
(Insert Phase)				
FY: (Insert Program Name)	$ _____	$ _____	$ _____	$ _____
FY: (Insert Program Name)	$ _____	$ _____	$ _____	$ _____
FY: (Insert Program Name)	$	$	$	$
Total Phase Costs	$ 0.00	$ 0.00	$ 0.00	$ 0.00
TOTAL COST OF THE PROJECT	$ 222,000.00	$ 22,200.00	$ 0.00	$ 199,800.00

COST ANALYSIS CERTIFICATION AS REQUIRED BY SECTION 216.3475, FLORIDA STATUTES:
I certify that the cost for each line item budget category has been evaluated and determined to be allowable, reasonable, and necessary as required by Section 216.3475, F.S. Documentation is on file evidencing the methodology used and the conclusions reached.

Precious L. Lewis
District Grant Manager Name

Signature Date

EXHIBIT C

TITLE VI ASSURANCES

During the performance of this contract, the consultant or contractor, for itself, its assignees and successors in interest (hereinafter collectively referred to as the "contractor") agrees as follows:

(1.) **Compliance with REGULATIONS:** The contractor shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the U.S. Department of Transportation (hereinafter, "USDOT") ***Title 49, Code of Federal Regulations, Part 21,*** as they may be amended from time to time, (hereinafter referred to as the ***REGULATIONS***), which are herein incorporated by reference and made a part of this contract.

(2.) **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the basis of race, color, national origin, or sex in the selection and retention of sub-contractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by ***Section 21.5*** of the ***REGULATIONS,*** including employment practices when the contract covers a program set forth in ***Appendix B*** of the ***REGULATIONS.***

(3.) **Solicitations for Sub-contractors, including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under sub-contract, including procurements of materials or leases of equipment, each potential sub-contractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the ***REGULATIONS*** relative to nondiscrimination on the basis of race, color, national origin, or sex.

(4.) **Information and Reports:** The contractor shall provide all information and reports required by the ***REGULATIONS*** or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the *Florida Department of Transportation* or the *Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, and Federal Motor Carrier Safety Administration* to be pertinent to ascertain compliance with such ***REGULATIONS,*** orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the *Florida Department of Transportation,* or the *Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, or Federal Motor Carrier Safety Administration* as appropriate, and shall set forth what efforts it has made to obtain the information.

(5.) Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the Florida Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, or

Federal Motor Carrier Safety Administration may determine to be appropriate, including, but not limited to:

a. withholding of payments to the contractor under the contract until the contractor complies, and/or
b. cancellation, termination or suspension of the contract, in whole or in part.

(6.) **Incorporation of Provisions:** The contractor shall include the provisions of paragraphs (1) through (7) in every sub-contract, including procurements of materials and leases of equipment, unless exempt by the ***REGULATIONS,*** or directives issued pursuant thereto. The contractor shall take such action with respect to any sub-contract or procurement as the *Florida Department of Transportation* or the *Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, or Federal Motor Carrier Safety Administration* 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 sub-contractor or supplier as a result of such direction, the contractor may request the *Florida Department of Transportation* to enter into such litigation to protect the interests of the *Florida Department of Transportation,* and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

(7.) **Compliance with Nondiscrimination Statutes and Authorities**: Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21; The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects); Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex); Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27; The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age); Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex); The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not); Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 -- 12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38; The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex); Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations; Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100); Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

EXHIBIT D

RECIPIENT RESOLUTION

The Recipient's Resolution authorizing entry into this Agreement is attached and incorporated into this Agreement.

EXHIBIT E

FEDERAL FINANCIAL ASSISTANCE (SINGLE AUDIT ACT)

FEDERAL RESOURCES AWARDED PURSUANT TO THIS AGREEMENT ARE AS FOLLOWS:

CFDA No.:	20.205
CFDA Title:	Highway Planning and Construction Federal-Aid Highway Program, Federal Lands Highway Program
CFDA Program Site:	**https://beta.sam.gov/fal/1093726316c3409a8e50f4c75f5ef2c6/view?keywords=20.205&sort=-relevance&index=cfda&is_active=true&page=1**
Award Amount:	**$199,800.00**
Awarding Agency:	Florida Department of Transportation
Award is for R&D:	No
Indirect Cost Rate:	N/A

FEDERAL RESOURCES AWARDED PURSUANT TO THIS AGREEMENT ARE SUBJECT TO THE FOLLOWING:

2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles & Audit Requirements for Federal Awards
http://www.ecfr.gov/cgi-bin/text-idx?node=2:1.1.2.2.1

FEDERAL RESOURCES AWARDED PURSUANT TO THIS AGREEMENT MAY ALSO BE SUBJECT TO THE FOLLOWING:

Title 23 – Highways, United States Code
http://uscode.house.gov/browse/prelim@title23&edition=prelim

Title 49 – Transportation, United States Code
http://uscode.house.gov/browse/prelim@title49&edition=prelim

Infrastructure Investment and Jobs Act (IIJA) (Public Law 117-58, also known as the “Bipartisan Infrastructure Law”)
https://www.congress.gov/117/bills/hr3684/BILLS-117hr3684enr.pdf

Federal Highway Administration – Florida Division
http://www.fhwa.dot.gov/fldiv/

Federal Funding Accountability and Transparency Act (FFATA) Sub-award Reporting System (FSRS)
https://www.fsrs.gov/

EXHIBIT F

CONTRACT PAYMENT REQUIREMENTS
Florida Department of Financial Services, Reference Guide for State Expenditures
Cost Reimbursement Contracts

Invoices for cost reimbursement contracts must be supported by an itemized listing of expenditures by category (salary, travel, expenses, etc.). Supporting documentation shall be submitted for each amount for which reimbursement is being claimed indicating that the item has been paid. Documentation for each amount for which reimbursement is being claimed must indicate that the item has been paid. Check numbers may be provided in lieu of copies of actual checks. Each piece of documentation should clearly reflect the dates of service. Only expenditures for categories in the approved agreement budget may be reimbursed. These expenditures must be allowable (pursuant to law) and directly related to the services being provided.

Listed below are types and examples of supporting documentation for cost reimbursement agreements:

Salaries: Timesheets that support the hours worked on the project or activity must be kept. A payroll register, or similar documentation should be maintained. The payroll register should show gross salary charges, fringe benefits, other deductions and net pay. If an individual for whom reimbursement is being claimed is paid by the hour, a document reflecting the hours worked times the rate of pay will be acceptable.

Fringe benefits: Fringe benefits should be supported by invoices showing the amount paid on behalf of the employee, e.g., insurance premiums paid. If the contract specifically states that fringe benefits will be based on a specified percentage rather than the actual cost of fringe benefits, then the calculation for the fringe benefits amount must be shown. Exception: Governmental entities are not required to provide check numbers or copies of checks for fringe benefits.

Travel: Reimbursement for travel must be in accordance with s. 112.061, F.S., which includes submission of the claim on the approved state travel voucher along with supporting receipts and invoices.

Other direct costs: Reimbursement will be made based on paid invoices/receipts and proof of payment processing (cancelled/processed checks and bank statements). If nonexpendable property is purchased using state funds, the contract should include a provision for the transfer of the property to the State when services are terminated. Documentation must be provided to show compliance with DMS Rule 60A-1.017, F.A.C., regarding the requirements for contracts which include services and that provide for the contractor to purchase tangible personal property as defined in s. 273.02, F.S., for subsequent transfer to the State.

Indirect costs: If the contract stipulates that indirect costs will be paid based on a specified rate, then the calculation should be shown. Indirect costs must be in the approved agreement budget and the entity must be able to demonstrate that the costs are not duplicated elsewhere as direct costs. All indirect cost rates must be evaluated for reasonableness and for allowability and must be allocated consistently.

Contracts between state agencies may submit alternative documentation to substantiate the reimbursement request, which may be in the form of FLAIR reports or other detailed reports.

The Florida Department of Financial Services, online Reference Guide for State Expenditures can be found at this web address https://www.myfloridacfo.com/docs-sf/accounting-and-auditing-libraries/state-agencies/reference-guide-for-state-expenditures.pdf.

EXHIBIT H

ALTERNATIVE ADVANCE PAYMENT FINANCIAL PROVISIONS

If payments are authorized by the Chief Financial Officer of the State of Florida under Chapters 215 and 216, Florida Statutes or the Department's Comptroller under Section 334.044(29), Florida Statutes:

1. The invoiced amount to the Department for contractor(s) and consultant(s) cannot exceed the amount of the invoice received from the Recipient's contractor(s) or consultant(s).

2. All of the Recipient's costs must have been incurred and paid prior to the date of the invoice.

3. All invoices received from the Recipient shall clearly separate the cost of the contractor(s) or consultant(s) from the Recipient's costs billed to the Department.

4. All invoices submitted to the Department must provide complete documentation, including a copy of the contractor's or consultant's invoice(s), to substantiate the cost on the invoice.

5. The Recipient must certify on each invoice that the costs from the contractor(s) or consultant(s) are valid and have been incurred by the contractor(s) or consultant(s).

6. Each monthly invoice subsequent to the first invoice from the Recipient must contain a statement from the Recipient that the previous month's cost incurred by the contractor(s) or consultant(s) has been paid by the Recipient to the contractor(s) or consultant(s).

EXHIBIT O

TERMS AND CONDITIONS OF CONSTRUCTION IN DEPARTMENT RIGHT OF WAY

Section 17.g. of the Agreement is amended as follows for Construction on the Department's Right of Way.

1. If the Project involves construction on, under, or over the Department's right-of-way, the design work for all portions of the Project to be constructed on, under, or over the Department's right-of-way shall be submitted to the Department for review prior to any work being commenced, and the following provisions shall apply:

a. The Project shall be designed and constructed in accordance with the latest edition of the Department's Standard Specifications for Road and Bridge Construction and Department Design Standards and Manual of Uniform Traffic Control Devices ("MUTCD"). The following guidelines shall apply as deemed appropriate by the Department: the Department Structures Design Manual, AASHTO Guide Specifications for the Design of Pedestrian Bridges, AASHTO LRFD Bridge Design Specifications, the Florida Department of Transportation Design Manual ("FDM") and the Department Traffic Engineering Manual.

Designs that do not meet Department standards may be rejected by the Department at its sole discretion. The Department may allocate Department-managed resources to facilitate compliance with applicable design standards. If changes to the Department approved plans are required, the Recipient shall notify the Department of the changes and receive approval from the Department prior to the changes being constructed. The Recipient shall maintain the area of the Project, at all times, and coordinate any work needs of the Department during construction of the Project.

b. The Recipient shall notify the Department a minimum of 48 hours before beginning construction within, under, or over Department right-of-way. The Recipient shall notify the Department should construction be suspended for more than 5 working days. The Department contact person for construction is D5-ConstructionSpecialProjects@dot.state.fl.us.

c. The Recipient shall be responsible for monitoring construction operations and the maintenance of traffic ("MOT") throughout the course of the Project in accordance with the latest edition of the Department Standard Specifications, section 102. The Recipient is responsible for the development of a MOT plan and making any changes to that plan as necessary. The MOT plan shall be in accordance with the latest version of the Department Design Standards, Index 600 series. Any MOT plan developed by the Recipient that deviates from the Department Design Standards must be signed and sealed by a professional engineer. MOT plans will require approval by the Department prior to implementation.

d. The Recipient shall be responsible for locating all existing utilities, both aerial and underground, and for ensuring that all utility locations be accurately documented on the construction plans. All utility conflicts shall be fully resolved directly with the applicable utility.

e. The Recipient will be responsible for obtaining all permits that may be required by other agencies or local governmental entities.

f. It is hereby agreed by the Parties that this Agreement creates a permissive use only and all improvements located on, under, or over the Department's right-of-way resulting from this Agreement shall become the property of the Department. Neither the granting of the permission to use the Department right-of-way nor the placing of facilities upon the Department property shall operate to create or vest any property right to or in the Recipient, except as may otherwise be provided in separate agreements. The Recipient shall not acquire any right, title, interest or estate in Department right-of-way, of any nature or kind whatsoever, by virtue of the execution, operation, effect, or performance of this Agreement including, but not limited to, the Recipient's use, occupancy or possession of Department right-of-way. The Parties agree that this Agreement does not, and shall not be construed to, grant credit for any future transportation concurrency requirements pursuant to Chapter 163, Florida Statutes.

g. The Recipient shall not cause any liens or encumbrances to attach to any portion of the Department's property, including but not limited to, the Department's right-of-way.

h. The Recipient shall perform all required testing associated with the design and construction of the Project. Testing results shall be entered into the department's Materials Testing and Certification database application and the department must provide the final Materials Certification for the Project. The Department shall have the right to perform its own independent testing during the course of the Project.

i. The Recipient shall exercise the rights granted herein and shall otherwise perform this Agreement in a good and workmanlike manner, with reasonable care, in accordance with the terms and provisions of this Agreement and all applicable federal, state, local, administrative, regulatory, safety and environmental laws, codes, rules, regulations, policies, procedures, guidelines, standards and permits, as the same may be constituted and amended from time to time, including, but not limited to, those of the Department, applicable Water Management District, Florida Department of Environmental Protection, Environmental Protection Recipient, the Army Corps of Engineers, the United States Coast Guard and local governmental entities.

j. If the Department determines a condition exists which threatens the public's safety, the Department may, at its discretion, cause construction operations to cease and immediately have any potential hazards removed from on, under, or over its right-of-way at the sole cost, expense, and effort of the Recipient. The Recipient shall bear all construction delay costs incurred by the Department.

k. The Recipient shall be responsible to maintain and restore all features that might require relocation within the Department right-of-way.

l. The Recipient will be solely responsible for clean up or restoration required to correct any environmental or health hazards that may result from construction operations.

m. The acceptance procedure will include a final "walk-through" by Recipient and Department personnel. Upon completion of construction, the Recipient will be required to submit to the Department final as-built plans and an engineering certification that construction was completed in accordance to the plans. Submittal of the final as-built plans shall include one complete set of the signed and sealed plans on 11" X 17" plan sheets and an electronic copy prepared in Portable Document Format (PDF). Prior to the termination of this Agreement, the Recipient shall remove its presence, including, but not limited to, all of the Recipient's property, machinery, and equipment from Department right-of-way and shall restore those portions of Department right of way disturbed or otherwise altered by the Project to substantially the same condition that existed immediately prior to the commencement of the Project.

n. If the Department determines that the Project is not completed in accordance with the provisions of this Agreement, the Department shall deliver written notification of such to the Recipient. The Recipient shall have thirty (30) days from the date of receipt of the Department's written notice, or such other time as the Recipient and the Department mutually agree to in writing, to complete the Project and provide the Department with written notice of the same (the "Notice of Completion"). If the Recipient fails to timely deliver the Notice of Completion, or if it is determined that the Project is not properly completed after receipt of the Notice of Completion, the Department, within its discretion may: 1) provide the Recipient with written authorization granting such additional time as the Department deems appropriate to correct the deficiency(ies); or 2) correct the deficiency(ies) at the Recipient's sole cost and expense, without Department liability to the Recipient for any resulting loss or damage to property, including, but not limited to, machinery and equipment. If the Department elects to correct the deficiency(ies), the Department shall provide the Recipient with an invoice for the costs incurred by the Department and the Recipient shall pay the invoice within thirty (30) days of the date of the invoice.

o. The Recipient shall implement best management practices for erosion and pollution control to prevent violation of state water quality standards. The Recipient shall be responsible for the correction of any erosion, shoaling, or water quality problems that result from the construction of the Project.

p. Portable Traffic Monitoring Site (PTMS) or a Telemetry Traffic Monitoring Site (TTMS) may exist within the vicinity of your proposed work. It is the responsibility of the Recipient to locate and avoid damage to these sites. If a PTMS or TTMS is encountered during construction, the Department must be contacted immediately.

q. During construction, highest priority must be given to pedestrian safety. If permission is granted to temporarily close a sidewalk, it should be done with the express condition that an alternate route will be provided, and shall continuously maintain pedestrian features to meet Americans Disability Act (ADA) standards.

r. Restricted hours of operation will be from TO BE DETERMINED PRIOR TO CONSTRUCTION, (DAYS OF THE WEEK FOR RESTRICTED OPERATION TO BE DETERMINED), unless otherwise approved by the Operations Engineer, or designee.

s. Lane closures on the state road system must be coordinated with the Public Information Office at least two weeks prior to the closure. The contact information for the Department's Public Information Office is:

D5-PIO@dot.state.fl.us

Note: (Highlighted sections indicate need to confirm information with District Office or appropriate DOT person managing the Agreement)

CITY OF PORT ORANGE
S.R. 421 (DUNLAWTON AVE.)
PURPOSE: RIGHT-OF-WAY
ESTATE: FEE SIMPLE

LEGAL DESCRIPTION

A PORTION OF GOVERNMENT LOT 6, SECTION 9, TOWNSHIP 16 SOUTH, RANGE 33 EAST, ALSO BEING A PORTION OF LANDS DESCRIBED IN OFFICIAL RECORD BOOK 2227, PAGE 579, AS RECORDED IN THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT A PARTIALLY BROKEN 4" BY 4" CONCRETE MONUMENT, WITH ILLEGIBLE STAMPING, MARKING THE NORTHWEST CORNER OF SLEEPY HOLLOW SUBDIVISION UNIT II, PLAT BOOK 34, PAGE 131, WHICH LIES ON THE EAST LINE OF GOVERNMENT LOT 6, SECTION 9, TOWNSHIP 16 SOUTH, RANGE 33 EAST; THENCE NORTH 00°13'28"WEST, ALONG SAID EAST LINE, A DISTANCE OF 677.06 FEET TO THE NORTHEAST CORNER OF SAID GOVERNMENT LOT 6; THENCE SOUTH 89°35'25"WEST, ALONG THE NORTH LINE OF SAID GOVERNMENT LOT 6, A DISTANCE OF 762.06 FEET TO THE EXISTING NORTHERLY RIGHT OF WAY OF STATE ROAD 421 (DUNLAWTON AVENUE) AS SHOWN ON FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT OF WAY MAP SECTION 79190-2513 AND A POINT ON A CURVE, CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 1809.86 FEET (CHORD BEARING = SOUTH 51°22'40"WEST, CHORD DISTANCE 292.98 FEET); THENCE ALONG SAID CURVE AND SAID EXISTING NORTHERLY RIGHT OF WAY A DISTANCE OF 293.30 FEET; THENCE SOUTH 56°01'13"WEST, ALONG SAID EXISTING NORTHERLY RIGHT OF WAY, A DISTANCE OF 101.02 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 56°01'13"WEST, ALONG SAID EXISTING NORTHERLY RIGHT OF WAY, A DISTANCE OF 10.00 FEET TO THE EXISTING EASTERLY RIGHT OF WAY OF STATE ROAD 5A (SOUTH NOVA ROAD), AS SHOWN ON FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT OF WAY MAP SECTION 79190-2513; THENCE NORTH 26°02'36"WEST, ALONG SAID EXISTING EASTERLY RIGHT OF WAY, A DISTANCE OF 10.10 FEET; THENCE SOUTH 74°41'41" EAST, A DISTANCE OF 13.19 FEET TO THE POINT OF BEGINNING.

