REGULAR CITY COUNCIL MEETING

6:30 PM – COUNCIL CHAMBERS – CITY HALL

MAY 20, 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 Joshua Owen of Spruce Creek Presbyterian Church
2. Pledge of Allegiance
3. Roll Call

B. SPECIAL REPORTS

4. Causeway Docks project update
5. Public Comments on Consent Agenda Items Only

C. CONSENT AGENDA

6. Approval of Minutes
    a. May 6, 2025 - Regular City Council Meeting
7. Bid Awards and Contract Items
    a. Approval of Contract to Purchase 413 Herbert Street
    b. Approval of Amendment No. 1 to Task Authorization No. 9 to Stanley Consultants, Inc. (f/k/a Traffic Engineering Data Solutions, Inc.) for a time extension to finalize the design plans for the SJR2C Loop SUN Trail Project, remove Task Item 12 (Post-Design Services), and decrease Task Authorization No. 9 by $11,285.00.
    c. Approval of Task Authorization No. 4 to the Continuing Services Contract with Stanley Consultants, Inc. (#CA8377) for Post-Design Services for the SJR2C Loop SUN Trail Project

d. Approval of Task Authorization No. 1 to the Continuing Services Contract (CA #8360) with Kimley-Horn for Construction Engineering Inspections Services (CEI) for the SJR2C Loop SUN Trail Project

e. Approval of Task Authorization No. 3 to the Continuing Services Contract with Zev Cohen & Associates (#CA8378) for design services of the Down Under Phase I infrastructure improvements

f. Approval of the Second Amendment to the Second Addendum to the Third Amendment and Restatement of Lease Agreement with Palmer College Foundation, Inc. for the Allen Green Center

g. Approval of a New Standard Contract with G&G Outdoors, LLC. for Services for Public Utilities Landscaping Maintenance

8. Resolution No. 25-27 - Authorizing the Submittal of the Florida Boating Improvement Program (FBIP) Grant Application
9. Approval of the Closest Unit Response Interlocal Agreement with Neighboring Municipalities for Fire-Rescue and Emergency Medical Services

D. STATE OF THE CITY

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

F. COMMENTS AND ADDITIONAL ITEMS

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

G. BOARD APPOINTMENTS, INTERVIEWS, AND REPORTS

13. Citizen Advisory Committee for TPO
14. Volusia Growth Management Commission Member Appointment
15. Fire Pension Board Appointment - Council Appointment

H. PUBLIC HEARING

16. Second Reading - Ordinance No. 2025-05 - Amending Chapter 58 - Streets, Sidewalks and Other Public Places, Article IV. Communications Facilities in Public Rights-of-Way
17. Capital Finance Items
    a. Second Reading - Ordinance No. 2025-15 - Authorizing and Securing Capital Improvement & Refunding Revenue Bonds Series 2025

b. Resolution No. 25-28 – Authorizing the issuance of not-to-exceed $38,000,000 City of Port Orange Capital Improvement Refunding Revenue Bonds, Series 2025

c. Resolution No. 25-29 – Supplementing Resolution No. 25-28 and authorizing and approving the negotiated sale of the City of Port Orange Capital Improvement Refunding Revenue Bonds, Series 2025 to Hilltop Securities Inc. and providing further details and authorization

I. COUNCIL COMMITTEE REPORTS

18. City Council Committee Reports

a. First Step Shelter - Councilman Shawn Goepfert

b. Port Orange/South Daytona Chamber of Commerce - Councilman Shawn Goepfert

J. 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 5/20/2025

SUBJECT: (B4) Causeway Docks project update

DEPARTMENT: Parks & Recreation

GOAL: 3 - Quality of Life

RECOMMENDED MOTION: Discussion only. No motion needed.

SUMMARY: Dredging and Marine Consultants will provide a brief overview of the Causeway Park south boat ramps and parking lot improvements.

PRESENTER: Susan Lovallo

ATTACHMENTS:

Robin Fenwick	Created/Initiated - 4/2/2025
Susan Lovallo	Approved - 4/14/2025
Junos Reed	Approved - 4/15/2025
Wayne Clark	Final Approval - 5/8/2025

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

OPENING

Invocation by Reverend Kari Niedermaier of All Saints Lutheran 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 City Attorney Matthew Jones Deputy City Clerk Amanda Bonin

4. Public Comments on Consent Agenda Items Only

There were none.

CONSENT AGENDA

5. Approval of Minutes
   a. Regular City Council Meeting - April 15, 2025
6. Bid Awards and Contract Items
   a. Approval to Award a Standard Contract for Services under ITB #25-10 for City Rights of Way Landscape Maintenance Services to Brightview Landscape Services
   b. Approval of Task Authorization No. 6 for design services for White Place Park with Hall and Ogle Architects, Inc.
   c. Approval of Task Authorization No. 8 to Advanced Roofing, Inc. under the Standard Contract for Services (CA7981) RSFQ #22-14 for Roofing Repair and Replacement Services
   d. Approval of Change Order No. 1 to the EJCDC Agreement for ITB #24-04 with General Underground, Inc. relating to the Ridgewood Avenue and North Commonwealth Boulevard Water Main Replacement
   e. Approval of Change Order No. 1 to Task Authorization No. 9 with Mead and Hunt, Inc. as it relates to the Ridgewood Avenue & North Commonwealth Boulevard Water Main Replacement project under ITB #24-04
7. Resolution No. 25-22 - Supporting Volusia County's Local Mitigation Strategy

8. Resolution No. 25-24 - Approval of FDOT Funding Agreement for the Construction of the St. John's River to Sea (SJR2C) Loop SUN Trail (FDOT #439865)

9. Resolution No. 25-26 - Approval of FDOT Maintenance Memorandum of Agreement for the St. John's River to Sea (SJR2C) Loop SUN Trail (FDOT #439865)

Motion to pull item B.6.b. Approval of Task Authorization No. 6 for Design Services for White Place Park with Hall and Ogle Architects, Inc. for further discussion was made by Councilman Lance Green and seconded by Councilman Shawn Goepfert. Motion carried unanimously by voice vote.

Motion to approve the Consent Agenda as amended was made by Councilman Lance Green and Seconded by Councilman Jonathan Foley. Motion carried unanimously by roll call vote.

b. Approval of Task Authorization No. 6 for design services for White Place Park with Hall and Ogle Architects, Inc.

Motion to approve Item B.6.b. was made by Councilman Jonathan Foley and Seconded by Councilman Shawn Goepfert.

Councilman Lance Green expressed his concerns regarding the White Place Park Project and requested Council hold off on voting on this project until they know more of what the project will entail. He agrees there are improvements needed but would like to see something more detailed. He believes a ballfield should stay on the property, or at least open, green space for kids to play.

Councilman Goepfert spoke about the condition of the ballfield and use of the park.

Mayor Scott Stiltner reminded council members that this is part of a bond that was approved by voters and asked the City Manager and City Attorney to speak about this item.

Wayne Clark, City Manager, provided clarification of this item. It is a request to hire consultants to assist in public meetings in the neighborhood so residents can provide input and suggestions on the amenities to be included in the project.

Matt Jones, City Attorney, provided further information on the bond.

Susan Lovallo, Parks and Recreation Director, spoke to the item and provided further details.

Council Members and Ms. Lovallo discussed the usage and status of the park, the cost for the design phase, and clarified the process for the next steps.

Carol Gilmore, resident, suggested a family picnic ground at the park.

Motion carried (4-1) by roll call vote with
Councilman Lance Green voting no.

RECOGNITION AND PROCLAMATIONS

10. Port Orange University Graduation Certificates

Mike Springer, Public Information Officer, introduced the Port Orange University Class of 2025, and provided an introduction of the program. Certificates were passed out to the graduates.

Council Members congratulated the graduates, expressed their appreciation for the participants showing up and getting involved, thanked the staff for putting this together, and encouraged them to find others ready to learn and get involved.

11. Professional Municipal Clerks Week

Mayor Stiltner read the Proclamation for Professional Municipal Clerks Week and presented it to the City Clerks.

12. Water Safety Month - Christina "Christy" Gillis

Mayor Stiltner read the Proclamation for Water Safety Month.

13. Family Abduction Awareness Day - Chris Felder

Mayor Stiltner read the Proclamation for Family Abduction Awareness Day.

PUBLIC PARTICIPATION (Non-Agenda – 20 minutes)

Cameron Vintson, Executive Director with Arthaus, provided a mural update on the Down Under Project, with an unveiling on May 23, 2025 at the Fun and Funky event where Former Mayor Don Burnette will be recognized.

Frank Bielat, resident, talked about a podcast that discussed past floods.

Ray Domato, resident, placed himself under oath and spoke on the letters received from the City and expressed his concerns regarding flooding.

COMMENTS AND ADDITIONAL ITEMS

14. Council Members

Vice Mayor Tracy Grubbs advised he will not be present at the next two Council meetings, on May 20 and June 3, 2025 due to travel. Save the dates were announced to include the Arthaus Fun and Funky event at Dunes Brewery on May 23, 2025, a Seafood Festival on May 18, 2025, the Mayors Golf Tournament on June 14, 2025, and recognized a newly retired City employee, Steve Edgar. Mr. Edgar expressed his gratitude to the City.

Additionally, Vice Mayor Grubbs spoke about LED signage and requested a review by Council for consideration of a change from 60 seconds to 30 seconds to help the visibility of businesses in plazas.

Mayor Scott Stiltner suggested bringing this back as an agenda item and giving City staff the ability to look at the code first.

Mr. Clark advised that any changes with the sign code must go through Planning Commission first.

Vice Mayor Grubbs discussed the water bill, how citizens receive it, and proposed having the water bill emailed. He suggested if the residents want to receive a paper bill, that individual pays to cover the cost. Vice Mayor Grubs would like this to be reviewed at the June 17, 2025, Council meeting, so it's seamless with the Tyler update on July 1, 2025.

> Motion to review the water bill surcharge on the City Council agenda on June 17, 2025, was made by Vice Mayor Tracy Grubbs and seconded by Councilman Lance Green.

Councilman Goepfert expressed his concerns about moving towards electronic water bills due to the fraud/criminal activity that's out there now.

Council members discussed the mailing rates as well as the utility rates and whether the cost to mail the utility bills were covered in the utility rates.

Mr. Clark advised that during the rate study the point wasn’t to cover the entire cost of mailing. Utility rate payers are subsidizing the cost so any savings would come back to utilities.

Mayor Stiltner expressed his concerns mentioning the majority of the residents who could do this electronically prefer to have their bill mailed, but also believes it’s worth having this as an item on the agenda to further discuss.

> Motion carried 4-1 by voice vote with Councilman Jonathan Foley voting no.

Councilman Goepfert discussed code enforcement and maintenance of the City.

Councilman Green recognized an item that was approved tonight and commended staff. This was the landscape maintenance item that saved the City approximately $100,000. Councilman Green also talked about the Touch-a-Truck event over the weekend at City Center, recognized the City for reaching out to HOA's and neighborhoods to educate residents about scams, brought up the fluoride item that is now at the Governor's level, and thanked staff for everything they do.
Mayor Stiltner advised he would like for himself, the City Manager, City Attorney, and City staff to get involved with the HOA communities to help educate them on everyone's respective responsibilities. He also requested City staff to oversee the contractors so that corners are not cut, and the contractor is held to the contract they agreed to.

15. City Attorney

There was nothing further.

16. City Manager

There was nothing further.

BOARD APPOINTMENTS, INTERVIEWS, AND REPORTS

17. Environmental Advisory Board Report

John Macaluso, Vice Chair, commended the Port Orange Police Department for taking the time to speak at HOA meetings and educate the residents about scams. He then provided the Environmental Advisory Board report to include the resident Adopt-a-D rain program, butterfly gardens, and an update on the water goat. Mr. Macaluso advised there is a vacancy on the board that the members would like to be filled as soon as possible and asked for the City to keep the ECHO applications coming in and touched on the Volusia Forever program.

Mayor Stiltner asked Mr. Macaluso to bring the Council the historical numbers of how much property has been purchased through Volusia Forever.

Council members thanked Mr. Macaluso for his service.

18. Fire Pension Board Appointment - 5th Member

> Motion to appoint Chris Taylor as 5th member to the Fire Pension Board was made by Councilman Jonathan Foley and Seconded by Vice Mayor Tracy Grubbs. Motion carried unanimously by voice vote.

PUBLIC HEARING

19. Second Reading - Ordinance No. 2025-09 - Comprehensive Plan Future Land Use Map Amendment/4009 & 4084 Halifax Drive (Case No. CPAM-24-0003)

Mr. Jones read Ordinance No. 2025-09 into the record.