CONTAINING 50 SQUARE FEET, MORE OR LESS.

SEE SHEET 2-3 FOR SKETCH OF DESCRIPTION
SEE SHEET 4 FOR GENERAL NOTES AND LEGEND

REVISION	BY	DATE

CITY OF PORT ORANGE

SKETCH OF DESCRIPTION - THIS IS NOT A SURVEY

STATE ROAD NO. 421 — VOLUSIA COUNTY

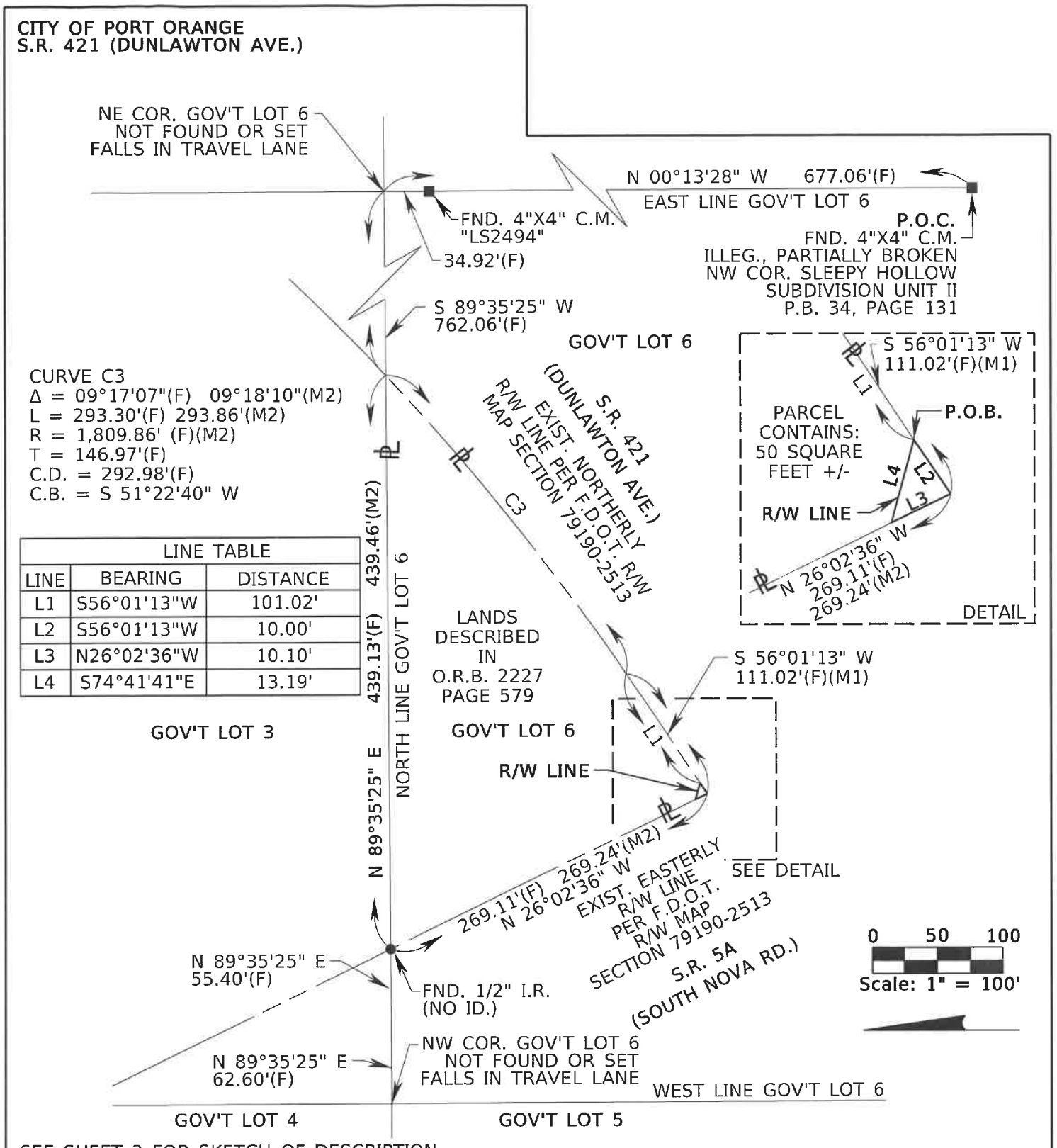
	BY	DATE
DRAWN	JCS	10/22/24
CHECKED	JCS	12/02/24

PREPARED BY: ECHO UES, INC.

DATA SOURCE: SEE GENERAL NOTES, SHEET 3

F.D.O.T. F.P. 449770-1 — SECTION 79230-2504 — SHEET 1 OF 3

CITY OF PORT ORANGE
S.R. 421 (DUNLAWTON AVE.)



LINE TABLE		
LINE	BEARING	DISTANCE
L1	S56°01'13"W	101.02'
L2	S56°01'13"W	10.00'
L3	N26°02'36"W	10.10'
L4	S74°41'41"E	13.19'

SEE SHEET 2 FOR SKETCH OF DESCRIPTION
SEE SHEET 3 FOR GENERAL NOTES AND LEGEND

SECTION 9, TOWNSHIP 16 SOUTH, RANGE 33 EAST

REVISION	BY	DATE

CITY OF PORT ORANGE

SKETCH OF DESCRIPTION - THIS IS NOT A SURVEY

STATE ROAD NO. 421 — VOLUSIA COUNTY

	BY	DATE
DRAWN	JCS	10/22/24
CHECKED	JCS	12/02/24

PREPARED BY: ECHO UES, INC.

DATA SOURCE: SEE GENERAL NOTES, SHEET 3

F.D.O.T. F.P. 449770-1 | SECTION 79230-2504 | SHEET 2 OF 3

CITY OF PORT ORANGE
S.R. 421 (DUNLAWTON AVE.)

LEGEND:

AVE.	=	AVENUE
COR	=	CORNER
C.B.	=	CHORD BEARING
C.D.	=	CHORD DISTANCE
C.M.	=	CONCRETE MONUMENT
EXIST.	=	EXISTING
(F)	=	FIELD DATA
F.D.O.T.	=	FLORIDA DEPARTMENT OF TRANSPORTATION
FND.	=	FOUND
F.P.	=	FINANCIAL PROJECT
GOV'T	=	GOVERNMENT
ID.	=	IDENTIFICATION
ILLEG.	=	ILLEGIBLE
I.R.	=	IRON ROD
L	=	LENGTH
(M1)	=	F.D.O.T. R/W MAP SECTION 79230-2504
(M2)	=	F.D.O.T. R/W MAP SECTION 79190-2513
NAD83	=	NORTH AMERICAN DATUM OF 1983
NO.	=	NUMBER
O.R.B.	=	OFFICAL RECORDS BOOK
P.L.	=	PROPERTY LINE
P.B.	=	PLAT BOOK
P.O.B.	=	POINT OF BEGINNING
P.O.C.	=	POINT OF COMMENCEMENT
PSM	=	PROFESSIONAL SURVEYOR & MAPPER
R	=	RADIUS
RD.	=	ROAD
R/W	=	RIGHT OF WAY
S.R.	=	STATE ROAD
T	=	TANGENT
Δ	=	DELTA
— — — —	=	R/W LINE

GENERAL NOTES:

1. BEARINGS SHOWN HEREON ARE BASED ON THE NORTH LINE OF GOVERNMENT LOT 6, SECTION 9, TOWNSHIP 16 SOUTH, RANGE 33 EAST AS BEING NORTH 89°35'25" EAST, BASED ON NAD83, 2011 ADJUSTMENT STATE PLANE COORDINATES, FLORIDA EAST ZONE.

2. THIS SKETCH OF DESCRIPTION IS NOT A SURVEY, NO CORNERS WERE SET OR RECOVERED IN THE FIELD FOR THE PURPOSE OF PREPARING THIS SKETCH, EXCEPT AS SHOWN.

3. PREPARED WITH THE BENEFIT OF A PROPERTY INFORMATION REPORT PREPARED BY FIRST AMERICAN TITLE INSURANCE COMPANY, FILE NUMBER 2140-2806543, DATED 09/03/2024.

I HEREBY CERTIFY THAT THIS SKETCH OF DESCRIPTION IS IN ACCORDANCE WITH THE STANDARDS OF PRACTICE REQUIRED BY CHAPTER 5J-17 FLORIDA ADMINISTRATIVE CODE PURSUANT TO SECTION 472.027, FLORIDA STATUTES.

DATE: 12/04/2024

JOSEPH C. STUKEY, PSM
FLORIDA PROFESSIONAL SURVEYOR AND MAPPER NO. 6514

NOT VALID WITHOUT ORIGINAL SIGNATURE AND SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

SEE SHEET 1 FOR LEGAL DESCRIPTION
SEE SHEET 2 FOR SKETCH OF DESCRIPTION

REVISION	BY	DATE

CITY OF PORT ORANGE

SKETCH OF DESCRIPTION - THIS IS NOT A SURVEY

VOLUSIA COUNTY

	BY	DATE
DRAWN	JCS	10/22/24
CHECKED	JCS	12/02/24

PREPARED BY: ECHO UES, INC.

DATA SOURCE: SEE GENERAL NOTES, SHEET 3

F.D.O.T. F.P. 449770-1 SECTION 79230-2504 SHEET 3 OF 3

CITY OF PORT ORANGE
S.R. 421 (DUNLAWTON AVE.)
PURPOSE: RIGHT-OF-WAY
ESTATE: PERPETUAL EASEMENT

LEGAL DESCRIPTION

A PORTION OF TRACT 3A, THE PINES, PLAT BOOK 42, PAGE 16, ALSO BEING A PORTION OF LANDS DESCRIBED IN OFFICIAL RECORD BOOK 7888, PAGE 731, AS RECORDED IN THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, AND LYING IN SECTION 17, TOWNSHIP 16 SOUTH, RANGE 33 EAST, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT A FOUND NAIL AND DISC STAMPED "LB4335", MARKING THE EASTERLY CORNER OF TRACT 3A, THE PINES, PLAT BOOK 42, PAGE 16, PUBLIC RECORDS OF VOLUSIA COUNTY, AND LYING ON THE EXISTING SOUTHERLY RIGHT OF WAY OF COUNTY ROAD 483 (CLYDE MORRIS BOULEVARD)(RIGHT OF WAY VARIES), AS SHOWN ON SAID PLAT BOOK 42, PAGE 16, ALSO BEING A POINT ON A CURVE, CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 650.00 FEET (CHORD BEARING = NORTH 57°41'42" EAST, CHORD DISTANCE = 13.81 FEET); THENCE ALONG SAID CURVE AND SAID EXISTING RIGHT OF WAY 13.81 FEET; THENCE SOUTH 33°33'53"WEST, A DISTANCE OF 16.59 FEET; THENCE NORTH 51°00'31"WEST, A DISTANCE OF 72.17 FEET; THENCE NORTH 42°46'23"WEST, A DISTANCE OF 55.65 FEET; THENCE NORTH 42°43'07"WEST, A DISTANCE OF 50.99 FEET; THENCE NORTH 47°16'53"EAST, A DISTANCE OF 5.18 FEET TO SAID EXISTING SOUTHERLY RIGHT OF WAY; THENCE SOUTH 45°03'31"EAST, ALONG SAID EXISTING SOUTHERLY RIGHT OF WAY, A DISTANCE OF 39.40 FEET TO SAID CURVE, CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 650.00 FEET (CHORD BEARING = SOUTH 51°04'21" EAST, CHORD DISTANCE = 136.20 FEET); THENCE ALONG SAID CURVE AND SAID EXISTING SOUTHERLY RIGHT OF WAY A DISTANCE OF 136.45 FEET TO THE POINT OF BEGINNING.

CONTAINING 1854 SQUARE FEET, MORE OR LESS.

SEE SHEET 2-3 FOR SKETCH OF DESCRIPTION
SEE SHEET 4 FOR GENERAL NOTES AND LEGEND

REVISION	BY	DATE

CITY OF PORT ORANGE

SKETCH OF DESCRIPTION - THIS IS NOT A SURVEY

STATE ROAD NO. 421 — VOLUSIA COUNTY

	BY	DATE
DRAWN	JCS	10/22/24
CHECKED	JCS	12/02/24

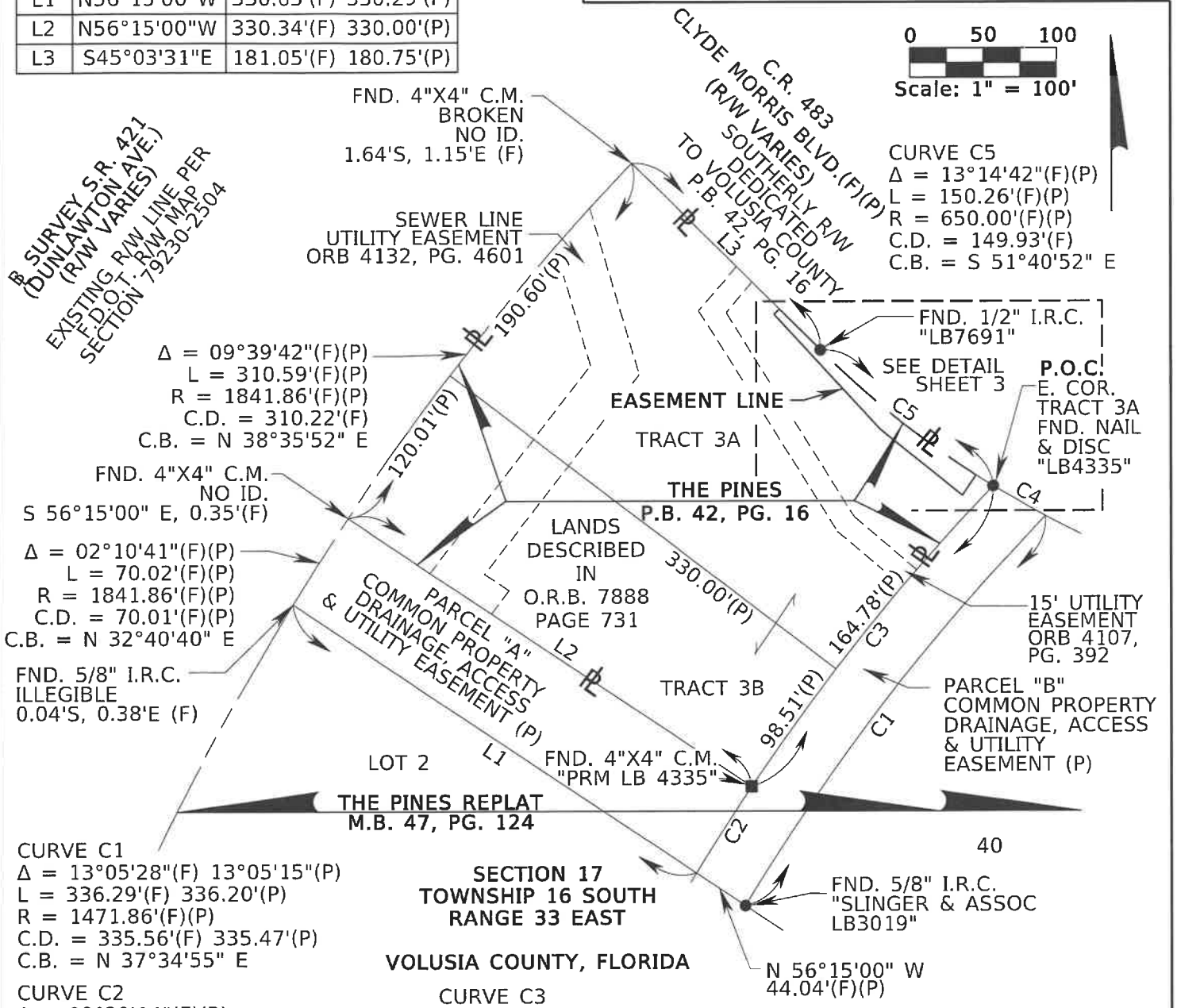
PREPARED BY: ECHO UES, INC.