ORDINANCE NO. 2025-09

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, RELATING TO COMPREHENSIVE PLANNING; AMENDING THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN; AMENDING THE FUTURE LAND USE (FLU) DESIGNATION FOR +1.2 ACRES FROM COMMERCIAL TO MIXED-USE CENTER; AUTHORIZE TRANSMITTAL TO REQUIRED AGENCIES; PROVIDING FOR CONFLICTING ORDINANCES, SEVERABILITY AND AN EFFECTIVE DATE.

Motion to adopt Ordinance No. 2025-09 was made by Councilman Jonathan Foley and Seconded by Vice Mayor Tracy Grubbs.

Robert Reinhagen, resident, expressed his concerns with the parking spaces on Halifax Drive.

Motion carried unanimously by roll call vote.

20. Second Reading - Ordinance No. 2025-10 - Second Restated Master Development Agreement Catfish Commons Planned Commercial Development (Case No. PRZA-24-0008)

Mr. Jones read Ordinance No. 2025-10 into the record.

ORDINANCE NO. 2025-10

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, REZONING PROPERTY CONSISTING OF APPROXIMATELY ±0.58 ACRES FROM COMMUNITY COMMERCIAL (CC) TO CATFISH COMMONS PLANNED COMMERCIAL DEVELOPMENT (PCD); APPROVING THE SECOND RESTATED MASTER DEVELOPMENT AGREEMENT CATFISH COMMONS PLANNNED COMMERICAL DEVELOPMENT (MDA) AND CONCEPTUAL DEVELOPMENT PLAN (CDP); PROVIDING FOR REPEAL OF CONFLICTING

ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

Motion to adopt Ordinance No. 2025-10 was made by Councilman Jonathan Foley and Seconded by Vice Mayor Tracy Grubbs. Motion carried unanimously by roll call vote.

21. Second Reading - Ordinance No. 2025-12: Rezoning/5656 Isabelle Avenue

Mr. Jones read Ordinance No. 2025-12 into the record.

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.

Motion to adopt Ordinance No. 2025-12 was made by Councilman Jonathan Foley and Seconded by Vice Mayor Tracy Grubbs. Motion carried unanimously by roll call vote.

22. Second Reading - Ordinance No. 2025-13 - Rezoning/4619 and 4629 Clyde Morris Boulevard

Mr. Jones read Ordinance No. 2025-13 into the record.

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.

Motion to adopt Ordinance No. 2025-13 was made by Councilman Jonathan Foley and Seconded by Vice Mayor Tracy Grubbs. Motion carried unanimously by roll call vote.

23. First Reading - Ordinance No. 2025-14 - Annexation/Vintage Acres

Mr. Jones read Ordinance No. 2025-14 into the record.

ORDINANCE NO. 2025-14

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, ANNEXING APPROXIMATELY ±56.5 ACRES OF PROPERTY LOCATED WEST OF AIRPORT ROAD AND NORTH OF CHARLES STREET; REPEALING CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

Motion to approve was made by Councilman Jonathan Foley and Seconded by Vice Mayor Tracy Grubbs.

Penelope Cruz, Planning Manager, discussed the annexation item, provided details, and answered council member's questions.

Vice Mayor Grubbs asked about the acreage and total usage (unit per acre).

Mayor Stiltner asked what our legal obligations are after it's annexed.

Ms. Cruz provided further clarification on property usage and the City's obligations.

Joey Posey, Attorney for applicant, spoke on the item and provided further clarification.

Mr. Reinhagan commented on urban sprawl related to the item.

Councilman Foley asked Ms. Cruz to clarify the use of the property.

Vice Mayor Grubbs asked if there would be a strain on the Police and Fire Departments when adding additional homes to the City.

Ms. Cruz advised both departments indicated they can handle the additional homes.

Councilman Goepfert verified that an apartment complex won't be permitted as it will be zoned single-family residential.

Councilman Green looked at the impacts in relation to this potential annexation/build.

Mayor Stiltner commented on stormwater mitigation in this area and touched on the Pioneer Road interchange.

Mr. Clark added further details about the stormwater plan.

Motion carried unanimously by roll call vote.

REGULAR AGENDA

24. Capital Financing Items

a. First Reading - Ordinance No. 2025-15 - Authorizing and Securing Capital Improvement & Refunding Revenue Bonds Series 2025

Mr. Jones read Ordinance No. 2025-15 into the record.

ORDINANCE NO. 2025-15

AN ORDINANCE OF THE CITY OF PORT ORANGE, FLORIDA, AUTHORIZING THE ISSUANCE OF NOT EXCEEDING $38,000,000 CAPITAL IMPROVEMENT REFUNDING REVENUE BONDS, SERIES 2025, TO REFUND ALL OR A PORTION OF THE CITY'S OUTSTANDING STORMWATER UTILITY REVENUE BONDS, SERIES 2005 AND CAPITAL IMPROVEMENT REFUNDING REVENUE BONDS, SERIES 2014, TO FINANCE OR REIMBURSE CAPITAL IMPROVEMENTS; PROVIDING FOR THE PAYMENT OF SUCH BONDS FROM LEGALLY AVAILABLE NON-AD VALOREM REVENUES DEPOSITED PURSUANT TO A COVENANT TO BUDGET AND APPROPRIATE; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

Motion to approve Ordinance No. 2025-15 was made by Councilman Shawn Goepfert and Seconded by Vice Mayor Tracy Grubbs.

Mark Simpson, Finance Director, introduced the item and provided details.

Motion carried unanimously by roll call vote.

b. Resolution No. 25-25 - Approval to Authorize Issuance of General Obligation Bonds

Motion to adopt Resolution No. 25-25 was made by Councilman Jonathan Foley and Seconded by Vice Mayor Tracy Grubbs.

Mark Simpson, Finance Director, introduced the item and provided details.

Motion carried unanimously by roll call vote.

25. First Reading - Ordinance No. 2025-05 - Amending Chapter 58 - Streets, Sidewalks and Other Public Places, Article IV. Communications Facilities in Public Rights-of-Way

Mr. Jones read Ordinance No. 2025-05 into the record.

ORDINANCE NO. 2025-05

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, AMENDING CHAPTER 58, ARTICLE IV, SECTIONS 58-74, 58-75, 58-77 AND 58-78; TO REMOVE REQUIREMENT FOR PHOTOGRAPHIC/VIDEOGRAPHIC DOCUMENTATION OF THE WORK AREA PRIOR TO CONSTRUCTION, DISPENSING WITH PERMITTING REQUIREMENTS FOR CERTAIN ROUTINE MAINTENANCE TASKS, REMOVING VARIOUS CERTIFICATIONS OF THE ENGINEERING PLAN, AND THE REQUIREMENT TO PROVIDE AS-BUILTS UPON COMPLETION; PROVIDING FOR CODIFICATION; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

Motion to approve Ordinance No. 2025-05 was made by Vice Mayor Tracy Grubbs and Seconded by Councilman Shawn Goepfert.

Mr. Jones provided details on the item and answered the council members' questions.

Councilman Goepfert and Councilman Green touched on concerns regarding the contractors work in the rights-of-way and ensuring the property is put back the way it was.

Mayor Stiltner commented on allowing the utility companies to do the work but also protecting the residents, and holding the contractors and sub-contractors accountable.

Alex Redken on behalf of Charter Communications, thanked the City and mentioned he looks forward to this being implemented and working with the City.

Motion carried unanimously by roll call vote.

COUNCIL COMMITTEE REPORTS

26. City Council Committee Reports

a. River to Sea TPO - Vice Mayor Tracy Grubbs o/b/o Councilman Jonathan Foley

Vice Mayor Tracy Grubbs provided an update on the Volusia Flagler TPO (f/k/a River to Sea TPO).

ADJOURNMENT - 8:56 p.m.

_____
Mayor Scott Stiltner

Attest:

_____
Robin Fenwick, MMC
City Clerk

CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 5/20/2025

SUBJECT: (C7a) Approval of Contract to Purchase 413 Herbert Street

DEPARTMENT: Parks & Recreation

GOAL: 3 - Quality of Life

RECOMMENDED MOTION: Move to approve the purchase of real property located at 413 Herbert Street for an amount of $230,000 and authorize an additional $5,000 for estimated closing costs; and authorize the Mayor and City Clerk to execute all necessary documents.

SUMMARY: The Port Orange Depot Park ("Depot Park") is located at 415 Herbert Street and is home to the oldest surviving Florida East Coast Railway (FEC) Freight Depot, which is listed on the National Registry of Historic Places. The current site is approximately 0.64 acres, and the Port Orange Railway Society is planning to add two train cars and tracks to house a caboose and box car.

Improvements to Depot Park is one of the projects approved by voters in the Parks Bond Referendum in August 2024. The homeowner of 413 Herbert Street was aware of the City's efforts to improve the park and approached Staff to discuss the purchase of the land to be used for the park expansion. This property is located on the southeast side of the Depot Park and currently has two structures on it.

Staff is requesting City Council approve the purchase of the property for $230,000. City Staff contracted with a local appraisal company to provide a report on the fair market value of the property. After discussions with Staff, the seller agreed to a sales price of $230,000, $10,000 (or 4.5%) above the appraised value. Staff believes the asking price is reasonable for the intended use. If approved, the two existing buildings will be demolished, and the property will remain open green space until the Depot Park design is complete. Staff is also requesting authorization for closing costs not to exceed $5,000.

Funding will come from the wetland mitigation fund. Resolution No. 20-27, Section 7c "allows funds from the wetland mitigation bank to fund the acquisition of real properties for environmental, parks and storm water drainage purposes."



PRESENTER: Susan Lovallo

ATTACHMENTS:

1.	413 Herbert Contract w option executed by the Seller and City Manager	413 Herbert Contract w option executed by the Seller and Coity Manager.pdf

Susan Lovallo	Created/Initiated - 4/14/2025
Susan Lovallo	Approved - 4/14/2025
Linda Truitt	Approved - 4/14/2025
Matthew Jones	Approved - 5/7/2025
Wayne Clark	Final Approval - 5/8/2025

OPTION TO PURCHASE CONTRACT AND CONTRACT FOR SALE AND PURCHASE OF REAL PROPERTY

THIS OPTION TO PURCHASE CONTRACT AND CONTRACT FOR SALE AND PURCHASE OF REAL PROPERTY, hereinafter, the "Contract" is made and entered into this _____ day of _____, 2025, between Daniel Moore, whose post office address is 838 Second Street, Port Orange, FL 32129, hereinafter referred to as "Seller"; and CITY OF PORT ORANGE, FLORIDA, a municipal corporation, mailing address: c/o City Manager, 1000 City Center Circle, Port Orange FL 32129-4144 , hereinafter referred to as "Purchaser." All references in this Contract to the singular shall include the plural where applicable.

For good and valuable consideration in the amount of **Five Hundred and NO/100 Dollars ($500.00)**, issuance of which will be requested immediately upon execution of the Option to Purchase Contract by Seller and City Manager, the parties agree as follows:

1. Subject to the exercise of the Option to Purchase Contract, hereinafter "Option", evinced by City Council approval as set forth in Section 16, Seller agrees to sell and Purchaser agrees to purchase the following described real estate, with its appurtenances, located at 413 Herbert Street, Port Orange, County of Volusia, State of Florida:

LOT "C", MARTIN'S SUBDIVISION OF LOTS 1 AND 2, BLOCK "L" WILSON'S PORT ORANGE AS PER PLAT RECORDED IN MAP BOOK 2, PAGE 177 OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA.

Also being identified as Parcel Number 6303-07-00-0030; the subject real estate being hereinafter referred to as the "Property".

General Description and Vicinity of Property: residential property generally located west of Orange Avenue and East of the FEC Railroad on the north side of Herbert Street, Port Orange, Volusia County, Florida.

Tangible Personal Property and Fixtures: If applicable, prior to the date of closing, Seller shall remove all personal property, furnishings, appliances, fixtures, and miscellaneous debris; and shall secure all exterior openings of the structure. Upon closing, any Tangible Personal Property and Fixtures, as defined herein, remaining on the Property shall be the property of the Purchaser and Seller shall have no further right of removal.

Conveyance by the Seller and Purchase by the Purchaser of the above-described Property is subject to the *Standards for Real Estate Transactions* set forth on the form contract approved by The Florida Bar and The Florida Association of Realtors, Inc., attached hereto as **Exhibit "A."** In the event of a conflict between the terms of the Contract and the terms contained in **Exhibit "A"**, this Contract shall control.

2. Purchase Price and Method of Payment. The purchase price payable to Seller is as follows:

(a) The Purchase Price for the Property is: **Two Hundred Thirty Thousand and NO/100 Dollars ($230,000.00)**; and

(b) Upon approval by City Council and execution of the Contract for Purchase by the Mayor and the City Clerk, a good faith deposit of Two Hundred Fifty and No/100 Dollars ($250.00), shall be paid to and held in trust by Columbia Title Research Corporation Trust Account, 200 Forest Lake Boulevard, Daytona Beach, FL 32119; referred to as "Escrow Agent," delivered within three business days of City Council approval, and upon the closing of this transaction, to be delivered to Seller at the time of closing; and

(c) The total Purchase Price, which includes the Purchaser's good faith deposit of Two Hundred Fifty and No/100 Dollars ($250.00), and less expenses and prorations as provided in Standard K and Standard L of Exhibit "A", and as otherwise agreed herein, delivered by wire transfer payable to the order of Seller, to be delivered at the time of closing.

3. Title and Survey.

(a) Marketable Title. Seller shall convey to Purchaser marketable title to the Property, determined in accordance with the Title Standards in Exhibit "A".

(b) Title Insurance and Commitment. Not later than Ten (10) days after approval by City Council, Seller shall cause to be delivered to the City Attorney's Office, on behalf of the Purchaser, a title insurance commitment, in accordance with Standard "A" of Exhibit "A", covering the Property, together with legible copies of all recorded documents referenced therein, along with a special assessment and real property tax search (the "Commitment"). An Owner's ALTA policy, insuring Purchaser for the full amount of the purchase price against loss or damage by reason of defect in the title of Seller in the Property shall be delivered to Purchaser at the time of closing.

(c) Survey. Purchaser, at Purchaser's expense, may have the Property surveyed and certified by a registered Florida Surveyor in accordance with Standard "C" of Exhibit "A".

(d) **Inspection Period.** Within Forty-five (45) days of the Effective Date of this Contract ("Inspection Period"), Purchaser, at Purchaser's expense, may obtain a survey of the Property (the "Survey") prepared by a duly licensed land surveyor licensed in the State of Florida and depicting the Property and all plottable exceptions to the Commitment to examine the condition of the Seller's title to the Property. The Survey shall be prepared in accordance with the minimum technical requirements for surveys in the State of Florida. Purchaser shall have until the end of the Inspection Period to examine the condition of the Seller's title to the Property.

If the Commitment or Survey reflects that title to the Property is subject to exceptions or survey matters that the Purchaser finds unacceptable, then the Purchaser shall, prior to the expiration of the Inspection Period, give written notice of the specific title defects ("Title Objections"). If Purchaser does not timely object to the exceptions listed in the Commitment, then Purchaser shall be deemed to have waived any right to disapprove of any exceptions contained therein and said exceptions shall be deemed to be permitted exceptions ("Permitted Exceptions"). If Purchaser gives such notice of Title Objections, Seller shall have Five (5) calendar days from the receipt of such notice to cure the Title Objections so specified (the "Curative Period") or to provide notice that it has declined to cure such matters. If Seller is unable, or unwilling, to correct such objections within the Curative Period, then Purchaser shall have the option to accept the title in its existing condition or terminate this Contract by sending written notice of termination prior to the end of the Curative Period. and proceed with the transaction. In such instance, the Initial Deposit provided in Section 2(b) to the Escrow Agent shall be released forthwith to the Purchaser and neither party shall have any further obligations under this Contract, except which expressly survive termination.

4. Taxes and assessments. Seller agrees to pay before delinquency all taxes, assessments and utility charges, if any, which may be due currently or may hereafter become due on the premises until and including the day of closing.

5. Risk of loss. Risk of loss or damage to the Property by fire or other casualty between the date of this Contract and Closing shall be and is assumed by Seller.

6. Rental Agreements. Seller warrants that no other persons have any right to possession of the Property and the Seller shall not enter into any Lease or other instrument granting possessory rights subsequent to the execution of this Contract.

7. Deed. Seller agrees, upon full payment of the purchase price in the manner herein specified, to make, execute and deliver to Purchaser a good and sufficient warranty deed to the

Property.

8. Closing. Closing shall take place in Volusia County, Florida at the office of the Escrow Agent on or before **Ninety (90) days** following the approval of this Contract by the Port Orange City Council. The date of closing may be extended upon mutual agreement of the parties. At the closing, Seller shall provide Purchaser with the deed to the Property and other documents in accordance with Standard J of Exhibit "A". Following the closing, Purchaser shall have the right to exclusive possession of the Property.

9. Closing Costs. Seller shall pay all closing costs, except for title insurance premium, including but not limited to, Florida documentary tax stamps, document preparation, and recording instruments to cure title defects. Costs of title insurance premium, environmental audits, surveys, and other inspections shall be paid by the Purchaser.

10. Fees. For the purpose of brokerage fees, Purchaser and Seller have not utilized the services of a Florida Real Estate Broker. Purchaser shall be responsible for the appraisal report prepared at its request, and Seller shall be responsible for fees incurred of Seller's independent review of this Contract by attorneys, engineers, and other professionals, if any.

11. Environmental Audit. For the period beginning with the date the Option is executed by the City Manager and continuing until the expiration of the Inspection Period, Purchaser shall have the right to conduct an environmental audit of the Property which audit shall be certified to Purchaser. In the event the environmental audit detects the presence of any hazardous materials, unique prehistoric or historic artifacts, relics, or structures of archaeological value, or of the remains of deceased persons interred therein on the Property, Purchaser, at its sole option, may elect to terminate this Contract prior to the expiration of the Inspection Period and neither party shall have any further obligations under this Contract. For purposes of this Contract, "hazardous materials" shall mean any hazardous or toxic substance, material or waste of any kind or any other substance which is regulated by any federal, state or local environmental laws, statutes, ordinances, rules, regulations, restrictions or orders relating to liability or standards of conduct.

12. Purchaser's Intended Use of the Property. The restrictions, easements, leases, if any, and limitations of record shall not prevent the Purchaser from exercising its rights for its intended use of the Property including all lawful purposes consistent with the local zoning regulations and the elimination and prevention of the development or spread of slums and urban blight. In the event that Purchaser determines that the Property cannot be used for its intended purposes, then the Purchaser shall be entitled to terminate this Purchase Contract prior to the expiration of the Inspection Period.

13. Default by Seller. If Seller is unable to convey marketable title to the Property in accordance with the terms of this Contract, or otherwise fails to perform this Contract within the time specified for closing or any extension thereof, the costs of examining the title, surveying the

Property, and inspecting and auditing the Property shall, at the option of Purchaser, be paid by Seller to Purchaser on demand. Service of such demand shall be made by certified mail, return receipt requested to Seller as identified and at their respective mailing address shown above, with a copy to Seller's agent or other authorized representative as Seller may indicate in writing to Purchaser. Purchaser shall have the right of specific performance and all other remedies at law or equity. Election of any options by Purchaser or failure of Purchaser to exercise any rights granted by this Contract shall not be construed as a waiver of any action for damages resulting from Seller's default.

14. Other Offers to Purchase. Seller acknowledges there are no existing contracts or options to purchase on said Property as of execution of this Option to Purchase Contract and Contract to Sale and Purchase of Real Property.

15. Access to Property. Seller agrees to allow Purchaser and Purchaser's employees, consultants, agents and representatives access to the Property upon execution of this Contract by Seller and extending to the time of closing for the purpose of conducting surveys, environmental audits and inspections of the premises. Seller shall not be responsible for any cost, expense, damage or liability to Purchaser's employees, consultants, agents, and representatives as a result of accessing the property. Where practical, prior notice via telephone shall be provided from Purchaser to Seller anytime Purchaser's employees, consultants, agents, and representatives will be accessing the property.

16. **Option to Purchase and Approval of Contract for Sale and Purchase of Real Property. Upon execution of this Option by the Seller and the City Manager, the City of Port Orange shall have the option for sixty (60) days to exercise the option to purchase the property described herein and in accordance with the terms described herein. The City Manager's signature on this Option shall not bind the City of Port Orange for the purchase of the Property until approved by the City Council. The City Council of the City of Port Orange may exercise the Option in a public meeting after 30 days' public notice, by casting a majority vote of the City Council in favor of exercising the option and by the Mayor and City Clerk duly executing this Contract. If this Contract is not approved by the City Council on or before the 60th day after execution of the Option by the City Manager, then the City shall provide written notice to Seller and the Escrow Agent and thereafter the City shall not be responsible for any other cost, expense, damage or liability and the parties shall both be discharged and released from any further responsibility under this Contract.**

17. Effective Date. The Effective Date of the Option shall be the date the Option is executed by the Seller and the City Manager, based on the date of the last signature received. The Effective Date for the Contract shall be the date of approval by the City Council for the City of Port Orange, Florida; such approval shall be evidenced by the signing of the Mayor and the City Clerk.

18. Counterparts. This Contract may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. The electronic transmittal of an executed copy of this Contract shall be deemed valid as if an original signature was delivered.

[REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY]

This Option to Purchase Contract and Contract for Sale and Purchase of Real Property is executed by the parties as of the respective dates shown below.

FOR THE OPTION TO PURCHASE CONTRACT AND CONTRACT FOR SALE AND PURCHASE OF REAL PROPERTY

WITNESSES:

Kimberly Hawley
First Witness Signature Above, Printed Name Below:
Kimberly Howley

Susan L. Lovallo
Second Witness Signature Above, Printed Name Below:
Susan L. Lovallo

SELLER:

By: Daniel Moore
Daniel Moore

Date: April 1, 2025

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing Option to Purchase Contract and Contract for Sale and Purchase of Real Property was acknowledged before me by means of [XX] physical presence or [___] online notarization this 1st day of April, 2025, by **Daniel Moore**, the Seller named in the foregoing Contract, who (*Notary, please check as applicable*): [_] took an oath or [_] did not take an oath; and who [_] is/are personally known to me or [X] has produced FLDL M600-164-60-005-0 as identification.

Barbara J. Abbate
Notary Public, State of Florida at Large
Printed Name, Commission Seal and Term Expiration Date

NOTARY PUBLIC STATE OF FLORIDA

BARBARA J. ABBATE
Commission # HH 090937
Expires April 26, 2025
Bonded Thru Budget Notary Services

FOR THE OPTION TO PURCHASE CONTRACT:

WITNESSES:

First Witness Signature Above, Printed Name Below:

Robin Fenwick

Second Witness Signature Above Printed Name Below:

Stephanie Di Pietrantonio

CITY OF PORT ORANGE

By: _____

Wayne Clark, City Manager

Date: April 1, 2025

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing Option to Purchase Contract was acknowledged before me by means of [XX] physical presence or [___] online notarization this 1st day of April, 2025, by Wayne Clark, the City Manager for the City of Port Orange, Florida, who (*Notary, please check as applicable)*: [_] took an oath or [_] did not take an oath; and who [X] is personally known to me or [_] has produced _____ as identification.

Notary Public, State of Florida at Large
Printed Name, Commission Seal and Term Expiration Date

NOTARY PUBLIC STATE OF FLORIDA
ROBIN L. FENWICK
Commission # HH 427199
Expires August 26, 2027

WITNESSES:

CONTRACT FOR SALE AND PURCHASE OF REAL PROPERTY:

PURCHASER:
CITY OF PORT ORANGE, FLORIDA,
a chartered municipal corporation

By:_____
Scott Stiltner, Mayor

_____
First Witness Signature Above, Printed Name Below:

_____

_____
First Witness Signature Above, Printed Name Below:

Attest:_____
Robin L. Fenwick, City Clerk

_____

Witnesses as to Both

Date: _____, 2025

STATE OF FLORIDA
COUNTY OF VOLUSIA

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

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

EXHIBIT "A"

STANDARDS FOR REAL ESTATE TRANSACTIONS

A. TITLE INSURANCE: The Title Commitment shall be issued by a Florida licensed title insurer agreeing to issue Buyer, upon recording of the deed to Buyer, an owner's policy of title insurance in the amount of the purchase price, insuring Buyer's marketable title to the Real Property, subject only to matters contained in Paragraph VII and those to be discharged by Seller at or before Closing. Marketable title shall be determined according to applicable Title Standards adopted by authority of The Florida Bar and in accordance with law. Buyer shall have 5 days from date of receiving the Title Commitment to examine it, and if title is found defective, notify Seller in writing specifying defect(s) which render title unmarketable. Seller shall have 30 days from receipt of notice to remove the defects, failing which Buyer shall, within 5 days after expiration of the 30 day period, deliver written notice to Seller either: (1) extending the time for a reasonable period not to exceed 120 days within which Seller shall use diligent effort to remove the defects; or (2) requesting a refund of deposit(s) paid which shall be returned to Buyer. If Buyer fails to so notify Seller, Buyer shall be deemed to have accepted the title as it then is. Seller shall, if title is found unmarketable, use diligent effort to correct defect(s) within the time provided. If, after diligent effort, Seller is unable to timely correct the defects, Buyer shall either waive the defects, or receive a refund of deposit(s), thereby releasing Buyer and Seller from all further obligations under this Contract. If Seller is to provide the Title Commitment and it is delivered to Buyer less than 5 days prior to Closing, Buyer may extend Closing so that Buyer shall have up to 5 days from date of receipt to examine same in accordance with this Standard.