DATA SOURCE: SEE GENERAL NOTES, SHEET 3

F.D.O.T. F.P. 449770-1 — SECTION 79230-2504 — SHEET 1 OF 4

CITY OF PORT ORANGE
S.R. 421 (DUNLAWTON AVE.)

LINE TABLE		
LINE	BEARING	DISTANCE
L1	N56°15'00"W	330.63'(F) 330.29'(P)
L2	N56°15'00"W	330.34'(F) 330.00'(P)
L3	S45°03'31"E	181.05'(F) 180.75'(P)



CURVE C1
Δ = 13°05'28"(F) 13°05'15"(P)
L = 336.29'(F) 336.20'(P)
R = 1471.86'(F)(P)
C.D. = 335.56'(F) 335.47'(P)
C.B. = N 37°34'55" E

CURVE C2
Δ = 02°39'14"(F)(P)
L = 70.02'(F) 70.03'(P)
R = 1511.86'(F)(P)
C.D. = 70.02'(F)(P)
C.B. = N 32°26'07" E

SECTION 17
TOWNSHIP 16 SOUTH
RANGE 33 EAST

VOLUSIA COUNTY, FLORIDA

CURVE C3
Δ = 09°58'51"(F) 09°58'41"(P)
L = 263.36'(F) 263.29'(P)
R = 1511.86'(F)(P)
C.D. = 263.03'(F) 262.96'(P)
C.B. = N 38°45'09" E

CURVE C4
Δ = 03°38'07"(F) 03°38'05"(P)
L = 41.42'(F) 41.23'(P)
R = 650.00'(F)(P)
C.D. = 41.23'(F)
C.B. = S 60°07'16" E

SEE SHEET 1 FOR DESCRIPTION
SEE SHEET 4 FOR GENERAL NOTES AND LEGEND

REVISION	BY	DATE

CITY OF PORT ORANGE

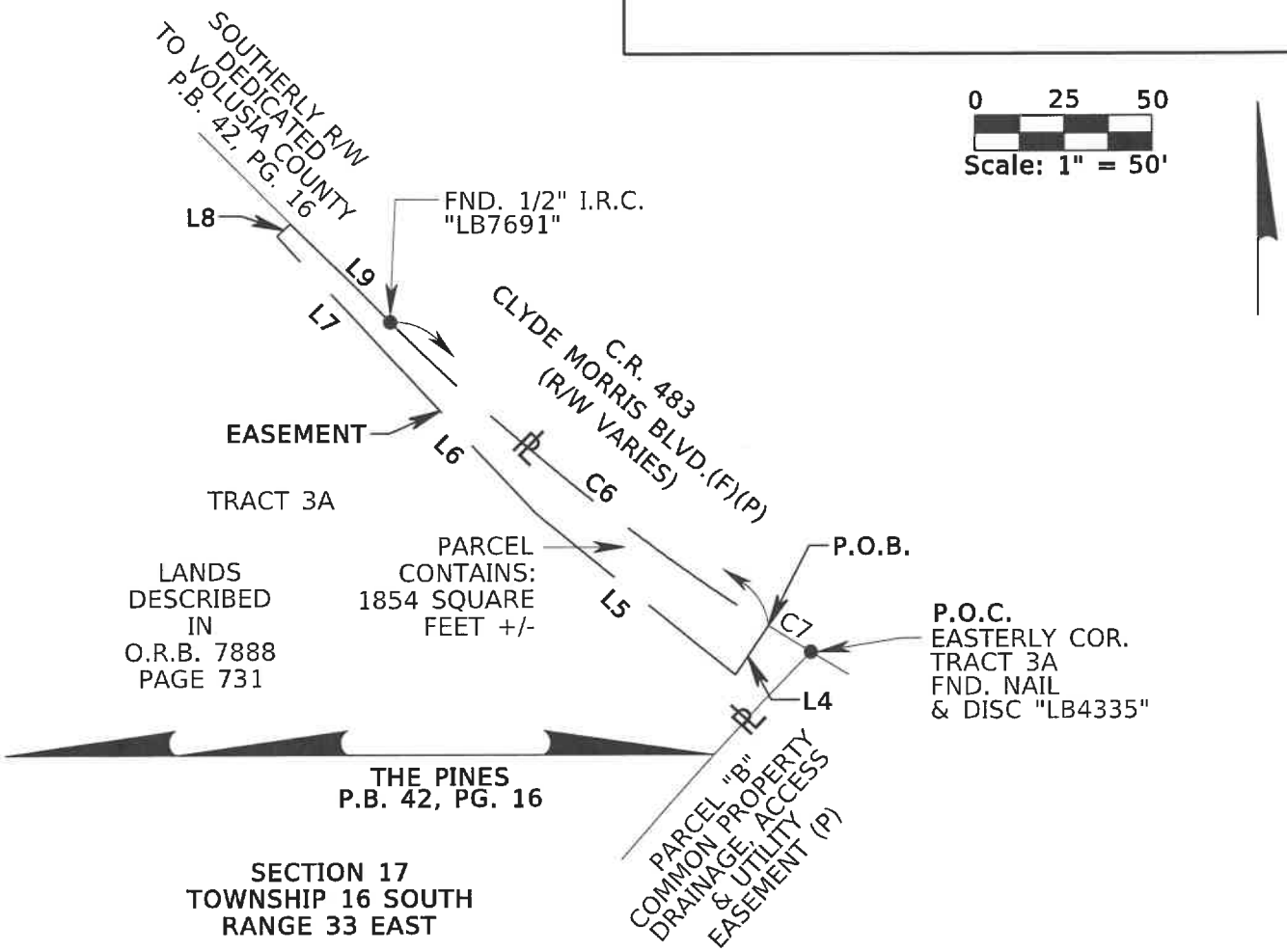
SKETCH OF DESCRIPTION - THIS IS NOT A SURVEY

STATE ROAD NO. 421 — VOLUSIA COUNTY

	BY	DATE
DRAWN	JCS	10/22/24
CHECKED	JCS	12/02/24

PREPARED BY: ECHO UES, INC.
DATA SOURCE: SEE GENERAL NOTES, SHEET 3
F.D.O.T. F.P. 449770-1 | SECTION 79230-2504 | SHEET 2 OF 4

CITY OF PORT ORANGE
S.R. 421 (DUNLAWTON AVE.)



SECTION 17
TOWNSHIP 16 SOUTH
RANGE 33 EAST

VOLUSIA COUNTY, FLORIDA

CURVE C6
Δ = 12°01'40"
L = 136.45'
R = 650.00'
C.D. = 136.20'
C.B. = S51°04'21"E

CURVE C7
Δ = 01°13'02"
L = 13.81'
R = 650.00'
C.D. = 13.81'
C.B. = N57°41'42"W

LINE TABLE		
LINE	BEARING	DISTANCE
L4	S33°33'53"W	16.59'
L5	N51°00'31"W	72.17'
L6	N42°46'23"W	55.65'
L7	N42°43'07"W	50.99'
L8	N47°16'53"E	5.18'
L9	S45°03'31"E	39.40'

SEE SHEET 1 FOR DESCRIPTION
SEE SHEET 4 FOR GENERAL NOTES AND LEGEND

REVISION	BY	DATE

CITY OF PORT ORANGE

SKETCH OF DESCRIPTION - THIS IS NOT A SURVEY

STATE ROAD NO. 421 — VOLUSIA COUNTY

	BY	DATE
DRAWN	JCS	10/22/24
CHECKED	JCS	12/02/24

PREPARED BY: ECHO UES, INC.

DATA SOURCE: SEE GENERAL NOTES, SHEET 3

F.D.O.T. F.P. 449770-1 — SECTION 79230-2504 — SHEET 3 OF 4

CITY OF PORT ORANGE
S.R. 421 (DUNLAWTON AVE.)

LEGEND:

AVE.	=	AVENUE
℄	=	BASELINE
BLVD.	=	BOULEVARD
COR.	=	CORNER
C.B.	=	CHORD BEARING
C.D.	=	CHORD DISTANCE
C.M.	=	CONCRETE MONUMENT
C.R.	=	COUNTY ROAD
(F)	=	FIELD DATA
F.D.O.T.	=	FLORIDA DEPARTMENT OF TRANSPORTATION
FND.	=	FOUND
F.N.D.	=	FOUND NAIL AND DISK
F.P.	=	FINANCIAL PROJECT
ID	=	IDENTIFICATION
I.R.C.	=	IRON ROD AND CAP
LB	=	LICENSED BUSINESS
L	=	LENGTH
M.B.	=	MAP BOOK
NAD83	=	NORTH AMERICAN DATUM OF 1983
NO.	=	NUMBER
O.R.B.	=	OFFICAL RECORDS BOOK
ℙ	=	PROPERTY LINE
(P)	=	PLAT DATA
P.B.	=	PLAT BOOK
PG.	=	PAGE
P.O.C.	=	POINT OF COMMENCEMENT
PSM	=	PROFESSIONAL SURVEYOR & MAPPER
R	=	RADIUS
R/W	=	RIGHT OF WAY
S.R.	=	STATE ROAD
Δ	=	DELTA
———	=	EASEMENT LINE

GENERAL NOTES:

1. BEARINGS SHOWN HEREON ARE BASED ON THE SOUTH R/W LINE OF COUNTY ROAD 483 (CLYDE MORRIS BLVD.) AS BEING SOUTH 45°03'31" EAST, BASED ON NAD83, 2011 ADJUSTMENT STATE PLANE COORDINATES, FLORIDA EAST ZONE.

2. THIS SKETCH OF DESCRIPTION IS NOT A SURVEY, NO CORNERS WERE SET OR RECOVERED IN THE FIELD FOR THE PURPOSE OF PREPARING THIS SKETCH, EXCEPT AS SHOWN.

3. PREPARED WITH THE BENEFIT OF A PROPERTY INFORMATION REPORT PREPARED BY FIRST AMERICAN TITLE INSURANCE COMPANY, FILE NUMBER 2140-2806546, DATED 08/27/2024.

I HEREBY CERTIFY THAT THIS SKETCH OF DESCRIPTION IS IN ACCORDANCE WITH THE STANDARDS OF PRACTICE REQUIRED BY CHAPTER 5J-17 FLORIDA ADMINISTRATIVE CODE PURSUANT TO SECTION 472.027, FLORIDA STATUTES.

DATE: 12/04/2024

JOSEPH C. STUKEY, PSM
FLORIDA PROFESSIONAL SURVEYOR AND MAPPER NO. 6514

NOT VALID WITHOUT ORIGINAL SIGNATURE AND SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

SEE SHEET 1 FOR LEGAL DESCRIPTION
SEE SHEET 2-3 FOR SKETCH OF DESCRIPTION

REVISION	BY	DATE

CITY OF PORT ORANGE

SKETCH OF DESCRIPTION - THIS IS NOT A SURVEY

STATE ROAD NO. 421 — VOLUSIA COUNTY

	BY	DATE
DRAWN	JCS	10/22/24
CHECKED	JCS	12/02/24

PREPARED BY: ECHO UES, INC.

DATA SOURCE: SEE GENERAL NOTES, SHEET 3

F.D.O.T. F.P. 449770-1 — SECTION 79230-2504 — SHEET 4 OF 4

CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 4/15/2025

SUBJECT: (G17) Second Reading - Ordinance No. 2025-11 - First Amendment to the Summer Trees Plaza PCD Master Development Agreement (Case No. PRZA-25-0001)

DEPARTMENT: Community Development

GOAL: 3 - Quality of Life

RECOMMENDED MOTION: Move to approve Ordinance 2025-11.

SUMMARY: Planning Commission Action (2/27/25): Recommended Approval (4-3)

The property owner requests the proposed amendment to the Master Development Agreement (MDA) for the Summer Trees Plaza Planned Commercial Development (PCD) to allow a broader range of commercial uses in the PCD, consistent with the uses allowed in the City's conventional commercial zoning districts and update the signage and architectural requirements for the PCD to be consistent with the current requirements in the City's Land Development Code (LDC). The Summer Trees Plaza PCD is located on the south side of Taylor Road, between Summer Trees Road and Williamson Boulevard.



Location Map of the Summer Trees Plaza PCD

The Summer Trees Plaza PCD was approved in November 2007, and the subject property has been zoned for commercial development since 1998 (27 years). The PCD was initially planned to be developed with a hotel, conference center, and commercial uses adjacent to Taylor Road. The PCD includes five (5) parcels/sites (Figure 2):

- Two (2) parcels (Site A and B) are developed with commercial uses (PNC Bank and a multi-tenant commercial building in 2012);
- Two (2) parcels are vacant (Site C and D); and
- The southernmost parcel (Site E) was sold to the City of Port Orange in 2007, and in 2010 a stormwater pond for the drainage associated with widening Williamson Boulevard from 2 to 4 lanes was constructed.

The proposed 1st Amendment to the Summer Trees Plaza MDA only pertains to Sites A-D and does not include the city-owned parcel (Site E).

The MDA for the Summer Trees Plaza PCD currently allows commercial uses such as hotels, restaurants, retail, medical and professional offices, assisted living facilities, etc. The additional uses proposed to be added to the list of allowed uses on any of the four sites (Sites A-D) include craft food and beverage producers, microbreweries, and private schools. According to the applicant, the uses are being added to provide more

flexibility for new development and/or redevelopment in the PCD. The three proposed additional uses listed above will be required to comply with all City development requirements in the LDC. For the craft food and beverage producers and microbreweries uses, there are additional special development requirements, which include requirements for screening, storage and parking that will need to be met, if developed. The special development requirements for these two uses are consistent with the special development requirements for these uses in the LDC. The special development requirements for these two uses are listed in Exhibit B of the MDA.

The applicant also requests to add mini-warehouses and motor vehicle and boat storage to the list of allowed uses for Site C and D. The proposed 1st Amendment to the MDA requires the development of a mini-warehouses and/or motor vehicle and boat storage use to meet the standard commercial site requirements (landscape buffers, screening, tree preservation, architecture, traffic concurrency, drainage and other infrastructure, parking, etc.) in the City's LDC, along with the additional special development requirements which include wider and denser landscape buffers, screen walls/fences, and building orientation to provide sufficient screening of these uses from residential areas and/or major roadways. The special development requirements for these two uses are consistent with the special development requirements for these uses in the LDC. The special development requirements for these uses are listed in Exhibit B of the MDA. According to the applicant, in addition to the special development requirements, there is also sufficient separation and existing vegetation between Sites C and D and the nearest residential lots to assist in buffering these uses.



Graphic that shows the Distance between Adjacent Lot Lines and Site C and D in the Summer Trees PCD

The Signage and Architectural/Design Standards sections of the MDA have also been updated to remove outdated signage and architectural requirements that are no longer consistent with the signage and architectural requirements in the LDC. The proposed amendments require all development within the PCD to comply with the City's current commercial signage and architectural requirements in the LDC that apply city-wide, simplify the MDA text, and ensure the standards remain current with current city regulations over time.

According to the applicant, no proposed plans exist for any new development within the PCD, specifically Site C and D. The owner intends to continue to market the vacant sites for sale and has proposed the 1st Amendment to the MDA to make the sites more marketable by adding the uses listed above as possible options. Prior to any development within the PCD, a site plan will be required to be submitted to the city and approved by the Staff Development Review Committee (SDRC). Any development in the PCD will need to meet the standard commercial site requirements (landscape buffers, screening, tree preservation, architecture, traffic concurrency, drainage and other infrastructure, parking, etc.) in the City's LDC, along with any additional special development requirements listed in the MDA.

The Staff Report is attached for more information.

PRESENTER: Penelope Cruz, Tim Burman

ATTACHMENTS:

1.	Ordinance No. 2025-11 w exhibit	Ordinance No. 2025-11 w exhibit.pdf
2.	STAFF REPORT	STAFF REPORT .pdf
3.	Business Impact Estimate - ORD 2025-11 - PRZA-25-0001	Business Impact Estimate - ORD 2025-11 - PRZA-25-0001.docx

Penelope Cruz	Created/Initiated - 3/17/2025
Amanda Bonin	Final Approval - 3/17/2025

ORDINANCE NO. 2025-11

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, APPROVING THE FIRST AMENDMENT TO THE MASTER DEVELOPMENT AGREEMENT FOR THE SUMMER TREES PLAZA PLANNED COMMERCIAL DEVELOPMENT (PCD) TO ALLOW ADDITIONAL COMMERCIAL USES CONSISTENT WITH THE USES ALLOWED IN THE CITY'S CONVENTIONAL COMMERCIAL ZONING DISTRICTS AND UPDATE SIGNAGE AND ARCHITECTURE REQUIREMENTS TO BE CONSISTENT WITH CURRENT THE LAND DEVELOPMENT CODE S; PROVIDING FOR THE REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY OF; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City and Developer desire to enter into the First Amendment to the Master Development Agreement for the Summer Trees Plaza Planned Commercial Development (PCD) (hereinafter referred to as the "First Amendment"); and

WHEREAS, the Owner submitted a request to the Planning Commission to approve the First Amendment; and

WHEREAS, a public hearing was held following public notice as prescribed by ordinance; and

WHEREAS, the Planning Commission has by majority vote recommended approval of the proposed First Amendment; and

WHEREAS, the City Council has approved by a majority vote of the members present the First Amendment.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA:

Section 1. The City Council of the City of Port Orange does hereby approve the

First Amendment (attached hereto as **Exhibit "1"**).

Section 2. The Mayor and City Clerk are hereby authorized to execute said First Amendment.