B. PURCHASE MONEY MORTGAGE; SECURITY AGREEMENT TO SELLER: A purchase money mortgage and mortgage note to Seller shall provide for a 30 day grace period in the event of default if a first mortgage and a 15 day grace period if a second or lesser mortgage; shall provide for right of prepayment in whole or in part without penalty; shall permit acceleration in event of transfer of the Real Property; shall require all prior liens and encumbrances to be kept in good standing; shall forbid modifications of, or future advances under, prior mortgage(s); shall require Buyer to maintain policies of insurance containing a standard mortgagee clause covering all improvements located on the Real Property against fire and all perils included within the term "extended coverage endorsements" and such other risks and perils as Seller may reasonably require, in an amount equal to their highest insurable value; and the mortgage, note and security agreement shall be otherwise in form and content required by Seller, but Seller may only require clauses and coverage customarily found in mortgages, mortgage notes and security agreements generally utilized by savings and loan institutions or state or national banks located in the county wherein the Real Property is located. All Personal Property and leases being conveyed or assigned will, at Seller's option, be subject to the lien of a security agreement evidenced by recorded or filed financing statements or certificates of title. If a balloon mortgage, the final payment will exceed the periodic payments thereon.

C. SURVEY: Buyer, at Buyer's expense, within time allowed to deliver evidence of title and to examine same, may have the Real Property surveyed and certified by a registered Florida surveyor. If the survey discloses encroachments on the Real Property or that improvements located thereon encroach on setback lines, easements, lands of others or violate any restrictions, Contract covenants or applicable governmental regulations, the same shall constitute a title defect.

D. WOOD DESTROYING ORGANISMS: "Wood Destroying Organisms" (WDO) shall be deemed to include all wood destroying organisms required to be reported under the Florida Structural Pest Control Act, as amended. Buyer, at Buyer's expense, may have the Property inspected by a Florida Certified Pest Control Operator ("Operator") within 20 days after the Effective Date to determine if there is any visible active WDO infestation or visible damage from WDO infestation, excluding fences. If either or both are found, Buyer may within said 20 days (1) have cost of treatment of active infestation estimated by the Operator; (2) have all damage inspected and cost of repair estimated by an appropriately licensed contractor; and (3) report such cost(s) to Seller in writing. Seller shall cause the treatment and repair of all WDO damage to be made and pay the costs thereof up to the amount provided in Paragraph XII(a). If estimated costs exceed that amount, Buyer shall have the option of canceling this Contract by giving written notice to Seller within 20 days after the Effective Date, or Buyer may elect to proceed with the transaction and receive a credit at Closing equal to the amount provided in Paragraph XII(a). If Buyer's lender requires an updated WDO report, then Buyer shall, at Buyer's expense, have the opportunity to have the Property re-inspected for WDO infestation and have the cost of active infestation or new damage estimated and reported to Seller in writing at least 10 days prior to Closing, and thereafter, Seller shall cause such treatment and repair to be made and pay the cost thereof; provided, Seller's total obligation for treatment and repair costs required under both the first and second inspection shall not exceed the amount provided in Paragraph XII (a).

E. INGRESS AND EGRESS: Seller warrants and represents that there is ingress and egress to the Real Property sufficient for its intended use as described in Paragraph VII hereof and title to the Real Property is insurable in accordance with Standard A without exception for lack of legal right of access.

F. LEASES: Seller shall, at least 10 days before Closing, furnish to Buyer copies of all written leases and estoppel letters from each tenant specifying the nature and duration of the tenant's occupancy, rental rates, advanced rent and security deposits paid by tenant. If Seller is unable to obtain such letter from each tenant, the same information shall be furnished by Seller to Buyer within that time period in the form of a Seller's affidavit, and Buyer may thereafter contact tenant to confirm such information. If the terms of the leases differ materially from Seller's representations, Buyer may terminate this Contract by delivering written notice to Seller at least 5 days prior to Closing. Seller shall, at Closing, deliver and assign all original leases to Buyer.

G. LIENS: Seller shall furnish to Buyer at time of Closing an affidavit attesting to the absence, unless otherwise provided for herein, of any financing statement, claims of lien or potential lienors known to Seller and further attesting that there have been no improvements or repairs to the Real Property for 90 days immediately preceding date of Closing. If the Real Property has been improved or repaired within that time, Seller shall deliver releases or waivers of construction liens executed by all general contractors, subcontractors, suppliers and materialmen in addition to Seller's lien affidavit setting forth the names of all such general contractors, subcontractors, suppliers and materialmen, further affirming that all charges for improvements or repairs which could serve as a basis for a construction lien or a claim for damages have been paid or will be paid at the Closing of this Contract.

H. PLACE OF CLOSING: Closing shall be held in the county wherein the Real Property is located at the office of the attorney or other closing agent ("Closing Agent") designated by the party paying for title insurance, or, if no title insurance, designated by Seller.

I. TIME: Calendar days shall be used in computing time periods except periods of less than six (6) days, in which event Saturdays, Sundays and state or national legal holidays shall be excluded. Any time periods provided for herein which shall end on a Saturday, Sunday, or a legal holiday shall extend to 5:00 p.m. of the next business day. **Time is of the essence in this Contract.**

J. CLOSING DOCUMENTS: Seller shall furnish the deed, bill of sale, certificate of title, construction lien affidavit, owner's possession affidavit, assignments of leases, tenant and mortgagee estoppel letters and corrective instruments. Buyer shall furnish mortgage, mortgage note, security agreement and financing statements.

K. EXPENSES: Documentary stamps on the deed and recording of corrective instruments shall be paid by Seller. All costs of Buyer's loan (whether obtained from Seller or third party), including, but not limited to, documentary stamps and intangible tax on the purchase money mortgage and any mortgage assumed, mortgagee title insurance commitment with related fees, and recording of purchase money mortgage to Seller, deed and financing statements shall be paid by Buyer. Unless otherwise provided by law or rider to this Contract, charges for related closing services, title search, and closing fees (including preparation of closing statement), shall be paid by the party responsible for furnishing the title evidence in accordance with Paragraph V.

L. PRORATIONS; CREDITS: Taxes, assessments, rent, interest, insurance and other expenses of the Property shall be prorated through the day before Closing. Buyer shall have the option of taking over existing policies of insurance, if assumable, in which event premiums shall be prorated. Cash at Closing shall be increased or decreased as may be required by prorations to be made through day prior to Closing, or occupancy, if occupancy occurs before Closing. Advance rent and security deposits will be credited to Buyer. Escrow deposits held by mortgagee will be credited to Seller. Taxes shall be prorated based on the current year's tax with due allowance made for maximum allowable discount, homestead and other exemptions. If Closing occurs at a date when the current year's millage is not fixed and current year's assessment is available, taxes will be prorated based upon such assessment and prior year's millage. If current year's assessment is not available, then taxes will be prorated on prior year's tax. If there are completed improvements on the Real Property by January 1st of year of Closing, which improvements were not in existence on January 1st of prior year, then taxes shall be prorated based upon prior year's millage and at an equitable assessment to be agreed upon between the parties; failing which, request shall be made to the County Property Appraiser for an informal assessment taking into account available exemptions. A tax proration based on an estimate shall, at request of either party, be readjusted upon receipt of current year's tax bill.

M. (RESERVED - purposely left blank)

N. INSPECTION AND REPAIR: Seller warrants that the ceiling, roof (including the fascia and soffits), and exterior and interior walls, and foundation of the Property do not have any visible evidence of leaks, water damage, or structural damage and that dockage, seawalls, septic tank, pool, all appliances, mechanical items,

heating, cooling, electrical, plumbing systems, and machinery are in Working Condition. The foregoing warranty shall be limited to the items specified unless otherwise provided in an addendum. Buyer may inspect, or, at Buyer's expense, have a firm or individual specializing in home inspections and holding an occupational license for such purpose (if required), or by an appropriately licensed Florida contractor, make inspections of, those items within 20 days after the Effective Date. Buyer shall, prior to Buyer's occupancy but not more than 20 days after Effective Date, report in writing to Seller such items that do not meet the above standards as to defects. Unless Buyer timely reports such defects, Buyer shall be deemed to have waived Seller's warranties as to defects not reported. If repairs or replacements are required to comply with this Standard, Seller shall cause them to be made and shall pay up to the amount provided in Paragraph XII (b). Seller is not required to make repairs or replacements of a Cosmetic Condition unless caused by a defect Seller is responsible to repair or replace. If the cost for such repair or replacement exceeds the amount provided in Paragraph XII (b), Buyer or Seller may elect to pay such excess, failing which either party may cancel this Contract. If Seller is unable to correct the defects prior to Closing, the cost thereof shall be paid into escrow at Closing. For purposes of this Contract: (1) "Working Condition" means operating in the manner in which the item was designed to operate; (2) "Cosmetic Condition" means aesthetic imperfections that do not affect the Working Condition of the item, including, but not limited to: pitted marcite or other pool finishes; missing or torn screens; fogged windows; tears, worn spots, or discoloration of floor coverings, wallpaper, or window treatments; nail holes, scratches, dents, scrapes, chips or caulking in ceilings, walls, flooring, fixtures, or mirrors; and minor cracks in floors, tiles, windows, driveways, sidewalks, or pool decks; and (3) cracked roof tiles, curling or worn shingles, or limited roof life shall not be considered defects Seller must repair or replace, so long as there is no evidence of actual leaks or leakage or structural damage, but missing tiles will be Seller's responsibility to replace or repair.

O. RISK OF LOSS: If, after the Effective Date, the Property is damaged by fire or other casualty ("Casualty Loss") before Closing and cost of restoration (which shall include the cost of pruning or removing damaged trees) does not exceed 1.5% of the Purchase Price, cost of restoration shall be an obligation of Seller and Closing shall proceed pursuant to the terms of this Contract and if restoration is not completed as of Closing, restoration costs will be escrowed at Closing. If the cost of restoration exceeds 1.5% of the Purchase Price, Buyer shall either take the Property as is, together with the 1.5% or receive a refund of deposit(s) thereby releasing Buyer and Seller from all further obligations under this Contract. Seller's sole obligation with respect to tree damage by casualty or other natural occurrence shall be the cost of pruning or removal.

P. CLOSING PROCEDURE: The deed shall be recorded upon clearance of funds. If the title agent insures adverse matters pursuant to Section 627.7841, F.S., as amended, the escrow and closing procedure required by this Standard shall be waived. Unless waived as set forth above the following closing procedures shall apply: (1) all closing proceeds shall be held in escrow by the Closing Agent for a period of not more than 5 days after Closing; (2) if Seller's title is rendered unmarketable, through no fault of Buyer, Buyer shall, within the 5 day period, notify Seller in writing of the defect and Seller shall have 30 days from date of receipt of such notification to cure the defect; (3) if Seller fails to timely cure the defect, all deposits and closing funds shall, upon written demand by Buyer and within 5 days after demand, be returned to Buyer and, simultaneously with such repayment, Buyer shall return the Personal Property, vacate the Real Property and reconvey the Property to Seller by special warranty deed and bill of sale; and (4) if Buyer fails to make timely demand for refund, Buyer shall take title as is, waiving all rights against Seller as to any intervening defect except as may be available to Buyer by virtue of warranties contained in the deed or bill of sale.