Section 3. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

Section 4. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are declared severable.

Section 5. This ordinance shall become effective immediately upon adoption.

_____
MAYOR 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

Document Prepared By
Storch Law Firm
420 South Nova Road
Daytona Beach, FL 32114

Return recorded document to:
City of Port Orange
1000 City Center Circle
Port Orange, FL 32129

FIRST AMENDMENT TO
THE SUMMER TREES PLAZA
MASTER DEVELOPMENT AGREEMENT FOR
PLANNED COMMERCIAL DEVELOPMENT

THIS FIRST AMENDMENT TO THE SUMMER TREES PLAZA THE MASTER DEVELOPMENT AGREEMENT FOR PLANNED COMMERCIAL DEVLEOPMENT (the "**First Amendment**") is made this ___ day of _____, 2025, by and among the City of Port Orange, a political subdivision of the State of Florida ("**City**") whose address is 1000 City Center Circle, Port Orange, Florida 32119; and Sun Glow Construction, Inc., a Florida corporation ("**Sun Glow**"), whose address is 230 N. Beach Street, Suite 4, Daytona Beach, Florida 32114.

WHEREAS, the City and Sun Glow previously entered into an agreement and covenant to bind their successors and assigns to the terms and provisions of a development agreement entitled "The Summer Trees Plaza Master Development Agreement for Planned Commercial Development", recorded in Official Records Book 6165, Page 4012, of the Public Records of Volusia County, Florida (the "**Master Development Agreement**"), relating to property described therein; and

WHEREAS, the only property subject to this First Amendment are more particularly described in the legal description attached hereto and incorporated herein as Exhibit "A" (the "Property");

WHEREAS, the City and Sun Glow wish to further amend the Master Development Agreement for the purposes of amending the permitted use in the Master Development Agreement.

NOW, **THEREFORE**, the parties, in consideration of the mutual and covenants contained herein, and with the intent to be legally bound and to bind their successors and assigns, due hereby agree as follows:

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

2. Section 4(a) of the Master Development Agreement is hereby amended by underline and strikethrough to read as follows:

4. PERMITTED USES FOR SUMMER TREES PLAZA.

(a) The Permitted Uses in Summer Trees Plaza shall include the following:

Appliance/Electrical Repair Shops;
Assisted Living Facilities/Nursing Homes;

Banks and Financial Services with drive-thru facilities;
Business Services;
Camouflaged and Monopole Communication Towers;
Child Care;
Clubs, lodges and fraternal organizations;
Convenience Stores (without fuel operations);
Craft food and beverage producer (designed in accordance with the special development requirements in Exhibit B);
Health/exercise clubs;
Hotels/Motels;
Fleet-based services;
Funeral Homes;
Furniture and Appliance Services
Medical Offices/Clinics;
Microbrewery (designed in accordance with the special development requirements in Exhibit B);
Mini warehouses (limited to Parcel Nos. 631900000222 and 631900000220 and designed in accordance with special development requirements in Exhibit B)
Motor Vehicle and Boat Storage (limited to Parcel Nos. 631900000222 and 631900000220 and designed in accordance with special development requirements in Exhibit B)
Municipal Uses, including Stormwater Retention;
Office Supplies;
Offices;
Personal Services;
Private schools;
Retail Home Building Materials;
Retail Nursery and Garden Supplies;
Retail Sales and Services;
Restaurant (Type "A" Site Down Only);
Veterinary Clinics; and
Xerographic and Offset Printing.

3. Section 9 of the Master Development Agreement is hereby amended to read as follows:

9. SIGNAGE. The applicable City signage ordinances in effect at the time of development, as defined by the Code, shall control.

4. Section 10 of the Master Development Agreement is hereby amended to read as follows:

10. ARCHITECTURAL/DESIGN STANDARDS. The applicable City architectural standards in effect at the time of development, as defined by the Code, shall control.

5. Section 11 of the Master Development Agreement is hereby amended to read as follows:

> **11. EXPIRATION.** Development of the Summer Trees Plaza shall commence within ten (10) years from the effective date of the First Amendment. Failure to comply with the schedule set out above shall cause this Agreement to lapse unless the schedule is modified by mutual agreement of the Owner and the City. The term "development" shall be as defined by the Code.

6. This First Amendment shall be effective upon the recording of the First Amendment in the Public Records of Volusia County, Florida at the expense of Sun Glow.

7. The Master Development Agreement, as previously enacted, shall remain in full force and effect except with respect to those matters specifically amended by this First Amendment.

[REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the parties have executed this Ninth Amendment, by and through their duly authorized representatives, on the respective dates below:

"CITY"

CITY OF PORT ORANGE, a Florida municipal corporation

WITNESSES:

_____
Print Name: _____

By: _____
Scott Stiltner, Mayor

_____
Print Name: _____

_____
Print Name: _____

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

_____
Print Name: _____

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 _____ and Scott Stiltner, Mayor and Robin L. Fenwick, City Clerk, both of the City of Port Orange, a Florida municipal corporation, on behalf of the City. They are personally known to me and did not take an oath.

_____
Notary: Type, Print or Stamp Name

My Commission Expires:

"Sun Glow"

WITNESSES:

SUN GLOW CONSTRUCTION, INC.,
a Florida corporation

_____
Print Name: _____

_____

By: _____

_____
Print Name: _____ Its: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of [_] physical presence or [_] online notarization on this ___ day of _____, 2025, by _____, as _____ of Sun Glow Construction, Inc., a Florida corporation. He/she is personally known to me or produced _____ as identification and did not take an oath.

(Seal)

_____
Notary Public

EXHIBIT "A"
LEGAL DESCRIPTION

SITE C

LEGAL DESCRIPTION:

A PORTION OF THAT UNPLATTED LAND LYING IN SECTION 19, TOWNSHIP 16 SOUTH, RANGE 33 EAST, BEING DESCRIBED AS FOLLOWS:
COMMENCE AT THE NORTHWEST CORNER OF SUMMER TREES, UNIT I, AS RECORDED IN MAP BOOK 34, PAGES 10-11, OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA; THENCE N63°59'01"E, ALONG THE NORTH LINE OF SAID SUMMER TREES, UNIT I, SAID LINE ALSO BEING THE SOUTH LINE OF TAYLOR ROAD (A 100 FOOT RIGHT OF WAY PER SAID SUMMER TREES, UNIT I), A DISTANCE OF 332.52 FEET TO THE NORTHEAST CORNER OF SAID SUMMER TREES, UNIT I; THENCE CONTINUE ALONG SAID SOUTH LINE OF TAYLOR ROAD, NORTH 63°59'01" EAST, A DISTANCE OF 175.99 FEET TO THE NORTHWEST CORNER OF CNB SUBDIVISION, AS RECORDED IN MAP BOOK 46, PAGE 91; THENCE SOUTH 00°27'55" EAST ALONG THE WEST LINE OF SAID CNB SUBDIVISION, A DISTANCE OF 267.38 FEET TO THE SOUTHWEST CORNER OF SAID CNB SUBDIVISION AND THE POINT OF BEGINNING; THENCE SOUTH 89°53'35" EAST ALONG THE SOUTH LINE OF SAID CNB SUBDIVISION AND THE SOUTH LINE OF TAYLOR / AIRPORT SUBDIVISION, AS RECORDED IN MAP BOOK 49, PAGE 1, A DISTANCE OF 231.68 FEET; THENCE DEPARTING SAID SOUTH LINE OF TAYLOR / AIRPORT SUBDIVISION, SOUTH 00°26'30" EAST, A DISTANCE OF 20.00 FEET; THENCE SOUTH 89°53'35" EAST, A DISTANCE OF 24.90 FEET; THENCE SOUTH 00°17'33" EAST, A DISTANCE OF 284.63 FEET; THENCE SOUTH 89°32'51" WEST, A DISTANCE OF 104.83 FEET TO A POINT ON THE EAST LINE OF SUMMER TREES UNIT III-A, AS RECORDED IN MAP BOOK 37, PAGE 62; THENCE THE NEXT THREE (3) COURSES ALONG SAID EAST LINE OF SUMMER TREES UNIT III-A; (1) NORTH 25°18'17" WEST, A DISTANCE OF 206.92 FEET; (2) THENCE SOUTH 62°33'25" WEST, A DISTANCE OF 82.00 FEET; (3) THENCE NORTH 27°26'35" WEST, A DISTANCE OF 145.00 FEET TO THE NORTHEAST CORNER OF SAID SUMMER TREES UNIT III-A; THENCE DEPARTING SAID BOUNDARY LINE OF SUMMER TREES, UNIT III-A, THENCE NORTH 69°27'44" EAST, A DISTANCE OF 79.76 FEET TO THE POINT OF BEGINNING.

CONTAINING: 65,165 SQUARE FEET OR 1.5 ACRES OF LAND, MORE OR LESS.

AND

SITE D

LEGAL DESCRIPTION:

A PORTION OF THAT UNPLATTED LAND LYING IN SECTION 19, TOWNSHIP 16 SOUTH, RANGE 33 EAST, BEING DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHWEST CORNER OF SUMMER TREES, UNIT I, AS RECORDED IN MAP BOOK 34, PAGES 10-11, OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA; THENCE N63°59'01"E, ALONG THE NORTH LINE OF SAID SUMMER TREES, UNIT I, SAID LINE ALSO BEING THE SOUTH LINE OF TAYLOR ROAD (A 100 FOOT RIGHT OF WAY PER SAID SUMMER TREES, UNIT I), A DISTANCE OF 332.52 FEET TO THE NORTHEAST CORNER OF SAID SUMMER TREES, UNIT I; THENCE CONTINUE ALONG SAID SOUTH LINE OF TAYLOR ROAD, NORTH 63°59'01" EAST, A DISTANCE OF 175.99 FEET

TO THE NORTHWEST CORNER OF CNB SUBDIVISION, AS RECORDED IN MAP BOOK 46, PAGE 91; THENCE SOUTH 00°27'55" EAST ALONG THE WEST LINE OF SAID CNB SUBDIVSION, A DISTANCE OF 267.38 FEET TO THE SOUTHWEST CORNER OF SAID CNB SUBDIVISION; THENCE SOUTH 89°53'35" EAST ALONG THE SOUTH LINE OF SAID CNB SUBDIVISION AND THE SOUTH LINE OF TAYLOR / AIRPORT SUBDIVISION, AS RECORDED IN MAP BOOK 49, PAGE 1, A DISTANCE OF 231.68 FEET; THENCE DEPARTING SAID SOUTH LINE OF TAYLOR / AIRPORT SUBDIVISION, SOUTH 00°26'30" EAST, A DISTANCE OF 20.00 FEET; THENCE SOUTH 89°53'35" EAST, A DISTANCE OF 24.90 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE SOUTH 89°53'35" EAST, A DISTANCE OF 362.76 FEET TO A POINT ON THE WEST LINE OF AIRPORT ROAD COMMERCIAL SUBDIVISION, AS RECORDED IN MAP BOOK 53, PAGES 135-138; THENCE SOUTH 00°27'55" EAST ALONG SAID WEST LINE OF AIRPORT ROAD COMMERCIAL SUBDIVISION, A DISTANCE OF 220.86 FEET TO THE SOUTHWEST CORNER OF SAID AIRPORT ROAD COMMERCIAL SUBDIVISION; THENCE NORTH 89°32'05" EAST ALONG THE SOUTH LINE OF SAID AIRPORT ROAD COMMERCIAL SUBDIVISION, A DISTANCE OF 15.00 FEET TO THE NORTHWEST CORNER OF TAYLOR WOODS II, AS RECORDED IN MAP BOOK 42, PAGE 200; THENCE SOUTH 00°27'55" EAST ALONG THE WEST LINE OF SAID TAYLOR WOODS II, A DISTANCE OF 60.23 FEET; THENCE DEPARTING SAID WEST LINE OF TAYLOR WOODS II, SOUTH 89°32'51" WEST, A DISTANCE OF 378.60 FEET; THENCE NORTH 00°17'33" WEST, A DISTANCE OF 284.63 FEET; TO THE POINT OF BEGINNING.

CONTAINING: 103,632 SQUARE FEET OR 2.38 ACRES OF LAND, MORE OR LESS.

Exhibit B
Special Development Requirements

Craft food and beverage producer

(a) Required to include one or more accessory uses such as a tasting room, tap room, restaurant, retail, demonstration area, education and training facility or other use incidental to the brewery and open and accessible to the public.
(b) Access and loading and unloading facilities are required to be internal to the site or development or located at the back (or side not adjacent to a single- family or duplex residential use or zoning district) of building.
(c) Required parking is calculated based on square footage proposed for each use (example: manufacturing parking ratio + retail parking ratio based on square-footage).
(d) All outdoor equipment and storage of materials, including silos, products for distribution, and other items requiring long-term storage shall be allowed in areas behind building, in enclosed buildings, or otherwise screened, using architectural features consistent with the principal structure, from the public right of way or a single-family or duplex residential use or residential zoning district. Spent or used grain or similar materials that can attract rodents shall be stored in sealed containers.
(e) Off-site distribution via semi-trailer (articulated combination vehicle with a permanent or semi-permanent pivoting joint; does not include a straight or box truck with no articulation) is only permitted if the truck traffic is limited to streets classified as arterial on the Comprehensive Plan Roadway Functional Classification Map.
(f) Outdoor seating is not permitted to be located on any side adjacent to a single-family or duplex residential use or residential zoning district.
(g) Shall comply with all applicable federal, state and local laws.

Microbrewery

(a) Required to include one or more accessory uses such as a tasting room, tap room, restaurant, retail, demonstration area, education and training facility or other use incidental to the microbrewery and open and accessible to the public.
(b) Decorative silos that are designed to be compatible and integral with the principal structure are permitted. No additional sign area is permitted for decorative silos; however, permitted wall sign area for the principal structure or building may be transferred to the silo, provided that silo signage is only situated on the sides of the silo visible from a right-of- way. The maximum height shall not exceed the maximum building height of the zoning district.
(c) Access and loading and unloading facilities are required to be internal to the site or development or located at the back (or side not adjacent to a single-family or duplex residential use or zoning district) building.
(d) Required parking is calculated based on square footage proposed for each use (example: manufacturing parking ratio + bar parking ratio based on square-footage).
(e) Storage of materials, including silos, products for distribution, and other items requiring long-term storage shall be allowed in areas behind building (or a side not adjacent to a residential use or zoning district), in enclosed buildings, or otherwise screened from the public right of way or a single-family or duplex residential use or residential zoning district- Spent or used grain shall be stored in sealed containers.
(f) Off-site distribution via semi-trailer (articulated combination vehicle with a permanent or semi-permanent pivoting joint; does not include a straight or box truck with no articulation) is only permitted if the truck traffic is limited to streets classified as arterial on the Comprehensive Plan Roadway Functional Classification Map.
(g) Outdoor seating is not permitted to be located on any side adjacent to a single-family or duplex

residential use or residential zoning district.

(h) Shall comply with all applicable federal, state and local laws.

Mini warehouses

(a) Warehouse buildings shall be screened from any public rights-of-way by a six-foot high opaque fence or wall with a type 2 bufferyard planted along the street side of the fence or wall. Bufferyard requirements may be increased in accordance with chapter 13 of the Land Development Code.

(b) All storage unit doors shall face interior to the development.

(c) The proposed site shall front on or have driveway access to an arterial roadway.

Motor Vehicle and Boat Storage

(a) The proposed site shall front on or have driveway access to an arterial roadway.

(b) Buffering shall be provided based on a land use intensity factor of six for completely enclosed facilities and seven for fenced facilities.

(c) Outside storage shall be completely enclosed within a six- to eight-foot-high opaque fence or wall.

(d) Vehicles shall include automobiles, trucks, vans, boats, boat trailers, recreational vehicles, and other similar vehicles which are customarily owned, rented or leased by the average family. Such vehicles shall be licensed and fully operational at all times. Towing to and impoundment at the facility of any inoperable vehicle or appurtenance thereof shall not be permitted.

(e) Vehicle washing shall be confined to a commercial facility or pervious surface in compliance with the water conservation regulations of the city.

(f) Vehicle servicing shall be limited to regular maintenance items such as changing oil, tires, batteries, and other similar activities. Mechanical or body repair, painting, engine rebuilding, or other similar work which would customarily be performed at a motor vehicle service center shall not be permitted.

(g) Living quarters for a resident manager may be permitted, provided such quarters are occupied by the manager.

(h) Required parking shall be provided at a ratio of one space for each ten storage stalls or fraction thereof, plus one space for each employee at the largest shift and two spaces if resident manager living quarters are provided.

STAFF REPORT

1st Amendment to the Master Development Agreement for the Summer Trees Plaza Planned Commercial Development
CASE NO. PRZA-25-0001

REQUEST:	To approve the 1st Amendment to the Master Development Agreement for the Summer Trees Plaza Planned Commercial Development (PCD) to allow a broader range of commercial uses in the PCD, consistent with the uses allowed in the City's conventional commercial zoning districts and update outdated language related to signage and architecture.
LOCATION:	Southside of Taylor Road, between Summer Trees Road and Williamson Boulevard (See location map below)
APPLICANT	Storch Law Firm c/o A, Joseph Posey, Jr.
PROPERTY OWNER:	Sun Glow Construction, Inc.
STAFF CONTACT:	Suzette Cameron, Senior Planner
STAFF RECOMMENDATION:	Approval
PLANNING COMMISSION:	Recommended Approval 4-3 (February 27, 2025)
CITY COUNCIL:	March 18, 2025

INTRODUCTION

The property owner requests the proposed amendment to the Master Development Agreement (MDA) for the Summer Trees Plaza Planned Commercial Development (PCD) to allow a broader range of commercial uses in the PCD, consistent with the uses allowed in the City's conventional commercial zoning districts and update the signage and architectural requirements for the PCD to be consistent with the current requirements in the City's Land Development Code (LDC). The Summer Trees Plaza PCD is located on the south side of Taylor Road, between Summer Trees Road and Williamson Boulevard.