Q. ESCROW: Any Closing Agent or escrow agent (collectively "Agent") receiving funds or equivalent is authorized and agrees by acceptance of them to deposit them promptly, hold same in escrow and, subject to clearance, disburse them in accordance with terms and conditions of this Contract. Failure of funds to clear shall not excuse Buyer's performance. If in doubt as to Agent's duties or liabilities under the provisions of this Contract, Agent may, at Agent's option, continue to hold the subject matter of the escrow until the parties hereto agree to its disbursement or until a judgment of a court of competent jurisdiction shall determine the rights of the parties, or Agent may deposit same with the clerk of the circuit court having jurisdiction of the dispute. An attorney who represents a party and also acts as Agent may represent such party in such action. Upon notifying all parties concerned of such action, all liability on the part of Agent shall fully terminate, except to the extent of accounting for any items previously delivered out of escrow. If a licensed real estate broker, Agent will comply with provisions of Chapter 475, F.S., as amended. Any suit between Buyer and Seller wherein Agent is made a party because of acting as Agent hereunder, or in any suit wherein Agent interpleads the subject matter of the escrow, Agent shall recover reasonable attorney's fees and costs incurred with these amounts to be paid from and out of the escrowed funds or equivalent and charged and awarded as court costs in favor of the prevailing party. The Agent shall not be liable to any party or person for misdelivery to Buyer or Seller of items subject to the escrow, unless such misdelivery is due to willful breach of the provisions of this Contract or gross negligence of Agent.

R. ATTORNEY'S FEES; COSTS: In any litigation, including breach, enforcement or interpretation, arising out of this Contract, the prevailing party in such litigation, which, for purposes of this Standard, shall include Seller, Buyer and any brokers acting in agency or nonagency relationships authorized by Chapter 475, F.S., as amended, shall be entitled to recover from the non-prevailing party reasonable attorney's fees, costs and expenses.

S. FAILURE OF PERFORMANCE: If Buyer fails to perform this Contract within the time specified, including payment of all deposits, the deposit(s) paid by Buyer and deposit(s) agreed to be paid, may be recovered and retained by and for the account of Seller as agreed upon liquidated damages, consideration for the execution of this Contract and in full settlement of any claims; whereupon, Buyer and Seller shall be relieved of all obligations under this Contract; or Seller, at Seller's option, may proceed in equity to enforce Seller's rights under this Contract. If for any reason other than failure of Seller to make Seller's title marketable after diligent effort, Seller fails, neglects or refuses to perform this Contract, Buyer may seek specific performance or elect to receive the return of Buyer's deposit(s) without thereby waiving any action for damages resulting from Seller's breach.

T. CONTRACT NOT RECORDABLE; PERSONS BOUND; NOTICE; COPIES: Neither this Contract nor any notice of it shall be recorded in any public records. This Contract shall bind and inure to the benefit of the parties and their successors in interest. Whenever the context permits, singular shall include plural and one gender shall include all. Notice and delivery given by or to the attorney or broker representing any party shall be as effective as if given by or to that party. All notices must be in writing and may be made by mail, personal delivery or electronic media. A legible facsimile or electronic (including "pdf") copy of this Contract and any signatures hereon shall be considered for all purposes as an original.

U. CONVEYANCE: Seller shall convey marketable title to the Real Property by statutory warranty, trustee's, personal representative's, or guardian's deed, as appropriate to the status of Seller, subject only to matters contained in Paragraph VII and those otherwise accepted by Buyer. Personal Property shall, at the request of Buyer, be transferred by an absolute bill of sale with warranty of title, subject only to such matters as may be otherwise provided for herein.

V. OTHER AGREEMENTS: No prior or present agreements or representations shall be binding upon Buyer or Seller unless included in this Contract. No modification to or change in this Contract shall be valid or binding upon the parties unless in writing and executed by the parties intended to be bound by it.

W. SELLER DISCLOSURE: There are no facts known to Seller materially affecting the value of the Property which are not readily observable by Buyer or which have not been disclosed to Buyer.

X. PROPERTY MAINTENANCE; PROPERTY ACCESS; REPAIR STANDARDS; ASSIGNMENT OF CONTRACTS AND WARRANTIES: Seller shall maintain the Property, including, but not limited to lawn, shrubbery, and pool in the condition existing as of Effective Date, ordinary wear and tear and Casualty Loss excepted. Seller shall, upon reasonable notice, provide utilities service and access to the Property for appraisal and inspections, including a walk-through prior to Closing, to confirm that all items of Personal Property are on the Real Property and, subject to the foregoing, that all required repairs and replacements have been made, and that the Property has been maintained as required by this Standard. All repairs and replacements shall be completed in a good and workmanlike manner, in accordance with all requirements of law, and shall consist of materials or items of quality, value, capacity and performance comparable to, or better than, that existing as of the Effective Date. Seller will assign all assignable repair and treatment contracts and warranties to Buyer at Closing.

Y. 1031 EXCHANGE: If either Seller or Buyer wish to enter into a like-kind exchange (either simultaneous with Closing or deferred) with respect to the Property under Section 1031 of the Internal Revenue Code ("Exchange"), the other party shall cooperate in all reasonable respects to effectuate the Exchange, including the execution of documents; provided (1) the cooperating party shall incur no liability or expense related to the Exchange and (2) the Closing shall not be contingent upon, nor extended or delayed by, such Exchange.

CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 5/20/2025

SUBJECT: (C7b) Approval of Amendment No. 1 to Task Authorization No. 9 to Stanley Consultants, Inc. (f/k/a Traffic Engineering Data Solutions, Inc.) for a time extension to finalize the design plans for the SJR2C Loop SUN Trail Project, remove Task Item 12 (Post-Design Services), and decrease Task Authorization No. 9 by $11,285.00.

DEPARTMENT: Community Development

GOAL: 1 - Public Safety
2 - Infrastructure
3 - Quality of Life

RECOMMENDED MOTION: Move to approve Amendment No. 1 to Task Authorization No.9 to Stanley Consultants, Inc. (f/k/a Traffic Engineering Data Solutions, Inc.) for a time extension to finalize the design plans for the SJR2C Loop SUN Trail Project, remove Task Item 12 (Post-Design Services) from Task Authorization No. 9, and decrease pricing by $11,285.00, from an amount of $309,707.08 to an amount not to exceed $298,422.08, and authorize the Mayor and City Clerk to sign all necessary documents.

SUMMARY: At its June 24, 2024 meeting, the City Council approved Change Order No. 5 to Traffic Engineering Data Solutions (n/k/a Stanley Consultants, Inc.) to Task Authorization No. 9 - design services associated with FDOT #439865 SJR2C Loop SUN Trail Project (Spruce Creek Road from south of Selin Circle to Herbert Street) (CIP #CD221). Change Order No. 5 provided additional time and funds to complete plans and environmental documentation required for submittal to the US Army Corps of Engineers (USACE). The need for Change Order No. 5 was due to a February 2024 federal court ruling vacating the Environmental Protection Agency's (EPA) December 2020 decision to allow the State of Florida to assume permitting authority for Section 404 of the Clean Water Act. As a result, the St. John's River Water Management District (SJRWMD) and the project design consultant advised the city that an alternate method to obtain an environmental permit would be to submit directly to USACE.

At the time Change Order No. 5 was approved, it was anticipated that the design schedule would need to be extended an additional 9 months to accommodate this additional permitting step with the USACE. The Florida Department of Transportation (FDOT) agreed to fund the costs of the additional consulting services required to submit to the USACE, and, in June 2024, the City Council approved a FDOT Supplemental Agreement for the state-funded grant for $20,690. No match by the city was required. Change Order No. 5 also extended the completion date for design services to February 28, 2025.

In March 2025, the USACE issued an environmental permit. Because of the extended permitting timeline, the project is anticipated to go out to bid in late May 2025, with construction anticipated to begin in late August 2025 and be completed in May 2026. The proposed Amendment to Task Authorization No. 9 will extend the timeframe the consultant has to complete Bid Phase Services and finalize the design plans as outlined in Task Authorization No. 9 until October 28, 2025, remove Task #12 (Limited Post Design Services) from Task Authorization No. 9., and decrease pricing by $11,285.00, from an amount of $309,707.08 to an amount not to exceed $298,422.08. A new Task Authorization with Stanley Consultants, Inc., also on this agenda, has been prepared to provide full post-design services throughout the construction phase of the project, which is anticipated to be completed by May 2026. No additional City funds are required for this Amendment.

PRESENTER: Tim Burman

ATTACHMENTS:

1.	Stanley Consultants, Inc. Amendment No 1 to Task Authorization No 9 Dated 061521	Stanley Consultants, Inc. Amendment No 1 to Task Authorization No 9 Dated 061521.pdf
2.	TRAFFIC ENGINEERING TA 9 SJR2C LOOP TRAIL	TRAFFIC ENGINEERING TA 9 SJR2C LOOP TRAIL.pdf
3.	TEDS Change Order 1 - Fully Executed	TEDS Change Order 1 - Fully Executed.pdf
4.	TEDS Change Order 2 - Fully Executed	TEDS Change Order 2 - Fully Executed.pdf
5.	TEDS Change Order 3 - Fully Executed	TEDS Change Order 3 - Fully Executed.pdf
6.	TEDS Change Order 4 - Fully Executed	TEDS Change Order 4 - Fully Executed.pdf
7.	TEDS Stanley Change Order 5 - Fully Executed	TEDS Stanley Change Order 5 - Fully Executed.pdf
8.	SCI 2025-05-07 - TA#09 Amendment #1	SCI 2025-05-07 - TA#09 Amendment #1.pdf
9.	EXECUTED TEDS Master Contract nka Stanley Consultants	EXECUTED TEDS Master Contract nka Stanley Consultants.pdf

Lisa Epstein	Created/Initiated - 4/29/2025
Tim Burman	Approved - 5/6/2025
Mark Simpson	Approved - 5/7/2025
Shannon Balmer	Approved - 5/8/2025
Wayne Clark	Final Approval - 5/8/2025

AMENDMENT NO. 1 TO TASK AUTHORIZATION NO. 9
OF MASTER CONTRACT FOR ENGINEERING SERVICES DATED FEBRUARY 14, 2017

THIS AMENDMENT NO. 1 ("2025 Amendment") 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 **STANLEY CONSULTANTS, INC. f/k/a TRAFFIC ENGINEERING DATA SOLUTIONS, INC.** ("Engineer"), an Iowa corporation, registered to transact business in Florida, with its principal place of business at 225 Iowa Avenue, Muscatine, Iowa 52761-3764. The City and the Contractor are collectively referred to herein as the "Parties."

WHEREAS, the Parties entered into a Master Contract for Engineering Services to provide Civil Engineering, Traffic Engineering and Transportation Planning, Landscape Architectural, Environmental and Planning Services, Geotechnical Engineering Services and related services for the City for preparation of a variety of projects ("Master"), pursuant to Request for Statement of Qualifications No. 16-32 ("RFSQ 16-32"), which has an initial term commencing on February 14, 2017 and continuing for a period of three (3) years or until either party provides the other party written notice of its intent to terminate the Contract, and which may be renewed upon written agreement of the Parties and appropriation by the City Council for up to two (2) additional two (2) year terms; and

WHEREAS, on the 15th day of June 2021, the Parties entered into Task Authorization No. 9 to the Master, for services relating to preparing design plans and permitting for two unbuilt portions of the SUN Trail St. Johns River-to-Sea Loop in Port Orange – SJR2C Loop Trail (Spruce Creek Road) from South of Selin Circle to Herbert Street (FPN 439865-3-34-01) ("Task Authorization"), with Task Items 1 through 10 to be completed no later than June 30, 2022, and Tasks Items 11 and 12 to be completed no later than September 30, 2023, in an amount not to exceed $190,317.08; and

WHEREAS, on the 15th day of December 2021, the Parties executed Change Order No. 1, increasing the amount of Task Authorization No. 9 by $2,000.00, from an amount of $190,317.08 to an amount not to exceed $192,317.08, for additional professional services to file for a General Permit with the Federal Department of Environmental Protection ("FDEP"), for clarification, a Notice to Proceed ("NTP") was issued for Task Items 1 through 10 on July 6, 2021; and

WHEREAS, on the 1st day of November 2022, the Parties executed Change Order No. 2, increasing the amount of Task Authorization No. 9 by $96,700.00, from an amount of $192,317.08 to an amount not to exceed $289,017.08, for additional professional services for the design of safety lighting and right-of-way or easement acquisition services, which also included adding Task Items 13 through 18, to be completed no later than September 30, 2023; and

WHEREAS, on the 19th day of September 2023, the Parties executed Change Order No. 3, changing time for Task Items 11 through 18 from September 20, 2023 to no later than January 31, 2024, with an NTP having been issued for Task Items 13 through 18 on January 19, 2023, for clarification, at this time no NTP has been issued for Task Items 11 and 12, this extension of time was to allow for the ongoing efforts for the acquisition of an easement located at 820 Oak Street; and

WHEREAS, on the 6th day of February 2024, the Parties executed Change Order No. 4, changing time for Task Items 11 through 18 from September 20, 2023 to July 31, 2024, an NTP was issued for Task Item 11 on January 16, 2024, at this time, no NTP has been issued for Task Item 12, this extension of time was to allow for additional time to complete the coordination of permitting with St. Johns River Water Management District ("SJRWMD") and utility providers, specifically Florida Power and Light ("FPL");and

WHEREAS, on the 4th day of June 2024, the Parties executed Change Order No. 5, increasing the amount of Task Authorization No. 9 by $20,690.00, from an amount of $289,017.08 to an amount not to

exceed $309,707.08, for the completion of the project design plans and permitting, which also includes the addition of Task Items 19 through 21 to be completed no later than February 28, 2025, and a change in time for Task Items 11 through 18 from July 31, 2024 to February 28, 2025, at this time, no NTP has been issued for Task Item 12, and Task Items 19 through 21; and

WHEREAS, the Parties desire to amend Task Authorization No. 9, to remove Task Item 12 relating to limited post-design services from Task Authorization No. 9 in its entirety; and

WHEREAS, the Parties desire to amend Task Authorization No. 9, by decreasing Task Authorization No. 9 by $11,285.00, from an amount of $309,707.08 to $298,422.08, as it relates to the removal of Task Item 12 in its entirety from Task Authorization No. 9; and

WHEREAS, the Parties desire to amend Change Order No. 5 of Task Authorization No. 9, to include a change in time for completion of Task Item 11 and Task Items 13 through 21, from February 28, 2025 to no later than October 28, 2025, for the completion of design plans and permitting for two unbuilt portions of the SUN Trail St. Johns River-to-Sea Loop in Port Orange – SJR2C Loop Trail; and

WHEREAS, the Port Orange City Council has determined that the execution of this 2025 Amendment 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:

The foregoing recitals are true and correct and incorporated herein.

1. A change in time for Task Item 11 and Task Items 13 through 21 of Task Authorization No. 9 is hereby amended. Task Item 11 and Task Items 13 through 21 of Task Authorization No. 9 shall be completed no later than October 28, 2025.

2. Task Item 12 of Task Authorization No. 9 relating to limited post-design services is hereby deleted in its entirety.

3. Pricing for Task Authorization No. 9 is hereby amended by decreasing Task Authorization No. 9 by $11,285.00, from an amount of $309,707.08 to $298,422.08, as it relates to the removal of Task Item 12 in its entirety from Task Authorization No. 9.

4. *Counterparts*. This 2025 Amendment may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. The delivery by facsimile or e-mail of an executed copy of this 2025 Amendment 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.

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 on the day and year stated hereinafter.

Witnesses:

STANLEY CONSULTANTS, INC.
f/k/a TRAFFIC ENGINEERING DATA SOLUTIONS, INC.

_____ By: _____

Printed Name: _____ 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: _____

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:_____

TASK AUTHORIZATION NO. 9
Master Contract for Engineering Services dated February 14, 2017
Between the City of Port Orange, Florida and Traffic Engineering Data Solutions, 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 **TRAFFIC ENGINEERING DATA SOLUTIONS, INC.**, a Florida corporation with its principal place of business at 80 Spring Vista Drive, DeBary Florida 32713-1821 ("Contractor"), and hereinafter collectively referred to as the "Parties," and is to that certain Master Contract for Engineering Services dated February 14, 2017, and any amendments thereto, hereinafter collectively referred to as the "Contract." The Parties, in exchange for the mutual covenants contained herein and in the Contract, agree as follows:

1. This Task Authorization expressly modifies the Contract and in the event of a conflict, the terms and conditions of this Task Authorization shall prevail.

2. The Engineering Specialist, Lisa Epstein, shall perform contract administration for this Task Authorization No. 9 and can be reached at (386) 506-5667.

3. In addition to all other terms and conditions contained in the Contract, Contractor shall provide services relating to preparing design plans and permitting for two unbuilt portions of the SUNTrail St. Johns River-to-Sea Loop in Port Orange - SJR2C Loop Trail (Spruce Creek Rd) from South of Selin Circle to Herbert St. (FPN 439865-3-34-01), as more particularly described in the Scope of Services attached hereto and incorporated herein as Task Authorization Exhibit "A."

4. Upon written Notice to Proceed from the City to the Contractor, the Contractor shall complete Task 1 through Task 10 as described in the attached Exhibit "A," no later than June 30, 2022. Upon written Notice to Proceed from the City to the Contractor, the Contractor shall complete Task 11 and Task 12 as described in the attached Exhibit "A," no later than September 30, 2023.

5. In return for the services identified above, the City agrees to compensate Contractor at the prices set forth in Exhibit "A" attached hereto and made a part hereof for all purposes, subject to a limit not to exceed $190,317.08. All payments shall be governed by the Local Government Prompt Payment Act as set forth in Sections 218.70 through 218.79, Florida Statutes, as amended.

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

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

Witnesses:

Sandy Council

Printed Name: Sandy Council

Eileen Wright

Printed Name: Eileen Wright

TRAFFIC ENGINEERING DATA SOLUTIONS, INC.

By: _____

Chris J. Walsh, PE Sr. VP of Engineering

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

Date: June 7, 2021

Witnesses:

Printed Name: Matt Jones

Printed Name: Jamie Miller

CITY OF PORT ORANGE

By: _____
Donald O. Burnette, City Mayor

Date: 6/15/2021

Witnesses:

Printed Name: Matt Jones

Printed Name: Jamie Miller

ATTEST:

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

Date: 6/15/2021

CITY OF PORT ORANGE 1867 FLORIDA

Traffic Engineering Data Solutions, Inc.

EXHIBIT A
SCOPE OF SERVICES

Contract:	Master Contract for Engineering Services dated February 14, 2017
Task Authorization No.:	09
Project Name:	SJR2C Loop Trail (Spruce Creek Rd) from South of Selin Circle to Herbert St (FPN 439865-3-34-01)
TEDS Project Number:	10962
Date:	April 26, 2021 *Revised May 19, 2021*

Traffic Engineering Data Solutions, Inc. (TEDS) is pleased to offer this scope of services to the City of Port Orange (CITY) for providing professional engineering services for the above referenced project.

PROJECT UNDERSTANDING

- The CITY furnished a copy of the Scope & Schedule for this trail project being completed through the Shared Use Nonmotorized (SUN) Trail Program, with state funding allocated under FPID 439865-3-34-01 to be administered by the Florida Department of Transportation (FDOT). Federal funding requirements do not apply.
- The CITY also furnished a copy of the Preliminary Engineering Report (PER) for FPID 439865-1-22-01, as prepared by FDOT's consultant in conducting the preceding Project Development & Environment (PD&E) study. The PER was finalized as of April 6, 2020.
- While the PER addresses a much longer corridor spanning through other cities, this proposal is being provided for design and permitting of a shared use path over a ±0.65 miles corridor alongside the Halifax Canal / Spruce Creek Road, extending from Selin Circle north to Herbert Street, within the City of Port Orange, Volusia County, Florida.
- The Spruce Creek Road Right-of-Way (R/W) is maintained by the CITY, though the Halifax Canal is maintained by Volusia County Public Works. There are no formal easement(s) or agreement(s) in place between the CITY and County related to maintenance of the canal. A R/W Use Permit will be required for the County's review and approval of the proposed trail improvements.
- As shown on the Concept Plans within the PER, several portions of the design segment corridor already contain existing trails (< 12' in width) that will remain in place, and no new trail facilities are required within these areas.
- FDOT is the maintenance authority for SR 421 (Dunlawton Avenue). Upgrades to the existing curb ramps may be necessary if determined to be non-compliant with current accessibility criteria, or if FDOT requires the existing shared curb ramps to be separated, thereby warranting relocation of existing crosswalks. Traffic signalization design is required for modification of the existing pedestrian signalization system. The CITY will provide copies of the plans to FDOT for review of proposed improvements, and it is anticipated that Driveway / Drainage Connection permits will not be required.
- The CITY provided copies of the Utility and Access Easement (ORB 5920, pgs 2088-2091) previously obtained over parcel Volusia County 631019000170 (presently owned by BLEDSOE & COLEMAN GENERAL) that provides the right to construct additional pedestrian facilities and perpetual use on the property. In addition, the CITY would like to explore the dedication of proposed R/W and/or easement(s) on the adjacent parcel 630901010080 (presently owned by JENZANO GROUP LLC), such that the trail could be maintained entirely on the east side of the Halifax Canal, in which case the proposed crossing of Spruce Creek Road just south of Selin Circle could be eliminated. The City will conduct all negotiations with existing private property owners required for dedication of proposed R/W and/or easements required to host the new trail, and the R/W support services included within this proposal are limited to basic surveying services intended to support the CITY's negotiations. A separate proposal will be provided for any additional R/W support services that may later be

determined to be desired, such as records research, abstracting, title opinions, legal, noticing, certified mailings, valuations, certified appraisals, assistance with negotiations, eminent domain, expert witness testimony, etc.

- FEMA FIRM Map 12127C0388J (effective September 29, 2017) indicates that that majority of the proposed trail corridor is located entirely within the Special Flood Hazard Area (SFHA) with a Base Flood Elevation (BFE) determined to be at elevation 5.00' NAVD 88 on the south of Dunlawton Ave. (SR 421), and at elevation 6.00' NAVD 88 on the north side of this roadway. Design will be based on constructing the proposed trail at or below existing grade in order to minimize impacts to existing flood plain, though compensating storage calculations will likely be required in areas where minimal amounts of fill is required.
- The proposed trail is routed across parcels 63040600008A and 630406000091, which are controlled by the CITY. The preferred alternative from the PD&E prescribes approximately 300' of boardwalk on these parcels in order to minimize impacts to existing wetlands located on these parcels. For maintenance reasons, the CITY desires the use of wood decking on boardwalks.
- Based on preliminary review, it is anticipated that the subject wetland would be non-jurisdictional under Section 404 of the Clean Water Act, such that required permitting includes only submitting a No Permit Required Verification Request to the Florida Department of Environmental Protection (FDEP). In the event the wetlands are deemed jurisdictional under this regulation, and federal authorization is necessary, a separate proposal will be provided for any such services required.
- Multi-use recreational paths less than 14' in width typically qualify for exemption from Environmental Resource Permit from the St. Johns River Water Management District (SJRWMD), unless there is work in, on, or over wetlands or other surface waters other than drainage ditches constructed in uplands, or unless they are located with previously permitted area(s). The PER did not contain any discussion of historical ERP's affected by the proposed trail construction, but under ERP Series 29869, it appears an original ERP and five (5) subsequent modifications were issued to the CITY for roadway drainage projects located within close proximity to the project, such that at least one (1) ERP modification will be required. There are numerous documents of record on file with SJRWMD which have not been fully reviewed at the time of preparation of this proposal, so the full extent of modification that may be required to the previous permit(s) is not presently known. However, given that the trail is to be constructed at existing grade in all locations other than boardwalk, it is presently anticipated that no drainage analysis will be required for this project, including but not limited to pollutant loading, treatment, attenuation, HGL analysis, spread calculations, etc.
- Based on the PER, protected species impacts are not anticipated. A review of the proposed trail corridor will be conducted with preliminary mapping of encountered protected species or habitats, but surveying, agency coordination, and/or permitting of protected species is not included in this proposal, as those services are not anticipated to be required.
- The two (2) parcels controlled by the CITY contain numerous existing trees. Tree survey information is necessary in these areas to ensure the proposed trail alignment minimizes impacts to existing trees, while at same time adhering to required design criteria as set forth in the PER. The CITY will be responsible for confirming tree species surveyed and evaluating the quality and/or health of trees as it relates to their removal or preservation.
- Given the shallow nature of excavation required for proposed trail construction, only minor adjustment of existing utilities is anticipated to be required. Obtaining Utility Work Schedule (UWS) information from the UAO's is not anticipated to be required. Subsurface Utility Engineering (SUE) including utility locates is not included in this proposal as it is not expected to be required, and the CITY will provide any such services that may later be determined to be required.
- Geotechnical and structural engineering services included in this agreement are limited to that required for the proposed trail and boardwalk. However, no other geotechnical or structural engineering design services are expected to be required for other project elements, such as retaining walls or box culverts, and therefore those services are not included in this agreement at this time.
- Pursuant to the CITY's prior coordination with FDOT, cultural resources assessment and contamination screening services are not included in this agreement, as they are not expected to be required.
- Landscape architecture, hardscape design, and irrigation design are not required in this project.

- The PER vaguely indicated that lighting along the trails should be given consideration, and lighting improvements were also referenced in the Scope & Schedule. However, lighting design services are not included in this proposal at this time.