Figure 1. Location Map



PROPOSED AMENDMENT

The Summer Trees Plaza PCD was approved in November 2007, and the subject property has been zoned for commercial development since 1998 (27 years). The PCD was initially planned to be developed with a hotel, conference center, and commercial uses adjacent to Taylor Road. The PCD includes five (5) parcels/sites (Figure 2):

- Two (2) parcels (Site A and B) are developed with commercial uses (PNC Bank and a multi-tenant commercial building);
- Two (2) parcels are vacant (Site C and D); and
- The southernmost parcel (Site E) was sold to the City of Port Orange in 2007, and in 2010 a stormwater pond for the drainage associated with widening Williamson Boulevard was constructed.

The proposed 1st Amendment to the Summer Trees Plaza MDA only pertains to Sites A-D and **does not** include the city-owned parcel (Site E). Figure 2 shows the location of the five parcels and the approximate distance from the nearest residential lots to the two vacant sites that remain.

Figure 2. Summer Trees Plaza PCD Amendment Area



The MDA for the Summer Trees Plaza PCD currently allows commercial uses such as hotels, restaurants, retail, medical and professional offices, assisted living facilities, etc. The additional uses proposed to be added to the list of allowed uses on any of the four

sites (Sites A-D) include 1) craft food and beverage producers, 2) microbreweries, and 3) private schools. According to the applicant, the uses are being added to provide more flexibility for new development and/or redevelopment in the PCD. The three proposed additional uses listed above will be required to comply with all City development requirements in the Land Development Code (LDC). For the craft food and beverage producers and microbreweries, there are additional special development requirements, which include requirements for screening, storage, and parking that will need to be met if developed. The special development requirements for these two uses are consistent with the special development requirements for these uses in the LDC. The special development requirements are listed in Exhibit B of the MDA.

In addition to the uses proposed to be allowed on Sites A-D, listed above, the applicant also requests to add mini-warehouses and motor vehicle and boat storage to the list of allowed uses on Sites C and D (See Figure 2). The proposed 1st Amendment to the MDA requires the development of mini-warehouses and/or motor vehicle and boat storage use to meet the standard commercial site requirements (landscape buffers, screening, tree preservation, architecture, traffic concurrency, drainage and other infrastructure, parking, etc.) in the City's LDC, along with the additional special development requirements which include wider landscape buffers, screen walls/fences, and building orientation to provide sufficient screening of these uses from residential areas and/or major roadways. The special development requirements for these uses are listed in Exhibit B of the MDA.

According to the applicant, no proposed plans exist for any new development within the PCD, specifically Site C and D. The owner intends to continue to market the vacant sites for sale and has proposed the 1st Amendment to the MDA to make the sites more marketable by adding the uses listed above as possible options. While the vacant sites have been on the market for several years, the owner has recently been approached about developing a mini-warehouse facility with a motor vehicle and boat storage. Before any development within the PCD, a site plan must be submitted to the City and approved by the Staff Development Review Committee (SDRC). Any development in the PCD will be needed to meet the standard commercial site requirements (landscape buffers, screening, tree preservation, architecture, traffic concurrency, drainage and other infrastructure, parking, etc.) in the City's Land Development Code, along with any additional special development requirements listed in the MDA.

The Signage and Architectural/Design Standards sections of the MDA have been also updated to remove outdated signage and architectural requirements that are no longer consistent with the signage and architectural requirements in the LDC. The proposed amendments require all development within the PCD to comply with the City's current commercial signage and architectural requirements in the LDC that apply city-wide, simplify the MDA text, and ensure the standards remain current with current city regulations over time.

CONSISTENCY WITH THE COMPREHENSIVE PLAN

The property is designated *Office/Residential Transition* on the Future Land Use (FLU) map. The original MDA was found to be consistent with the Comprehensive Plan when it was approved in 2007. The proposed 1st Amendment does not change the FLU

designation for the subject property and is consistent with the general intent of the City's Comprehensive Plan.

PUBLIC NOTICE
Public Notice signs were posted along Taylor Road and Sumer Trees Road on January 30, 2025. As of the posting of this agenda, staff have received four (4) phone calls, which were general inquiries regarding the proposed PCD Amendment.

RECOMMENDATION
Staff recommends approval of the 1st Amendment to the Summer Trees Plaza PCD Master Development Agreement.

ATTACHMENT
Exhibit 1 - 1st Amendment to the Master Development Agreement for Summer Trees Plaza Planned Commercial Development

Exhibit 1

Document Prepared By
Storch Law Firm
420 South Nova Road
Daytona Beach, FL 32114

Return recorded document to:
City of Port Orange
1000 City Center Circle
Port Orange, FL 32129

FIRST AMENDMENT TO
THE SUMMER TREES PLAZA
MASTER DEVELOPMENT AGREEMENT FOR
PLANNED COMMERCIAL DEVELOPMENT

THIS FIRST AMENDMENT TO THE SUMMER TREES PLAZA THE MASTER DEVELOPMENT AGREEMENT FOR PLANNED COMMERCIAL DEVLEOPMENT (the "**First Amendment**") is made this ___ day of _____, 2025, by and among the City of Port Orange, a political subdivision of the State of Florida ("**City**") whose address is 1000 City Center Circle, Port Orange, Florida 32119; and Sun Glow Construction, Inc., a Florida corporation ("**Sun Glow**"), whose address is 230 N. Beach Street, Suite 4, Daytona Beach, Florida 32114.

WHEREAS, the City and Sun Glow previously entered into an agreement and covenant to bind their successors and assigns to the terms and provisions of a development agreement entitled "The Summer Trees Plaza Master Development Agreement for Planned Commercial Development", recorded in Official Records Book 6165, Page 4012, of the Public Records of Volusia County, Florida (the "**Master Development Agreement**"), relating to property described therein; and

WHEREAS, the only property subject to this First Amendment are more particularly described in the legal description attached hereto and incorporated herein as Exhibit "A" (the "Property");

WHEREAS, the City and Sun Glow wish to further amend the Master Development Agreement for the purposes of amending the permitted use in the Master Development Agreement.

NOW, **THEREFORE**, the parties, in consideration of the mutual and covenants contained herein, and with the intent to be legally bound and to bind their successors and assigns, due hereby agree as follows:

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

2. Section 4(a) of the Master Development Agreement is hereby amended by underline and strikethrough to read as follows:

4. PERMITTED USES FOR SUMMER TREES PLAZA.

(a) The Permitted Uses in Summer Trees Plaza shall include the following:

Appliance/Electrical Repair Shops;
Assisted Living Facilities/Nursing Homes;

Banks and Financial Services with drive-thru facilities;
Business Services;
Camouflaged and Monopole Communication Towers;
Child Care;
Clubs, lodges and fraternal organizations;
Convenience Stores (without fuel operations);
Craft food and beverage producer (designed in accordance with the special development requirements in Exhibit B);
Health/exercise clubs;
Hotels/Motels;
Fleet-based services;
Funeral Homes;
Furniture and Appliance Services
Medical Offices/Clinics;
Microbrewery (designed in accordance with the special development requirements in Exhibit B);
Mini warehouses (limited to Parcel Nos. 631900000222 and 631900000220 and designed in accordance with special development requirements in Exhibit B)
Motor Vehicle and Boat Storage (limited to Parcel Nos. 631900000222 and 631900000220 and designed in accordance with special development requirements in Exhibit B)
Municipal Uses, including Stormwater Retention;
Office Supplies;
Offices;
Personal Services;
Private schools;
Retail Home Building Materials;
Retail Nursery and Garden Supplies;
Retail Sales and Services;
Restaurant (Type "A" Site Down Only);
Veterinary Clinics; and
Xerographic and Offset Printing.

3. Section 9 of the Master Development Agreement is hereby amended to read as follows:

9. SIGNAGE. The applicable City signage ordinances in effect at the time of development, as defined by the Code, shall control.

4. Section 10 of the Master Development Agreement is hereby amended to read as follows:

10. ARCHITECTURAL/DESIGN STANDARDS. The applicable City architectural standards in effect at the time of development, as defined by the Code, shall control.

5. Section 11 of the Master Development Agreement is hereby amended to read as follows:

> **11. EXPIRATION.** Development of the Summer Trees Plaza shall commence within ten (10) years from the effective date of the First Amendment. Failure to comply with the schedule set out above shall cause this Agreement to lapse unless the schedule is modified by mutual agreement of the Owner and the City. The term "development" shall be as defined by the Code.

6. This First Amendment shall be effective upon the recording of the First Amendment in the Public Records of Volusia County, Florida at the expense of Sun Glow.

7. The Master Development Agreement, as previously enacted, shall remain in full force and effect except with respect to those matters specifically amended by this First Amendment.

[REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the parties have executed this Ninth Amendment, by and through their duly authorized representatives, on the respective dates below:

"CITY"

CITY OF PORT ORANGE, a Florida municipal corporation

WITNESSES:

_____
Print Name: _____

By: _____
Scott Stiltner, Mayor

_____
Print Name: _____

_____
Print Name: _____

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

_____
Print Name: _____

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 _____ and Scott Stiltner, Mayor and Robin L. Fenwick, City Clerk, both of the City of Port Orange, a Florida municipal corporation, on behalf of the City. They are personally known to me and did not take an oath.

_____
Notary: Type, Print or Stamp Name

My Commission Expires:

"Sun Glow"

WITNESSES:

SUN GLOW CONSTRUCTION, INC.,
a Florida corporation

_____
Print Name: _____

_____

By: _____

_____
Print Name: _____ Its: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of [_] physical presence or [_] online notarization on this ___ day of _____, 2025, by _____, as _____ of Sun Glow Construction, Inc., a Florida corporation. He/she is personally known to me or produced _____ as identification and did not take an oath.

(Seal)

_____
Notary Public

EXHIBIT "A"
LEGAL DESCRIPTION

SITE C

LEGAL DESCRIPTION:

A PORTION OF THAT UNPLATTED LAND LYING IN SECTION 19, TOWNSHIP 16 SOUTH, RANGE 33 EAST, BEING DESCRIBED AS FOLLOWS:
COMMENCE AT THE NORTHWEST CORNER OF SUMMER TREES, UNIT I, AS RECORDED IN MAP BOOK 34, PAGES 10-11, OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA; THENCE N63°59'01"E, ALONG THE NORTH LINE OF SAID SUMMER TREES, UNIT I, SAID LINE ALSO BEING THE SOUTH LINE OF TAYLOR ROAD (A 100 FOOT RIGHT OF WAY PER SAID SUMMER TREES, UNIT I), A DISTANCE OF 332.52 FEET TO THE NORTHEAST CORNER OF SAID SUMMER TREES, UNIT I; THENCE CONTINUE ALONG SAID SOUTH LINE OF TAYLOR ROAD, NORTH 63°59'01" EAST, A DISTANCE OF 175.99 FEET TO THE NORTHWEST CORNER OF CNB SUBDIVISION, AS RECORDED IN MAP BOOK 46, PAGE 91; THENCE SOUTH 00°27'55" EAST ALONG THE WEST LINE OF SAID CNB SUBDIVISION, A DISTANCE OF 267.38 FEET TO THE SOUTHWEST CORNER OF SAID CNB SUBDIVISION AND THE POINT OF BEGINNING; THENCE SOUTH 89°53'35" EAST ALONG THE SOUTH LINE OF SAID CNB SUBDIVISION AND THE SOUTH LINE OF TAYLOR / AIRPORT SUBDIVISION, AS RECORDED IN MAP BOOK 49, PAGE 1, A DISTANCE OF 231.68 FEET; THENCE DEPARTING SAID SOUTH LINE OF TAYLOR / AIRPORT SUBDIVISION, SOUTH 00°26'30" EAST, A DISTANCE OF 20.00 FEET; THENCE SOUTH 89°53'35" EAST, A DISTANCE OF 24.90 FEET; THENCE SOUTH 00°17'33" EAST, A DISTANCE OF 284.63 FEET; THENCE SOUTH 89°32'51" WEST, A DISTANCE OF 104.83 FEET TO A POINT ON THE EAST LINE OF SUMMER TREES UNIT III-A, AS RECORDED IN MAP BOOK 37, PAGE 62; THENCE THE NEXT THREE (3) COURSES ALONG SAID EAST LINE OF SUMMER TREES UNIT III-A; (1) NORTH 25°18'17" WEST, A DISTANCE OF 206.92 FEET; (2) THENCE SOUTH 62°33'25" WEST, A DISTANCE OF 82.00 FEET; (3) THENCE NORTH 27°26'35" WEST, A DISTANCE OF 145.00 FEET TO THE NORTHEAST CORNER OF SAID SUMMER TREES UNIT III-A; THENCE DEPARTING SAID BOUNDARY LINE OF SUMMER TREES, UNIT III-A, THENCE NORTH 69°27'44" EAST, A DISTANCE OF 79.76 FEET TO THE POINT OF BEGINNING.

CONTAINING: 65,165 SQUARE FEET OR 1.5 ACRES OF LAND, MORE OR LESS.

AND

SITE D

LEGAL DESCRIPTION:

A PORTION OF THAT UNPLATTED LAND LYING IN SECTION 19, TOWNSHIP 16 SOUTH, RANGE 33 EAST, BEING DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHWEST CORNER OF SUMMER TREES, UNIT I, AS RECORDED IN MAP BOOK 34, PAGES 10-11, OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA; THENCE N63°59'01"E, ALONG THE NORTH LINE OF SAID SUMMER TREES, UNIT I, SAID LINE ALSO BEING THE SOUTH LINE OF TAYLOR ROAD (A 100 FOOT RIGHT OF WAY PER SAID SUMMER TREES, UNIT I), A DISTANCE OF 332.52 FEET TO THE NORTHEAST CORNER OF SAID SUMMER TREES, UNIT I; THENCE CONTINUE ALONG SAID SOUTH LINE OF TAYLOR ROAD, NORTH 63°59'01" EAST, A DISTANCE OF 175.99 FEET

TO THE NORTHWEST CORNER OF CNB SUBDIVISION, AS RECORDED IN MAP BOOK 46, PAGE 91; THENCE SOUTH 00°27'55" EAST ALONG THE WEST LINE OF SAID CNB SUBDIVSION, A DISTANCE OF 267.38 FEET TO THE SOUTHWEST CORNER OF SAID CNB SUBDIVISION; THENCE SOUTH 89°53'35" EAST ALONG THE SOUTH LINE OF SAID CNB SUBDIVISION AND THE SOUTH LINE OF TAYLOR / AIRPORT SUBDIVISION, AS RECORDED IN MAP BOOK 49, PAGE 1, A DISTANCE OF 231.68 FEET; THENCE DEPARTING SAID SOUTH LINE OF TAYLOR / AIRPORT SUBDIVISION, SOUTH 00°26'30" EAST, A DISTANCE OF 20.00 FEET; THENCE SOUTH 89°53'35" EAST, A DISTANCE OF 24.90 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE SOUTH 89°53'35" EAST, A DISTANCE OF 362.76 FEET TO A POINT ON THE WEST LINE OF AIRPORT ROAD COMMERCIAL SUBDIVISION, AS RECORDED IN MAP BOOK 53, PAGES 135-138; THENCE SOUTH 00°27'55" EAST ALONG SAID WEST LINE OF AIRPORT ROAD COMMERCIAL SUBDIVISION, A DISTANCE OF 220.86 FEET TO THE SOUTHWEST CORNER OF SAID AIRPORT ROAD COMMERCIAL SUBDIVISION; THENCE NORTH 89°32'05" EAST ALONG THE SOUTH LINE OF SAID AIRPORT ROAD COMMERCIAL SUBDIVISION, A DISTANCE OF 15.00 FEET TO THE NORTHWEST CORNER OF TAYLOR WOODS II, AS RECORDED IN MAP BOOK 42, PAGE 200; THENCE SOUTH 00°27'55" EAST ALONG THE WEST LINE OF SAID TAYLOR WOODS II, A DISTANCE OF 60.23 FEET; THENCE DEPARTING SAID WEST LINE OF TAYLOR WOODS II, SOUTH 89°32'51" WEST, A DISTANCE OF 378.60 FEET; THENCE NORTH 00°17'33" WEST, A DISTANCE OF 284.63 FEET; TO THE POINT OF BEGINNING.

CONTAINING: 103,632 SQUARE FEET OR 2.38 ACRES OF LAND, MORE OR LESS.

Exhibit B
Special Development Requirements

Craft food and beverage producer

(a) Required to include one or more accessory uses such as a tasting room, tap room, restaurant, retail, demonstration area, education and training facility or other use incidental to the brewery and open and accessible to the public.
(b) Access and loading and unloading facilities are required to be internal to the site or development or located at the back (or side not adjacent to a single- family or duplex residential use or zoning district) of building.
(c) Required parking is calculated based on square footage proposed for each use (example: manufacturing parking ratio + retail parking ratio based on square-footage).
(d) All outdoor equipment and storage of materials, including silos, products for distribution, and other items requiring long-term storage shall be allowed in areas behind building, in enclosed buildings, or otherwise screened, using architectural features consistent with the principal structure, from the public right of way or a single-family or duplex residential use or residential zoning district. Spent or used grain or similar materials that can attract rodents shall be stored in sealed containers.
(e) Off-site distribution via semi-trailer (articulated combination vehicle with a permanent or semi-permanent pivoting joint; does not include a straight or box truck with no articulation) is only permitted if the truck traffic is limited to streets classified as arterial on the Comprehensive Plan Roadway Functional Classification Map.
(f) Outdoor seating is not permitted to be located on any side adjacent to a single-family or duplex residential use or residential zoning district.
(g) Shall comply with all applicable federal, state and local laws.

Microbrewery

(a) Required to include one or more accessory uses such as a tasting room, tap room, restaurant, retail, demonstration area, education and training facility or other use incidental to the microbrewery and open and accessible to the public.
(b) Decorative silos that are designed to be compatible and integral with the principal structure are permitted. No additional sign area is permitted for decorative silos; however, permitted wall sign area for the principal structure or building may be transferred to the silo, provided that silo signage is only situated on the sides of the silo visible from a right-of- way. The maximum height shall not exceed the maximum building height of the zoning district.
(c) Access and loading and unloading facilities are required to be internal to the site or development or located at the back (or side not adjacent to a single-family or duplex residential use or zoning district) building.
(d) Required parking is calculated based on square footage proposed for each use (example: manufacturing parking ratio + bar parking ratio based on square-footage).
(e) Storage of materials, including silos, products for distribution, and other items requiring long-term storage shall be allowed in areas behind building (or a side not adjacent to a residential use or zoning district), in enclosed buildings, or otherwise screened from the public right of way or a single-family or duplex residential use or residential zoning district- Spent or used grain shall be stored in sealed containers.
(f) Off-site distribution via semi-trailer (articulated combination vehicle with a permanent or semi-permanent pivoting joint; does not include a straight or box truck with no articulation) is only permitted if the truck traffic is limited to streets classified as arterial on the Comprehensive Plan Roadway Functional Classification Map.
(g) Outdoor seating is not permitted to be located on any side adjacent to a single-family or duplex

residential use or residential zoning district.

(h) Shall comply with all applicable federal, state and local laws.

Mini warehouses

(a) Warehouse buildings shall be screened from any public rights-of-way by a six-foot high opaque fence or wall with a type 2 bufferyard planted along the street side of the fence or wall. Bufferyard requirements may be increased in accordance with chapter 13 of the Land Development Code.

(b) All storage unit doors shall face interior to the development.

(c) The proposed site shall front on or have driveway access to an arterial roadway.

Motor Vehicle and Boat Storage

(a) The proposed site shall front on or have driveway access to an arterial roadway.

(b) Buffering shall be provided based on a land use intensity factor of six for completely enclosed facilities and seven for fenced facilities.

(c) Outside storage shall be completely enclosed within a six- to eight-foot-high opaque fence or wall.

(d) Vehicles shall include automobiles, trucks, vans, boats, boat trailers, recreational vehicles, and other similar vehicles which are customarily owned, rented or leased by the average family. Such vehicles shall be licensed and fully operational at all times. Towing to and impoundment at the facility of any inoperable vehicle or appurtenance thereof shall not be permitted.

(e) Vehicle washing shall be confined to a commercial facility or pervious surface in compliance with the water conservation regulations of the city.

(f) Vehicle servicing shall be limited to regular maintenance items such as changing oil, tires, batteries, and other similar activities. Mechanical or body repair, painting, engine rebuilding, or other similar work which would customarily be performed at a motor vehicle service center shall not be permitted.

(g) Living quarters for a resident manager may be permitted, provided such quarters are occupied by the manager.

(h) Required parking shall be provided at a ratio of one space for each ten storage stalls or fraction thereof, plus one space for each employee at the largest shift and two spaces if resident manager living quarters are provided.

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. 2025-11 – 1st Amendment to the Master Development Agreement for Summer Trees Plaza Planned Commercial Development (CASE NO. PRZA-25-0001)

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 law[1] 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 property owner requests the proposed amendment to the Master Development Agreement (MDA) for the Summer Trees Plaza Planned Commercial Development (PCD) to allow a broader range of commercial uses in the PCD, consistent with the uses allowed in the City's conventional commercial zoning districts and update the signage and architectural requirements for the PCD to be consistent with the current requirements in the City's Land Development Code (LDC). The Summer Trees Plaza PCD is located on the south side of Taylor Road, between Summer Trees Road and Williamson Boulevard.

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 useful[2] (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 4/15/2025

SUBJECT: (G18) First Reading - Ordinance No. 2025-12: Rezoning/5656 Isabelle Avenue

DEPARTMENT: Community Development

GOAL: 4 - Economic Development

RECOMMENDED MOTION: Move to approve Ordinance No. 2025-12.

SUMMARY: Planning Commission Action (3/27/2025): Recommended Approval 5-0

This request is to rezone an existing commercial property located at the southwest corner of Isabelle Avenue and Regency Boulevard from Planned Community Development (PCD) to Professional Office (PO). The current Master Development Agreement (MDA) for the PCD was approved by the City in 1995 and restricts the uses of the property to office, wholesalers/distributors, construction contractor's office/storage, and light manual assembly/minor repair. Although the current PCD limits the use of the property, the subject property has been designated Commercial on the Future Land Use Map since 1985 and was zoned C-1 (Shopping Center Commercial District) before it was rezoned to PCD in 1995.



Map showing the location of 5656 Isabelle Avenue

The rezoning request is a shift from the negotiated PCD zoning district to a conventional limited commercial/office zoning district that uses the LDC to provide specific development regulations and allowed uses. Rezoning the subject property to PO will assist with filling vacant tenant spaces within the existing commercial multi-tenant buildings on site and the possible redevelopment of the subject site in the future. If the zoning remains PCD, ongoing amendments to the MDA would likely be necessary to attract new tenants and could delay future redevelopment opportunities on the property. The list of allowed uses in the PO zoning district and the development requirements in the LDC is a more efficient process to attract new tenants or redevelop the site. In addition, the list of permitted uses in the PO zoning district is more current and flexible than the currently allowed uses in the MDA that were established in the late 1990s.

The PO zoning district is intended to provide areas for business, government, industry, medical, professional, service offices, and limited personal services. The PO zoning district generally allows the same uses allowed by the current MDA, along with uses such as fleet-based services (pest control, lawn care, etc.) and personal services (beauty/barber shop, tanning salon, etc.), which are not allowed by the current MDA but are compatible with the surrounding area. The PO zoning district was selected because it allows less intense non-residential uses and will be a transition between the Community Commercial zoned properties along Nova Road and the mobile home park across the street.

The PCD zoning district is intended to provide a flexible approach for unique and innovative land development proposals that would otherwise not be permitted by this code. Because the property owner intends to allow tenants to occupy the buildings on-site in compliance with the allowed uses list for the PO zoning district and does not anticipate deviating from the site and maintenance requirements in the LDC, the use of a standard zoning district is more efficient than maintaining the property as a PCD.
If the subject commercial property is rezoned to the PO zoning category, the City's LDC will provide the permitted uses and site development requirements for the subject property. As part of any future redevelopment, a site plan and/or building permits will need to be submitted and will require a detailed technical review by the Staff Development Review Committee (SDRC) to verify all LDC and Florida Building Code requirements are met, such as landscape buffers, parking, building setbacks, tree preservation, and infrastructure, to ensure compatibility with adjoining properties, and that adequate public facilities and services are available.

The proposed PO zoning district is appropriate for this location, consistent with the Commercial FLU designation for the subject property and is compatible with the surrounding properties.

The Staff Report is attached for more information.

PRESENTER: Penelope Cruz, Tim Burman

ATTACHMENTS:

1.	Ordinance No. 2025-12 with exhibits	Ordinance No. 2025-12 with exhibits.pdf
2.	STAFF REPORT	STAFF REPORT .pdf
3.	Business Impact Estimate - ORD 2025-12- REZONING-25-0002	Business Impact Estimate - ORD 2025-12- REZONING-25-0002.docx

Penelope Cruz	Created/Initiated - 3/24/2025
Tim Burman	Approved - 3/28/2025
Shannon Balmer	Approved - 4/2/2025
Wayne Clark	Final Approval - 4/3/2025

ORDINANCE NO. 2025-12

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, REZONING PROPERTY CONSISTING OF APPROXIMATELY ±1.23 ACRES FROM PLANNED COMMERCIAL DEVELOPMENT (PCD) TO PROFESSIONAL OFFICE (PO); AUTHORIZING REVISION OF THE OFFICIAL ZONING ATLAS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, ±1.23 acres of the property located at 5656 Isabelle Avenue to be rezoned from Planned Commercial Development (PCD) to Professional Office (PO); and

WHEREAS, a public hearing was held following public notice as prescribed by ordinance; and

WHEREAS, the Planning Commission recommended approval of the proposed rezoning;

WHEREAS, the City Council has approved by majority vote of the members present the rezoning of the described property; and

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 rezone approximately ±1.23 acres of the property located at 5656 Isabelle Avenue from Planned Commercial Development (PCD) to Professional Office (PO), more particularly described in **Exhibit "A",** attached hereto**.**

Section 2. The City Council of the City of Port Orange does hereby approve, authorize and direct the revision of the City's Official Zoning Atlas to show

the classifications for the area as hereby rezoned as shown on **Exhibit "B"** attached hereto.

Section 3. 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

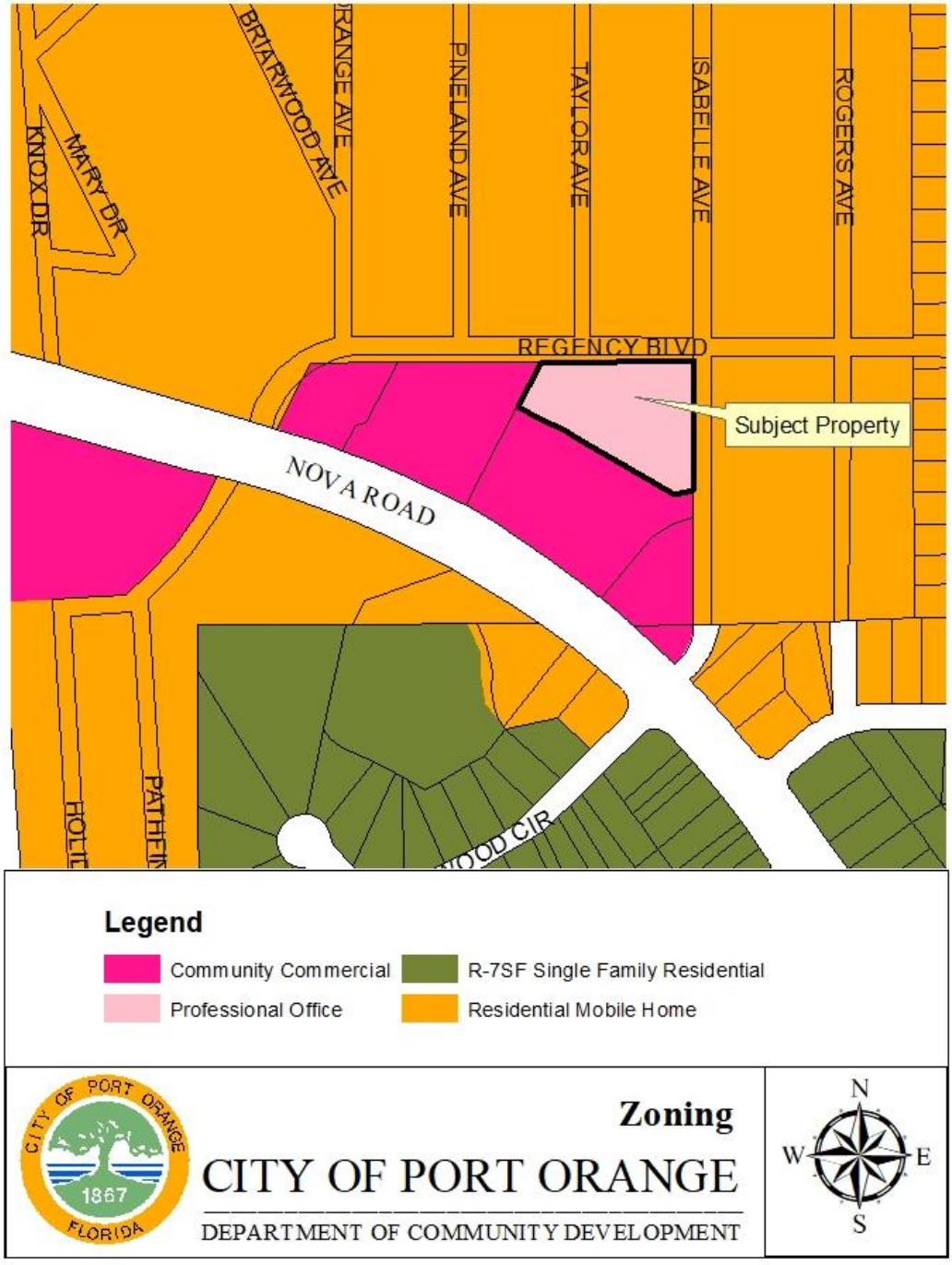
Reviewed and Approved: _____
Shannon K. Balmer, Senior Assistant City Attorney

Exhibit A

That portion of the Southwest 1/4 of the Northeast 1/4 of Section 15, Township 16 South, Range 33 East, Volusia County, Florida, described as follows: Commence at the intersection of the Westerly line of Isabelle Avenue, with the South line of said Southwest 1/4 of the Northeast 1/4 of Section 15, said point being a distance of 420' Westerly of the Southeast corner of said Southwest 1/4 of the Northeast 1/4 of Section 15; thence North along the West line of Isabelle Avenue a distance of 227.4' to the Point of Beginning; from said Point of Beginning go South 89°43' West, a distance of 37.2' to a point; thence North 57°44'50" West, a distance of 90.05' to a point; thence North and parallel to Isabelle Avenue, a distance of 201.02' to a point in the South line of an undedicated street; thence North 89°43' East along said line, a distance of 113.34' to the West line of Isabelle Avenue; thence South along the West line of Isabelle Avenue, a distance of 249.75' to the Point of Beginning.

That portion of the Southwest 1/4 of the Northeast 1/4 of Section 15, Township 16 South, Range 33 East, Volusia County, Florida, described as follows: Commence at the intersection of the West line of Isabelle Avenue, with the South line of the Southwest 1/4 of the Northeast 1/4 of Section 15, said point being a distance of 420' Westerly of the Southeast corner of said Southwest 1/4 of the Northeast 1/4 of Section 15; thence North along the West line of Isabelle Avenue a distance of 477.15' to the South line of an undedicated street; thence South 89°43, West along said line, a distance of 113.34' to the Point of Beginning; from said Point of Beginning continue South 89°43' West along said line, a distance of 162.47' to a point; thence South 27°66' West, a distance of 95.35' to a point; thence South 64°26'30" East, a distance of 110.13' to a point; thence South 57°44'50" East, a distance of 127.65' to a point; thence North and parallel to Isabelle Avenue, a distance of 201.02' to the Point of Beginning.

EXHIBIT "B"


BRIARWOOD AVE
PINELAND AVE
TAYLOR AVE
ISABELLE AVE
ROGERS AVE
KNOX DR
MARY DR
REGENCY BLVD
Subject Property
NOVA ROAD
Legend
Community Commercial
Professional Office
R-7SF Single Family Residential
Residential Mobile Home
CITY OF PORT ORANGE
1867
FLORIDA
Zoning
CITY OF PORT ORANGE
DEPARTMENT OF COMMUNITY DEVELOPMENT
N
W
E
S

STAFF REPORT
ADMINISTRATIVE REZONING
CASE NO. REZONING-25-0002

REQUEST:	Rezone ±1.23 acres from Regency Planned Commercial Development (PCD) to Professional Office (PO)
LOCATION:	5656 Isabelle Avenue (Figure 1 – Location Map)
OWNER:	Sun and Sand Holdings, LLC
APPLICANT:	City of Port Orange
STAFF CONTACT:	Penelope Cruz, Planning Manager (386) 506-5671
STAFF RECOMMENDATION:	Approval
PLANNING COMMISSION:	Recommended Approval 5-0 (March 27, 2025)
CITY COUNCIL:	April 15, 2025

PROPERTY OVERVIEW

The request is to rezone an existing commercial property located at the southwest corner of Isabelle Avenue and Regency Boulevard (see Figure 1) from Planned Community Development (PCD) to Professional Office (PO).

FIGURE 1. LOCATION MAP



The current Master Development Agreement (MDA) for the PCD was approved by the city in 1995 with a limited list of allowed uses. The allowed uses include office,

wholesalers/distributors, construction contractor's office/storage, and light manual assembly/minor repair. Although the current PCD limits the use of the property, the subject property has been designated *Commercial* on the Future Land Use Map since 1985 and was zoned C-1 (Shopping Center Commercial District) before it was rezoned to PCD in 1995.

Over the past 10 years, the City has approved several rezonings from Planned Commercial Development (PCD) to a conventional city commercial zoning district to provide a list of allowed uses and development requirements consistent with the current Land Development Code (LDC) and encourage redevelopment of existing commercial infill properties. Some examples of former PCD properties that have been rezoned to a conventional city commercial zoning district include:

- Port Orange Plaza – Located at the southwest corner of Ridgewood Avenue and Dunlawton Avenue
- Spruce Creek Center - Located at the southwest corner of Spruce Creek Road and Nova Road
- Riverwood Shopping Center - Located at the northwest corner of Spruce Creek Road and Nova Road
- Commonwealth Plaza - Located at the northwest corner of Isabelle Avenue and Nova Road.
- Former Movie Theater Plaza at 3780 Nova Road - Located at the northwest corner of Eagle Lake Trail and Nova Road
- Former K-MART at Dunlawton Square - Located at the southeast corner of Dunlawton Avenue and Nova Road

DISCUSSION

The rezoning was reviewed according to the criteria established in Chapter 3, Section 7 of the Land Development Code (LDC) in terms of consistency with the Comprehensive Plan and consistency with the surrounding land uses and zoning.