SCOPE OF SERVICES

Task 1 – Project Management & Administration

TEDS will complete administrative procedures intended to aid in the successful management of the project, including the following services:

- Schedule, prepare for and attend a kickoff meeting with the CITY, FDOT and the County present, with preparation of meeting minutes
- Preparation of project schedule, as well as update(s) thereto
- General coordination with the CITY to discuss project issues or provide status updates on current progress
- Administration of the design contract through completion of the project, including monthly invoicing
- Initial setup of sub-consultant contracts and administration, including monthly invoicing
- Prepare for and attend a City Council meeting to address questions regarding the project design

Task 2 – Surveying

TEDS will retain PEC Surveying and Mapping, LLC (PEC) to provide the surveying services as described in their letter proposal No. PS16805r-TEDS dated April 26, 2021, a copy of which has been attached to this proposal.

Task 3 – Environmental Resources & Permitting

TEDS will retain Terracon Consultants, Inc. (Terracon) to provide the environmental services described in their letter proposal No. PEQ217222 dated May 6, 2021, a copy of which has been attached to this proposal. More specifically, this includes the work described in the following sections of the proposal:

- 2.0 ENVIRONMENTAL RESOURCES REPORT
- 3.0 ENVIRONMENTAL PERMITTING

Task 4 – Geotechnical Engineering

TEDS will retain Terracon Consultants, Inc. (Terracon) to provide the geotechnical engineering services described in their letter proposal No. PEQ217222 dated April 16, 2021, a copy of which has been attached to this proposal. More specifically, this includes the work described in the following section of the proposal:

- 4.0 GEOTECHNICAL SERVICES

Task 5 – Design Development

TEDS will provide the following services to address the critical roadway design elements for the proposed trail improvements:

- Obtain and review record plan information that may be on file with the CITY, Volusia County, or SJRWMD, and reference to project CAD files for analyses relevant to project design
- Process aerial photographs or other supporting base map files or imagery, such as GIS data, quad maps, FEMA maps, etc., such that it can be referenced to project CAD files for analyses relevant to project design
- Conduct field review of project corridor and obtain photographs of existing conditions
- Review the completed survey
- Develop an alignment for the proposed trail improvements and typical section(s) based on avoidance and/or minimization of impacts to existing elements, such as trees, utilities, etc.

- Assess profile along centerline of trail to ensure accessible slopes (*not to be presented in plans*)
- Assess existing drainage basinology and proposed grading needed to maintain existing drainage patterns
- Assess minor adjustments to existing drainage structures that may be required
- Calculate and report earthwork by section using average end area method (*in addition to 3-D earthwork completed via grading models*)
- Assess relocation and/or modification of existing signage and pavement markings within the right of way, as well as any proposed signage / pavement markings that may be necessary

Task 6 – Roadway Plans - **Approximately 0.65 mile corridor**

TEDS will prepare the following roadway construction plans for the project:

- *Key Sheet* (1 sheet)
- *Summary of Pay Items* (1 sheet)
- *Signature Sheet* (1 sheet)
- *Drainage Map (1"=200' scale)* (1 sheet)
- *General Notes* (1 sheet)
- *Project Layout* (1 sheet)
- *Project Control* (1 sheet) – *based on information provided by surveyor*
- *Typical Section* (2 sheets)
- *Roadway Plan (1"=40' scale)* (6 sheets) – *minor utility adjustments to be shown on these sheets*
- *Bridge Plan & Profile (1"=40' scale)* (1 sheet)
- *Cross-Sections* (10 sheets) – *100' intervals with roadway borings depicted (assume 20 cross-sections)*
- *Construction Details* (1 sheet)
- *Traffic Control Plans* (2 sheets) – *FDOT Standard Plans only*
- *Stormwater Pollution Prevention Plan (SWPPP) Notes* (1 sheet) – *with notes to describe erosion control measures necessary for the CITY's contractor to maintain compliance with the National Pollutant Discharge Elimination System (NPDES) program during construction*
- *Erosion Control Plans (1"=40' scale)* (3 sheets) – *double plan windows*
- *Signing & Pavement Marking Plans (1"=40' scale)* (3 sheets) – *double plan windows*

Design provided by TEDS will be based on the standard practices and publications utilized by the FDOT, including the FDOT Design Manual (FDM), the Florida Greenbook, Standard Plans, Standard Specifications, the Utility Accommodation Manual (UAM), etc. Preliminary roadway plans will be prepared and provided to the CITY for their initial negotiation(s) of proposed R/W and/or easements with private property owners, as necessary to maintain the trail east of the Halifax Canal. The roadway plans will be updated based on the outcome of those negotiations and will be formally prepared for progress review by the CITY and FDOT at 60%, and 90% levels of completion, along with an Engineer's Opinion of Probable Costs (EOPC).

Task 7 – Traffic Signal Design

TEDS shall prepare a signed and sealed set of traffic signal plans for the modification of the traffic signal at the intersection of SR 421 (Dunlawton Avenue) and Spruce Creek Road suitable for permitting, bidding and construction. The plans shall be prepared to Volusia County/FDOT standards. The tasks involved in this process include design of the traffic signal modifications, submission of the preliminary design for review and finalization of design plans including the incorporation of appropriate design review comments. Final plans will be prepared at a scale of 1" = 40'. It is understood that the plans will be a component set of the overall roadway plans for the trail project. The design tasks are detailed on the following page:

Task 7.1 – Data Collection

TEDS shall obtain a surveyed base plan, signed and sealed by a surveyor duly registered in the State of Florida, depicting existing and proposed conditions, including above ground and below ground utilities, suitable for preparing

the traffic signal design. Survey coverage shall include the turn lanes and tapers for the intersecting roadways but shall not be less than 150 feet along each leg of the intersection. The base plan shall be transmitted to TEDS in both hard copy and electronic format at a scale of 1" = 40'. The base plan shall indicate the edge of pavement, lane utilization including pavement markings, any medians or sidewalks within the intersection, drainage appurtenances (inlets, ditches, storm drain pipes showing size and direction of run), manholes and the presence of any known above or below ground utilities.

Task 7.2 – Initial Plan Preparation

TEDS shall prepare a traffic signalization base plan from this data. TEDS' design shall include sufficient vehicular detection modifications as required for semi-actuated control as well as pedestrian feature modifications. TEDS will also conduct one (1) field review to review existing field conditions and discuss preliminary modifications to the signal with the County.

TEDS shall provide the traffic signal plan package to include the following:

- Key Sheet (1 sheet) identifying the project name and location, Engineer of Record, the date of the design plan preparation, appropriate standards and specifications identification, revision block and plan sheet table of contents;
- General Notes Sheet (1 sheet) containing traffic signal design and installation notes standard to The COUNTY;
- Tabulation of Quantities Sheet (1 sheet) identifying the pay item descriptions and quantities of the traffic signal components, identifying appropriate general design notes pertaining to the traffic signal design;
- Traffic Signal Plans (1 sheet) presenting the intersection layout at the intersection in plan view, appropriate traffic signal design components including FDOT Pay Item Numbers, and notes pertaining to the operation of the new traffic signal and removal of the existing traffic signal items;
- Signal Details Sheet (1 sheet) presenting zoomed in view of the details in the quadrants of the intersection.

TEDS shall provide a digital copy of the submittal to the CITY/Volusia County/FDOT for review and comment.

Task 7.3 – Final Design Plan Preparation

Upon receipt of agency comments, TEDS shall address each comment in writing and shall discuss the appropriate revisions to the plans with the agency staff. Once the comments have been addressed, TEDS shall submit a revised draft traffic signal plan package for final review and comment. Once these comments are received, TEDS shall address same and shall provide to the CITY one (1) electronic plan set and five (5) signed and sealed plan sets. TEDS shall repeat the review and response to comments until final resolution with the agencies to obtain final signal plan approval.

Task 8 – Structural Engineering

TEDS will retain Florida Bridge and Transportation, Inc. (FBT) to provide the structural engineering services related to the proposed boardwalk as described in their letter proposal for FBT Project No. 21-31.01 dated April 22, 2021, a copy of which has been attached to this proposal.

Task 9 – Utility Coordination

TEDS will coordinate a Sunshine 811 design ticket for the project in an attempt to identify any Utility Agency Owner's (UAO's) that may currently be using the right of way and reach out to them to confirm the appropriate representatives. Upon completion of 60% plans, TEDS will transmit courtesy copies to the utility companies for their review and comment on the accuracy of utilities shown in the plan, conflicts that may exist between existing utilities and proposed construction, and minor relocation(s) that may be required. Minor adjustments to be designed and constructed by the UAO's will be graphically depicted on the plan sheets.

Task 10 – Agency Permitting

At 60% and 90% levels of completion, TEDS will submit copies of the plans and other pertinent documents to the CITY for review. Once comments have been received from the CITY and FDOT, TEDS will revise the plans and respond to comments. In addition, TEDS will prepare the following permit application packages for submittal to the agencies listed below:

A. SJRWMD – Modification for ERP Series 29869
B. Volusia County – R/W Use Permit

Task 11 – Bid Phase Services

As Engineer of Record for the project, TEDS will provide support to the CITY during the bid phase, including the following services:

- Review of draft bid documents prepared by the CITY's Purchasing Division
- Prepare technical specifications for the project, with support from the sub-consultants as may be necessary, and provide copies for insertion into the CITY's bid documents (through FDOT Specs on the Web)
- Prepare a project description narrative
- Prepare a bid sheet
- Revise documents per comments received from the CITY and/or FDOT
- Prepare for and attend a pre-bid meeting
- Answer questions during the bid process
- Prepare bid tabulation and assist with selection of a contractor

Task 12 – Limited Post-Design Services

As Engineer of Record for the project, TEDS will provide support to the CITY in administering the construction contract through completion of the project construction, including the following limited post-design services:

- Attendance at a pre-construction meeting
- Provide review of civil-related shop drawing submittals for approval
  (*to be received from the contractor in one (1) single package*)
- Attend up to five (5) meetings at the CITY or the project site for general coordination or to complete limited construction observation
- Review and respond to up to five (5) Requests for Information (RFI's) during construction
- Provide up to 20 hours of general construction administration assistance, such as review of change order(s)
- Review As-Built surveys provided by contractor with overlay of CAD files on design
- Prepare certification package for submittal to Volusia County for R/W Use Permit close-out
- Prepare a *MSSW/Stormwater As-Built Certification By A Registered Professional Engineer* for submittal to the SJRWMD for permit closure
- Prepare Engineer's Certification of Completion
  (*to serve as Exhibit C to State Funded Grant Agreement with FDOT*)

Deliverables: Plans for this project will be developed in English units and formatted for printing on 11"x17" sheets at the scales noted in the individual tasks above. TEDS will provide PDF's of the plans throughout progress completion, and up to (10) sets of deliverables once they have been finalized, for bidding or construction.

FEES

TEDS shall conduct the work in the tasks described above for the lump sum fees indicated below:

Description	Fee
Task 1 – Project Management & Administration	**$9,135.00**
Task 2 – Surveying	**$51,200.00**
Task 2.1 – Right-of-Way Surveys	*$7,900.00*
Task 2.2 – Baseline Survey	*$3,000.00*
Task 2.3 – Bench Levels	*$4,000.00*
Task 2.4 – Intersection Survey	*$4,500.00*
Task 2.5 – Cross-Sections	*$10,300.00*
Task 2.6 – City Parcels - Boundary Topographic and Tree Location Surveys	*$9,250.00*
Task 2.7 – Jenzano Corridor Topographic Survey	*$4,000.00*
Task 2.8 – Sketch of Legal Description of Jenzano Trail Easement	*$750.00*
Task 2.9 – Jenzano Parent Parcel Eminent Domain Survey	*$7,500.00*
Task 3 – Environmental Resources & Permitting	**$12,000.00**
Task 4 – Geotechnical Engineering	**$14,000.00**
Task 5 – Design Development	**$14,460.00**
Task 6 – Roadway Plans	**$22,480.00**
Task 7 – Traffic Signal Design	**$10,460.00**
Task 8 – Structural Engineering	**$19,500.00**
Task 9 – Utility Coordination	**$4,725.00**
Task 10 – Agency Permitting	**$14,625.00**
Task 11 – Bid Phase Services	**$4,575.00**
Task 12 – Limited Post-Design Services	**$11,285.00**
Direct Expenses	**$1,872.08**
Total	**$190,317.08**

An estimate of man-hours and expenses is provided on the following pages.

CITY OF PORT ORANGE
MAN-HOUR ESTIMATE
May 19, 2021

TEDS PROJECT No.: 10962
CONTRACT DESCRIPTION: Master Contract for Engineering Services (February 14, 2017)
PRIME CONSULTANT: Traffic Engineering Data Solutions, Inc.