The rezoning request is a shift from the negotiated PCD zoning district to a conventional limited commercial/office zoning district that uses the LDC to provide specific development regulations and allowed uses. Rezoning the subject property to PO will assist with filling vacant tenant spaces within the existing commercial multi-tenant buildings on site and the possible redevelopment of the subject site in the future. If the zoning remains PCD, ongoing amendments to the MDA would likely be necessary to attract new tenants and could delay future redevelopment opportunities on the property. The list of allowed uses in the PO zoning district and the development requirements in the LDC is a more efficient process to attract new tenants or redevelop the site. In addition, the list of permitted uses in the PO zoning district (Exhibit 1) is more current and flexible than the currently allowed uses in the MDA that were established in the late 1990s.

The PO zoning district is intended to provide areas for business, government, industry, medical, professional, service offices, and limited personal services. The PO zoning district generally allows the same uses allowed by the current MDA, along with uses such as fleet-based services (pest control, lawn care, etc.) and personal services (beauty/barber shop, tanning salon, etc.), which are not allowed by the current MDA but are compatible with the surrounding area. The PO zoning district was selected because it allows less intense non-residential uses and will be a transition between the Community

Commercial zoned properties along Nova Road and the mobile home park across the street.

The PCD zoning district is intended to provide a flexible approach for unique and innovative land development proposals that would otherwise not be permitted by this code. Because the property owner intends to allow tenants to occupy the buildings on-site in compliance with the allowed uses list for the PO zoning district and does not anticipate deviating from the site and maintenance requirements in the LDC, the use of a standard zoning district is more efficient than maintaining the property as a PCD.

If the subject commercial property is rezoned to the PO zoning category, the City's LDC will provide the permitted uses and site development requirements for the subject property. As part of any future redevelopment, a site plan and/or building permits will need to be submitted and will require a detailed technical review by the Staff Development Review Committee (SDRC) to verify all LDC and Florida Building Code requirements are met, such as landscape buffers, parking, building setbacks, tree preservation, and infrastructure, to ensure compatibility with adjoining properties, and that adequate public facilities and services are available.

Access to the property is provided by existing driveways off Regency Boulevard and Isabelle Avenue, and city water and sewer are currently available at the property.

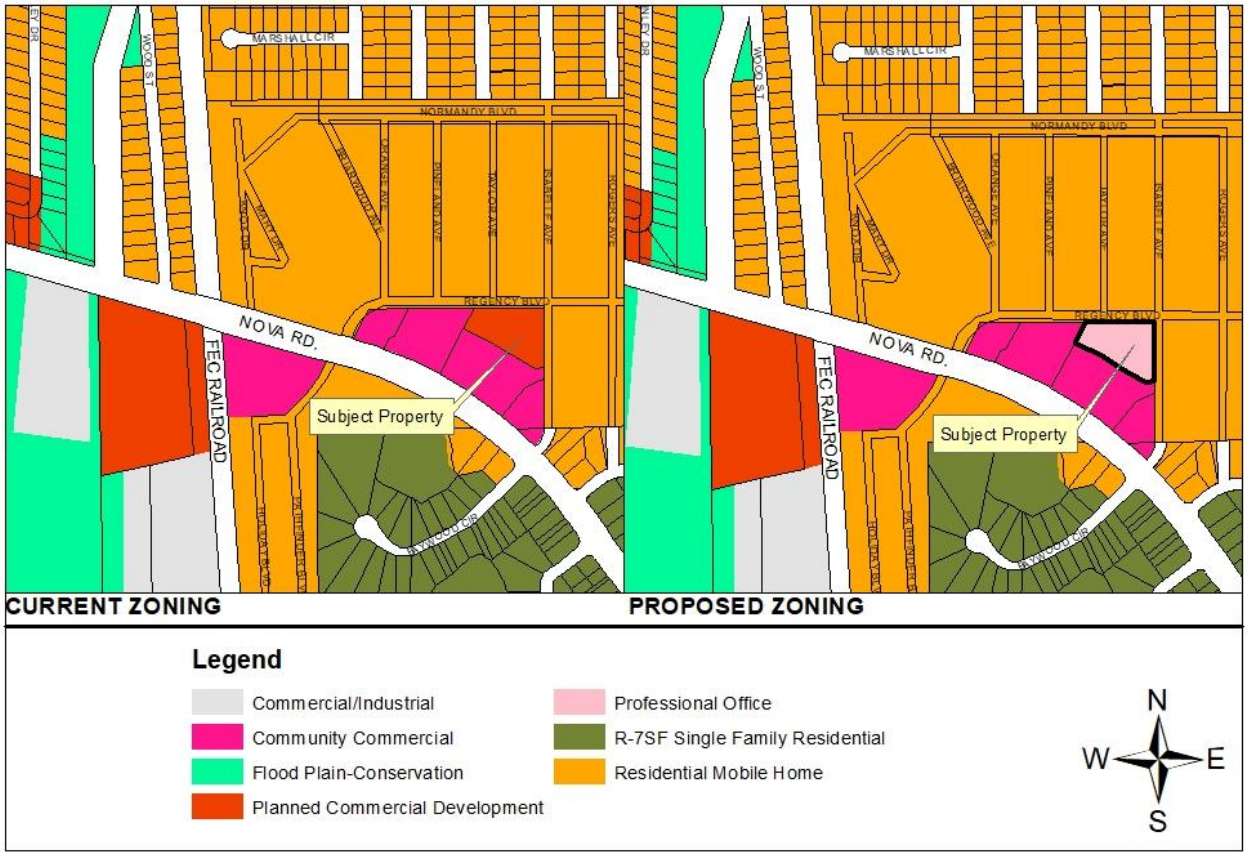
COMPATIBILITY WITH SURROUNDING USES AND ZONING DISTRICTS

The proposed PO zoning district is appropriate for this location and is compatible with the surrounding properties. Table 1 summarizes the existing land use, zoning districts, and Future Land Use designations of the adjacent properties, and Figure 2 shows the surrounding zoning districts of the adjacent properties.

TABLE 1. SURROUNDING LAND USES, FLU DESIGNATION, AND ZONING DISTRICTS

Direction	Existing Land Use	Future Land Use Designation	Zoning District
North	Regency Boulevard right-of-way and Briarwood residential mobile home	*Urban Medium Density Residential 4-8 units/acre)*	Residential Mobile Home (RMH)
South	Commercial	*Commercial*	Community Commercial (CC)
East	Regency Boulevard right-of-way and Briarwood residential mobile home	*Urban Medium Density Residential 4-8 units/acre)*	Residential Mobile Home (RMH)
West	Commercial	*Commercial*	Community Commercial (CC)

FIGURE 2. CURRENT AND PROPOSED ZONING MAP



Consistency with Comprehensive Plan

The subject property has been designated *Commercial* on the City's Future Land Use Map since 1985. It is also part of the Neighbor Commercial Node located at the intersection of Isabelle Avenue and Regency Boulevard, as designated in the City's Comprehensive Plan, which is intended to serve the convenience needs of neighborhood areas within a ±1-mile radius.

The proposed rezoning is generally consistent with the pertinent Goals, Objectives, and Policies of the City's Comprehensive Plan and is compatible with adjacent properties. Compatibility is defined in the Comprehensive Plan as a condition in which dissimilar land uses can co-exist in relative proximity to one another in a stable fashion over time, such that neither use is negatively impacted by the other. The subject property is a longstanding commercially zoned property.

The proposed PO zoning district is consistent with the current *Commercial* FLU designation for the subject property. The *Commercial* FLU designation is generally characterized by uses that provide for the retail sale of items and the provision of services to the general public. Based on compatibility with adjacent uses and availability of infrastructure, the requested zoning is appropriate for this location and is consistent with the existing *Commercial* FLU designation.

PUBLIC NOTICE

On March 17, 2025, staff posted the property, notifying the public of the proposed rezoning. As of the time this agenda item was prepared (March 20, 2025), no calls or other inquiries were received regarding the information on the proposed rezonings.

STAFF RECOMMENDATION

Staff recommends **approval** of the request to rezone ±1.23 acres from Regency Planned Commercial Development (PCD) to the Professional Office (PO).

ATTACHMENT

Exhibit 1 – List of Permitted Uses for the Professional Office (PO) Zoning District

Exhibit 1
List of Permitted Uses for the Professional Office (PO) Zoning District

Chapter 17 - ZONING DISTRICT REGULATIONS
Section 19: - Professional office (PO) district.

(a) Purpose and intent. The professional office (PO) district is intended to provide areas for business, government, industry, medical, professional, or service offices.

(b) Permitted uses.

(1) Business services.
(2) Financial services.
(3) Fleet-based services.
(4) Funeral homes (freestanding uses only).
(5) Medical office/clinics.
(6) Offices.
(7) Veterinary clinics.
(8) Xerographic and offset printing.

(bb) Permitted uses with special development requirements (chapter 18, section 4).

(1) Assisted living facilities (subsection 1.5).
(2) Banks (subsection 3).
(3) Childcare centers (subsection 4).
(4) Health/exercise clubs (subsection 6).
(5) Nursing homes (subsection 1.5).
(6) Office supplies (subsection 11).
(7) Office/warehouse facilities (subsection 12).
(8) Pain management clinics.
(9) Personal services.
(10) Restaurants.
(11) Community gardens.

(c) Special exception uses (chapter 18, section 3).

(1) Houses of worship (subsection 9).
(2) Private schools (subsection 16).

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. 2025-12 – Rezone ±1.23 acres from Regency Planned Commercial Development (PCD) to Professional Office (PO) (Case No. REZONING-25-0002)

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 law[1] 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 request is to rezone an existing commercial property located at the southwest corner of Isabelle Avenue and Regency Boulevard from Planned Community Development (PCD) to Professional Office (PO). The current Master Development Agreement (MDA) for the PCD was approved by the city in 1995 with a limited list of allowed uses. Rezoning the subject property to PO will assist with filling vacant tenant spaces within the existing commercial multi-tenant buildings on site and the possible redevelopment of the subject site in the future. If the zoning remains PCD, ongoing amendments to the MDA would likely be necessary to attract new tenants and could delay future redevelopment opportunities on the property. The list of allowed uses in the PO zoning district and the development requirements in the LDC is a more efficient process to attract new tenants or redevelop the site. The proposed PO zoning district is appropriate for this location, is consistent with the Commercial FLU designation for the subject property and is compatible with the surrounding properties.

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 useful[2] (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 4/15/2025

SUBJECT: (G19) First Reading - Ordinance No. 2025-13 - Rezoning/4619 and 4629 Clyde Morris Boulevard

DEPARTMENT: Community Development

GOAL: 4 - Economic Development

RECOMMENDED MOTION: Move to approve Ordinance No. 2025-13.

SUMMARY: Planning Commission Action (3/27/2025): Recommend Approval 5-0

This request is to rezone two existing commercial properties (Lot 1 and Lot 2) located at the northeast corner of Clyde Morris Boulevard and Herbert Street from Planned Commercial Development (PCD) to Community Commercial (CC). Lot 3 of the PCD is not part of the rezoning request and will remain in the PCD. The current Master Development Agreement (MDA) for the PCD was approved by the City in 1999 and does not include several commercial uses typically found on other properties with a conventional city commercial zoning designation (e.g., office (allowed on Lot 1), health/exercise clubs, restaurants with a drive-thru, fleet-based services, craft food and beverage producer, microbrewery, retail (allowed on Lot 1), and personal services (hair salons, barber shops, nail salons, retail dry cleaning, etc.) as allowed uses on Lots 1 and 2 and has specific architectural requirements for Lot 2 that may limit redevelopment. The subject property has had a *Commercial* or *Office* Future Land Use (FLU) designation on the City's Future Land Use Map since 1985 and has been zoned Planned Commercial Development (PCD) since 1990.



Map of the Ritter PCD and Lots 1 and 2 Located at 4619 and 4629 Clyde Morris Boulevard

In 1999, the City approved the Master Development Agreement (MDA) for the Ritter PCD that established a three-lot commercial development, specific architectural requirements for Lot 2, and a limited list of commercial uses for Lots 1-3. At the time the Ritter's Frozen Custard restaurant (Lot 2) was built in 1999, the design of the building and outdoor seating area was considered unique, and very specific architectural requirements were listed in the MDA for the PCD, such as the use of specified colors and materials (i.e. split-face block), roof color must be "International Blue" or lighter blue color, all tables and chairs must be concrete and natural grey color, and only exterior blue and white striped umbrellas could be placed on site.

Rezoning the subject properties to CC is anticipated to assist in the redevelopment of the subject properties. The CC zoning district permits typical community-scale commercial uses commonly found at shopping centers. The list of permitted uses in the CC zoning district and the development requirements in the LDC is a more efficient process to redevelop the site or fill existing tenant spaces in the current building on the site. If the subject commercial properties are rezoned to the CC zoning category, the

City's LDC will provide the permitted uses and site development requirements for the subject properties (Lot 1 and Lot 2).

The proposed CC zoning district is appropriate for this location, consistent with the current *Commercial* FLU designation for the subject property and is compatible with the surrounding properties.

The Staff Report is attached for more information.

PRESENTER: Penelope Cruz, Tim Burman

ATTACHMENTS:

1.	Ordinance No. 2025-13 with exhibits	Ordinance No. 2025-13 with exhibits.pdf
2.	STAFF REPORT	STAFF REPORT .pdf
3.	Business Impact Estimate - ORD 2025-13- REZONING-25-0001	Business Impact Estimate - ORD 2025-13-REZONING-25-0001.docx

Penelope Cruz	Created/Initiated - 3/24/2025
Tim Burman	Approved - 3/28/2025
Shannon Balmer	Approved - 4/3/2025
Wayne Clark	Final Approval - 4/3/2025

ORDINANCE NO. 2025-13

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, REZONING PROPERTY CONSISTING OF APPROXIMATELY ±5.38 ACRES FROM PLANNED COMMERCIAL DEVELOPMENT (PCD) TO COMMUNITY COMMERCIAL (CC); AUTHORIZING REVISION OF THE OFFICIAL ZONING ATLAS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, ±5.38 acres of the property located at 4619 and 4629 Clyde Morris Boulevard to be rezoned from Planned Commercial Development (PCD) to Community Commercial (CC); and

WHEREAS, a public hearing was held following public notice as prescribed by ordinance; and

WHEREAS, the Planning Commission recommended approval of the proposed rezoning;

WHEREAS, the City Council has approved by majority vote of the members present the rezoning of the described property; and

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 rezone approximately ±5.38 acres of the property located at 4619 and 4629 Clyde Morris Boulevard to be rezoned from Planned Commercial Development (PCD) to Community Commercial (CC), more particularly described in **Exhibit "A",** attached hereto**.**

Section 2. The City Council of the City of Port Orange does hereby

approve, authorize and direct the revision of the City's Official Zoning Atlas to show the classifications for the area as hereby rezoned as shown on **Exhibit "B"** attached hereto.

Section 3. 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

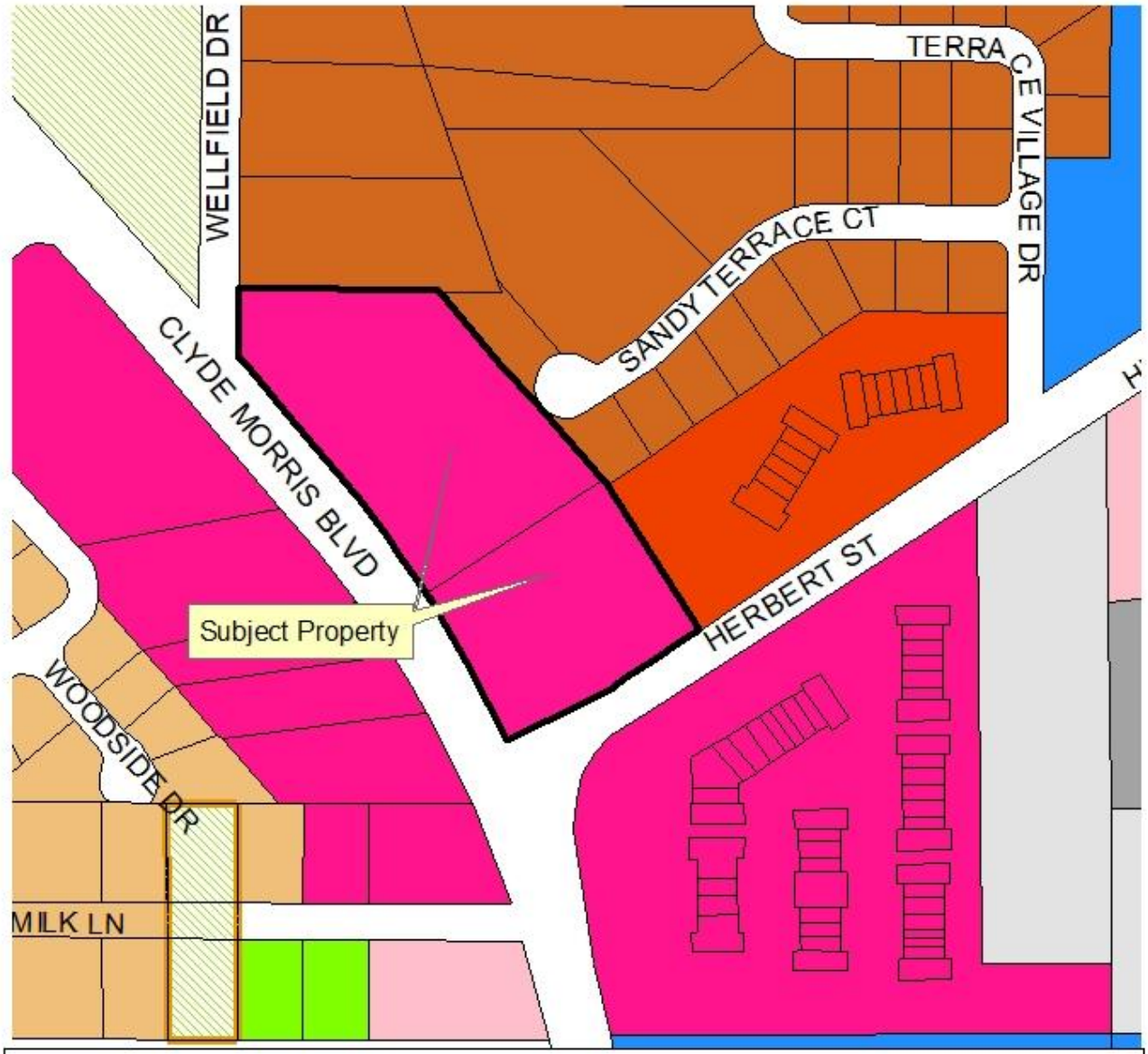
EXHIBIT “A”

LOT 1 RITTERS OF FLORIDA ACCORDING TO MAP OR PLAT THEREOF, AS RECORDED IN MAP BOOK 48 PAGES 158-159 INC, PUBLIC RECORDS, VOLUSIA COUNTY, FLORIDA.

AND

LOT 2 RITTERS OF FLORIDA ACCORDING TO MAP OR PLAT THEREOF, AS RECORDED IN MAP BOOK 48 PAGES 158-159 INC, PUBLIC RECORDS, VOLUSIA COUNTY, FLORIDA.

EXHIBIT "B"



Legend

- Agriculture
- Commercial/Industrial
- Community Commercial
- Government/Public Use
- Light Industrial
- Planned Commercial Development
- Professional Office
- R-10SF Single Family Residential
- R-8SF Single Family Residential
- Volusia County A-2

Zoning

CITY OF PORT ORANGE

DEPARTMENT OF COMMUNITY DEVELOPMENT

N W E S

STAFF REPORT
ADMINISTRATIVE REZONING
4619 & 4629 Clyde Morris Boulevard
CASE NO. REZONING-25-0001

REQUEST:	Rezone ±5.38 acres from Ritter Planned Commercial Development (PCD) to Community Commercial (CC)
LOCATION:	4619 and 4629 Clyde Morris Boulevard (Figure 1 – Location Map)
OWNERS:	Saljanin, LLC. and Sun Beach Investment Co. Inc.
APPLICANT:	City of Port Orange
STAFF CONTACT:	Penelope Cruz, Planning Manager (386) 506-5671
STAFF RECOMMENDATION:	Approval
PLANNING COMMISSION:	Recommended Approval 5-0 (March 27, 2025)
CITY COUNCIL:	April 15, 2025

PROPERTY OVERVIEW

The request is to rezone two existing commercial properties (Lot 1 and Lot 2) located at the northeast corner of Clyde Morris Boulevard and Herbert Street (see Figure 1) from Planned Commercial Development (PCD) to Community Commercial (CC). Lot 3 of the PCD is **not** part of the rezoning request and will remain in the PCD.

FIGURE 1. LOCATION MAP



The current Master Development Agreement (MDA) for the PCD was approved by the City in 1999 and does not include several commercial uses typically found on other properties with a conventional city commercial zoning designation (e.g., office (allowed on Lot 1), health/exercise clubs, restaurants with a drive-thru, fleet-based services, craft food and beverage producer, microbrewery, retail (allowed on Lot 1), and personal services (hair salons, barber shops, nail salons, retail dry cleaning, etc.) as allowed uses on Lots 1 and 2 and has specific architectural requirements for Lot 2 that may limit redevelopment. The subject property has had a non-residential Future Land Use (FLU) designation on the City's Future Land Use Map since 1985 and zoned Planned Commercial Development (PCD) since 1990.

Over the past 10 years, the City has approved several rezonings from Planned Commercial Development (PCD) to a conventional city commercial zoning district to provide a list of allowed uses and development requirements consistent with the current Land Development Code (LDC) and encourage redevelopment of existing commercial infill properties. Some examples of former PCD properties that have been rezoned to a conventional city commercial zoning district include:

- Port Orange Plaza – Located at the southwest corner of Ridgewood Avenue and Dunlawton Avenue
- Spruce Creek Center - Located at the southwest corner of Spruce Creek Road and Nova Road
- Riverwood Shopping Center - Located at the northwest corner of Spruce Creek Road and Nova Road
- Commonwealth Plaza - Located at the northwest corner of Isabella Avenue and Nova Road.
- Former Movie Theater Plaza at 3780 Nova Road - Located at the northwest corner of Eagle Lake Trail and Nova Road
- Former K-MART at Dunlawton Square - Located at the southeast corner of Dunlawton Avenue and Nova Road

DISCUSSION

The proposed rezoning was reviewed according to the criteria established in Chapter 3, Section 7 of the Land Development Code (LDC) in terms of consistency with the Comprehensive Plan and the surrounding land uses and zoning.

In 1999, the city approved the Master Development Agreement (MDA) for the Ritter PCD that established a three-lot commercial development, specific architectural requirements for Lot 2, and a limited list of commercial uses for Lots 1-3.

At the time the Ritter's Frozen Custard restaurant (Lot 2) was built in 1999, the design of the building and outdoor seating area was considered unique, and very specific architectural requirements were listed in the MDA for the PCD, such as the use of specified colors and materials (i.e. split-face block), roof color must be "International Blue" or lighter blue color, all tables and chairs must be concrete and natural grey color, and only exterior blue and white striped umbrellas could be placed on site.

The rezoning from PCD to CC is a shift from the negotiated PCD zoning district to a conventional city commercial zoning district that uses the LDC to provide specific development regulations and allowed uses. Rezoning the subject properties to CC is

anticipated to assist in the redevelopment of the subject properties. The CC zoning district permits typical community-scale commercial uses commonly found at shopping centers and outparcels, such as retail stores, restaurants, personal services (hair salons, barber shops, nail salons, retail dry cleaning, etc.) offices, breweries, health/exercise clubs, childcare centers, convenience store/gas station, banks, and similar uses. It is difficult to predict future redevelopment options for the subject properties. If the zoning remains PCD, ongoing amendments to the MDA would likely be necessary and could delay redevelopment opportunities on these existing commercial infill lots. The list of permitted uses in the CC zoning district (Exhibit 1) and the development requirements in the LDC is a more efficient process to redevelop the site or fill existing tenant spaces in the current building on the site.

The current PCD zoning district is intended to provide a flexible approach for unique and innovative land development proposals that would otherwise not be permitted by this code. Because the property owners intend to redevelop or develop the sites in compliance with the LDC and do not anticipate deviating from the requirements of the LDC and Code of Ordinances, the standard CC zoning district was selected as the zoning district for the subject properties.

If the subject commercial properties are rezoned to the CC zoning category, the City's LDC will provide the permitted uses and site development requirements for the subject properties (Lot 1 and Lot 2). As part of any future redevelopment or new development, a site plan and/or building permits will need to be submitted and will require a detailed technical review by the Staff Development Review Committee (SDRC) to verify that all LDC, Code of Ordinance, and Florida Building Code requirements are met, such as landscape buffers, parking, building setbacks, screening (fence or wall), tree preservation, and infrastructure, to ensure compatibility with adjoining properties and that adequate public facilities and services are available.

Access to Lots 1 and 2 is available from existing driveways off Clyde Morris Boulevard and Herbert Street, and cross-access easements will remain between Lots 1-3. City water and sewer currently serve Lot 2 and are available to service Lot 1.

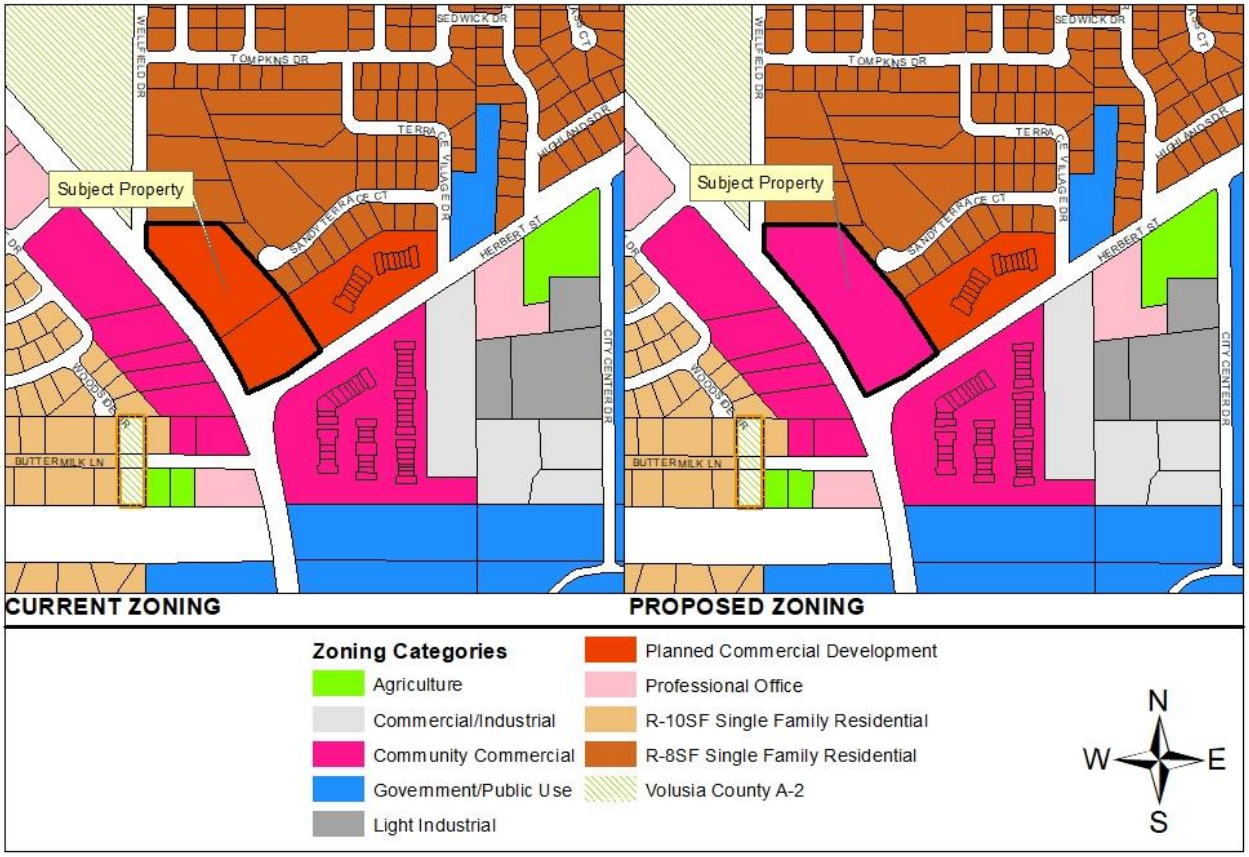
COMPATIBILITY WITH SURROUNDING USES AND ZONING DISTRICTS

The proposed CC zoning district is appropriate for this location and is compatible with the surrounding properties. Table 1 summarizes the adjacent properties' existing land use, zoning districts, and Future Land Use designations. Figure 2 shows the surrounding zoning for the subject property and adjacent properties. The subject properties are located along a major arterial roadway and adjacent to existing commercial properties currently zoned CC.

TABLE 1. SURROUNDING LAND USES, FUTURE LAND USE DESIGNATIONS, AND ZONING DISTRICTS

Direction	Existing Land Uses	FLU Designations	Zoning Districts
North	Single-family residential	*Suburban Residential 2-4 units/acre)*	R-8SF Single Family Residential
South	Commercial and Herbert Steet right-of-way	*Commercial*	(CC) Community Commercial
East	Single-family residential and Commercial	*Suburban Residential 2-4 units/acre) and Commercial*	R-8SF Single Family Residential and Ritters Planned Commercial Development (PCD)
West	Commercial and Clyde Morris Boulevard right-of-way	*Commercial*	(CC) Community Commercial

FIGURE 2. CURRENT AND PROPOSED ZONING MAP



CONSISTENCY WITH COMPREHENSIVE PLAN

The subject properties have had a non-residential Future Land Use (FLU) designation on the City's Future Land Use Map since 1985 and are currently designated *Commercial*. The proposed Community Commercial (CC) zoning designation is consistent with the *Commercial* FLU designation as it provides the opportunity for a variety of retail sales and services within a community-scale shopping center. The subject properties are also part of a Community Commercial Node located at the intersection of Clyde Morris Boulevard and Herbert Street, as designated in the City's Comprehensive Plan, and is intended to

provide commercial uses to serve the general shopping needs of the residential areas within a ±2-mile radius.

The proposed rezoning is generally consistent with the pertinent Goals, Objectives, and Policies of the City's Comprehensive Plan and is compatible with adjacent properties. Compatibility is defined in the Comprehensive Plan as a condition in which dissimilar land uses can co-exist in relative proximity to one another in a stable fashion over time, such that neither use is negatively impacted by the other. The subject properties are all longstanding commercially zoned properties.

Based on compatibility with adjacent uses and availability of infrastructure, the requested zoning is appropriate for this location and is consistent with the existing *Commercial* FLU designation.

PUBLIC NOTICE

On March 17, 2025, staff posted the property, notifying the public of the proposed rezoning. As of the time this agenda item was prepared (March 20, 2025), no calls or other inquiries were received regarding the information on the proposed rezonings.

STAFF RECOMMENDATION

Staff recommends **approval** of the request to rezone ±5.38 acres from Ritters Planned Commercial Development (PCD) to Community Commercial (CC).

ATTACHMENT

Exhibit 1 – List of Permitted Uses for the Community Commercial (CC) Zoning District

Exhibit 1
List of Permitted Uses for the Community Commercial (CC) Zoning District

Chapter 17 - ZONING DISTRICT REGULATIONS
Section 21: - Community Commercial (CC) district.

(a) Purpose and intent. The community commercial (CC) district is intended to provide for community-scale businesses that customarily require freestanding buildings on individual sites.

(b) Permitted uses.

(1) Adult/vocational education.
(2) Appliance/electronic repair shops.
(3) Banks.
(4) Business services.
(5) Clubs, lodges, and fraternal organizations.
(6) Convenience stores with or without fuel operations.
(7) Financial services.
(8) Fleet-based services.
(9) Funeral homes.
(10) Furniture and appliance stores.
(11) Health/exercise clubs.
(12) Medical offices/clinics.
(13) Motor vehicle service stations.
(14) Offices.
(15) Office supplies.
(16) Personal services.
(17) Restaurants.
(18) Retail home building materials.
(19) Retail nurseries and garden supplies.
(20) Retail sales and services.
(21) Veterinary clinics.

(bb) Permitted uses with special development requirements (chapter 18, section 4).

(1) Athletic/sports facilities (subsection 2).
(2) Brewery (subsection 3.7).
(3) Childcare centers (subsection 4).
(4) Craft food and beverage producer (subsection 5.15).
(5) Community gardens (subsection 5.1).
(6) Microbrewery (subsection 9.57).
(7) Theaters (subsection 17).

(c) Special exception uses (chapter 18, section 3).

(1) Bars, lounges, and nightclubs (subsection 3).
(2) Fortune tellers, astrologers, and palm readers (subsection 6).
(3) Game/recreation facilities (subsection 7).
(4) Marina, recreational (subsection 9.6).
(5) Mini-warehouses (subsection 10).
(6) Motor vehicle and boat storage facilities (subsection 12).

(d) Project access. Any CC district development shall have direct access to any arterial or major collector road, as designated in the functional classification system in the comprehensive plan.

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. 2025-13 – Rezone ±5.38 acres from Ritter Planned Commercial Development (PCD) to Community Commercial (CC) (Case No. REZONING-25-0001)

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 law[1] 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 request is to rezone two existing commercial properties (Lot 1 and Lot 2) located at the northeast corner of Clyde Morris Boulevard and Herbert Street (see Figure 1) from Planned Commercial Development (PCD) to Community Commercial (CC). Lot 3 of the PCD is not part of the rezoning request and will remain in the PCD. The current Master Development Agreement (MDA) for the PCD was approved by the City in 1999 and does not include several commercial uses typically found on other properties with a city conventional commercial zoning designation as allowed uses on Lot 1 and 2 and has specific architectural requirements for Lot 2 that may limit redevelopment. The subject property has been designated non-residential on the Future Land Use Map since 1985 and was zoned PCD since 1990. Rezoning the subject properties to CC is anticipated to assist in the redevelopment of the subject properties. The CC zoning district permits typical community-scale commercial uses commonly found at shopping centers and outparcels. The proposed CC zoning district is appropriate for this location, is consistent with the Commercial FLU designation for the subject property and is compatible with the surrounding properties.

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 useful[2] (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.