TASK AUTHORIZATION No.: 09
PROJECT DESCRIPTION: SJR2C Loop Trail (Spruce Creek Rd) from South of Selin Circle to Herbert St (FPN 439865-3-34-01)
ESTIMATE PREPARED BY: Mikal R. Hale, P.E.

ACTIVITY	Chief Engineer / Vice President		Engineer		Engineer Intern		Sr. Designer		Senior Technician		Admin. Assistant		TOTAL		
	Rate/Hr:	$180.00	Rate/Hr:	$115.00	Rate/Hr:	$85.00	Rate/Hr:	$100.00	Rate/Hr:	$60.00	Rate/Hr:	$65.00			
	Man Hours	Cost by Pos & Act	Man Hours	Cost by Pos & Act	Man Hours	Cost by Pos & Act	Man Hours	Cost by Pos & Act	Man Hours	Cost by Pos & Act	Man Hours	Cost by Pos & Act	Man-hours By Activity	Activity Cost	Avg. Hourly Rate
Task 1 – Project Management & Administration	**40.0**	**7,200.00**	**0.0**	**0.00**	**9.0**	**765.00**	**0.0**	**0.00**	**0.0**	**0.00**	**18.0**	**1,170.00**	**67.0**	**9,135.00**	**136.34**
Prepare for / attend kickoff meeting / minutes	4.0				4.0								8.0		
Prepare project schedule / updates	5.0				2.0								7.0		
General coordination / progress status updates	5.0				3.0								8.0		
Administration of design contract / monthly invoicing	12.0										6.0		18.0		
Initial setup & admin of sub-contracts / monthly invoicing	10.0										12.0		22.0		
Prepare for / attend City Council meeting	4.0												4.0		
Task 5 – Design Development	**14.0**	**2,520.00**	**41.0**	**4,715.00**	**85.0**	**7,225.00**	**0.0**	**0.00**	**0.0**	**0.00**	**0.0**	**0.00**	**140.0**	**14,460.00**	**103.29**
Obtain and review record plans / trace for insertion	2.0		10.0		15.0								27.0		
Process GIS data (aerials, FEMA, LIDAR, parcels, etc.)			5.0		10.0								15.0		
Conduct field review / site photos	3.0				3.0								6.0		
Review completed survey	1.0		1.0		3.0								5.0		
Develop alignment & typical sections	2.0		10.0		20.0								32.0		
Assess trail profile	2.0		5.0		10.0								17.0		
Assess drainage basinology & minor drainge structure mods	2.0		5.0		10.0								17.0		
Earthwork / average end area calcs	1.0		2.0		8.0								11.0		
Assess S&PM modifications	1.0		3.0		6.0								10.0		
Task 6 – Roadway Plans	**36.0**	**6,480.00**	**50.0**	**5,750.00**	**110.0**	**9,350.00**	**9.0**	**900.00**	**0.0**	**0.00**	**0.0**	**0.00**	**205.0**	**22,480.00**	**109.66**
Key Sheet (1 sheet)	1.0				3.0								4.0		
Summary of Pay Items (1 sheet)	1.0				5.0		2.0						8.0		
Signature Sheet (1 sheet)	1.0				1.0								2.0		
Drainage Map (1"=200' scale) (1 sheet)	2.0		2.0		10.0		2.0						16.0		
General Notes (1 sheet)	2.0		2.0										4.0		
Project Layout (1 sheet)					3.0								3.0		
Project Control (1 sheet)	1.0				3.0								4.0		
Typical Section (2 sheets)	2.0		2.0		2.0								6.0		
Roadway Plan (1"=40' scale) (6 sheets)	5.0		20.0		25.0								50.0		
Bridge Plan & Profile (1"=40' scale) (1 sheet)	5.0		5.0		8.0								18.0		
Cross-Sections (10 sheets)	2.0		15.0		10.0								27.0		
Construction Details (1 sheet)	1.0		1.0		2.0								4.0		
Traffic Control Plans (2 sheets) – FDOT Standard Plans			1.0		2.0								3.0		
SWPPP Notes (1 sheet)	1.0		1.0		3.0								5.0		
Erosion Control Plans (1"=40' scale) (3 sheets)			1.0		5.0								6.0		
S&PM Plans (1"=40' scale) (3 sheets)	3.0				10.0		5.0						18.0		
Engineer's Opinion of Probable Costs (60%, 90%, & Final)	3.0				18.0								21.0		
QA/QC (60%, 90%, & Final)	6.0												6.0		
													0.0		
Task 7 – Traffic Signal Design	**16.0**	**2,880.00**	**12.0**	**1,380.00**	**0.0**	**0.00**	**62.0**	**6,200.00**	**0.0**	**0.00**	**0.0**	**0.00**	**90.0**	**10,460.00**	**116.22**
Initial Plans Package	8.0		8.0				50.0						66.0		
Field Meeting	4.0						4.0						8.0		
Final Plans Package	4.0		4.0				8.0						16.0		

CITY OF PORT ORANGE
MAN-HOUR ESTIMATE
May 19, 2021

TEDS PROJECT No.: 10962
CONTRACT DESCRIPTION: Master Contract for Engineering Services (February 14, 2017)
PRIME CONSULTANT: Traffic Engineering Data Solutions, Inc.

TASK AUTHORIZATION No.: 09
PROJECT DESCRIPTION: SJR2C Loop Trail (Spruce Creek Rd) from South of Selin Circle to Herbert St (FPN 439865-3-34-01)
ESTIMATE PREPARED BY: Mikal R. Hale, P.E.

ACTIVITY	Chief Engineer / Vice President Rate/Hr: $180.00		Engineer Rate/Hr: $115.00		Engineer Intern Rate/Hr: $85.00		Sr. Designer Rate/Hr: $100.00		Senior Technician Rate/Hr: $60.00		Admin. Assistant Rate/Hr: $65.00		TOTAL		
	Man Hours	Cost by Pos & Act	Man Hours	Cost by Pos & Act	Man Hours	Cost by Pos & Act	Man Hours	Cost by Pos & Act	Man Hours	Cost by Pos & Act	Man Hours	Cost by Pos & Act	Man-hours By Activity	Activity Cost	Avg. Hourly Rate
Task 9 – Utility Coordination	**4.0**	**720.00**	**6.0**	**690.00**	**39.0**	**3,315.00**	**0.0**	**0.00**	**0.0**	**0.00**	**0.0**	**0.00**	**49.0**	**4,725.00**	**96.43**
811 Design Ticket					1.0								1.0		
Confirm representatives					5.0								5.0		
Prepare & send notification e-mails with plans	1.0				8.0								9.0		
Adjust location of existing utilities per UAO markups	2.0		3.0		20.0								25.0		
Depict relocations by UAO's per conflicts (if applicable)	1.0		3.0		5.0								9.0		
Task 10 – Agency Permitting	**16.0**	**2,880.00**	**43.0**	**4,945.00**	**80.0**	**6,800.00**	**0.0**	**0.00**	**0.0**	**0.00**	**0.0**	**0.00**	**139.0**	**14,625.00**	**105.22**
Submit 60% plans to City & FDOT	1.0		2.0		2.0								5.0		
Review comments and revise plans	3.0		15.0		25.0								43.0		
Submit 90% plans to City & FDOT	1.0		2.0		2.0								5.0		
Review comments and revise plans	3.0		10.0		20.0								33.0		
Submit FINAL plans to City & FDOT	1.0		2.0		2.0								5.0		
Prepare & submit SJRWMD ERP Modification	3.0		5.0		10.0								18.0		
Review comments and revise plans	2.0		3.0		15.0								20.0		
Prepare & submit County R/W Use Permit	1.0		2.0		2.0								5.0		
Review comments and revise plans	1.0		2.0		2.0								5.0		
Task 11 – Bid Phase Services	**12.0**	**2,160.00**	**21.0**	**2,415.00**	**0.0**	**0.00**	**0.0**	**0.00**	**0.0**	**0.00**	**0.0**	**0.00**	**33.0**	**4,575.00**	**138.64**
Review draft bid docs (by City)	3.0		3.0										6.0		
Prepare Technical Specifications	1.0		3.0										4.0		
Prepare project description & bid sheet	1.0		2.0										3.0		
Revisions per City & FDOT	1.0		5.0										6.0		
Attend pre-bid meeting	3.0												3.0		
Answer bid questions	1.0		3.0										4.0		
Prepare bid tabulation	2.0		5.0										7.0		

CITY OF PORT ORANGE
MAN-HOUR ESTIMATE

May 19, 2021

TEDS PROJECT No.: 10962
TASK AUTHORIZATION No.: 09
CONTRACT DESCRIPTION: Master Contract for Engineering Services (February 14, 2017)
PROJECT DESCRIPTION: SJR2C Loop Trail (Spruce Creek Rd) from South of Selin Circle to Herbert St (FPN 439865-3-34-01)
PRIME CONSULTANT: Traffic Engineering Data Solutions, Inc.
ESTIMATE PREPARED BY: Mikal R. Hale, P.E.

ACTIVITY	Chief Engineer / Vice President		Engineer		Engineer Intern		Sr. Designer		Senior Technician		Admin. Assistant		TOTAL		
	Rate/Hr:	$180.00	Rate/Hr:	$115.00	Rate/Hr:	$85.00	Rate/Hr:	$100.00	Rate/Hr:	$60.00	Rate/Hr:	$65.00			
	Man Hours	Cost by Pos & Act	Man Hours	Cost by Pos & Act	Man Hours	Cost by Pos & Act	Man Hours	Cost by Pos & Act	Man Hours	Cost by Pos & Act	Man Hours	Cost by Pos & Act	Man-hours By Activity	Activity Cost	Avg. Hourly Rate
Task 12 – Limited Post-Design Services	**31.0**	**5,580.00**	**40.0**	**4,600.00**	**13.0**	**1,105.00**	**0.0**	**0.00**	**0.0**	**0.00**	**0.0**	**0.00**	**84.0**	**11,285.00**	**134.35**
Attend pre-con meeting	3.0												3.0		
Shop drawing review	2.0		8.0										10.0		
Attend (5) meetings at City	10.0		5.0										15.0		
Review and respond to (5) RAI's	2.0		3.0		5.0								10.0		
General construction administration	10.0		20.0										30.0		
Review As-Builts / overlay CAD files on design	1.0		1.0		2.0								4.0		
Certification package for Volusia County R/W Use	1.0		1.0		2.0								4.0		
Certification package for SJRWMD ERP Mod	1.0		1.0		2.0								4.0		
Engineer's Certification of Completion for FDOT	1.0		1.0		2.0								4.0		
TOTALS	**169.0**	**30,420.00**	**213.0**	**24,495.00**	**336.0**	**28,560.00**	**71.0**	**7,100.00**	**0.0**	**0.00**	**18.0**	**1,170.00**	**586.0**	**91,745.00**	**156.56**

TEDS LABOR		**$91,745.00**
EXPENSES *(Refer to backup provided on the following page)*		
Sub-Consultant Fees		
I. SUB-CONSULTANT FEES		**$96,700.00**
Direct Expenses		
II. REPRODUCTION		**$52.80**
III. MILEAGE / TRAVEL		**$629.28**
IV. PERMIT REVIEW FEES		**$1,190.00**
V. SHIPPING / POSTAGE		**$0.00**
	Sub-Total Direct Expenses	**$1,872.08**
	SUB-TOTAL EXPENSES	**$98,572.08**
TOTAL LUMP SUM CONTRACT AMOUNT		**$190,317.08**

CITY OF PORT ORANGE
EXPENSES
May 19, 2021

TEDS PROJECT No.: 10962
CONTRACT DESCRIPTION: Master Contract for Engineering Services (February 14, 2017)

TASK AUTHORIZATION No.: 09
PROJECT DESCRIPTION: SJR2C Loop Trail (Spruce Creek Rd) from South of Selin Circle to Herbert St (FPN 439865-3-34-01)

PRIME CONSULTANT: Traffic Engineering Data Solutions, Inc.

ESTIMATE PREPARED BY: Mikal R. Hale, P.E.

I. SUB-CONSULTANT FEES

	Sub-Consultant	Description of Services	Fee
a)	PEC Surveying and Mapping, LLC	Task 2.1 – Right-of-Way Surveys	$7,900.00
b)	PEC Surveying and Mapping, LLC	Task 2.2 – Baseline Survey	$3,000.00
c)	PEC Surveying and Mapping, LLC	Task 2.3 – Bench Levels	$4,000.00
d)	PEC Surveying and Mapping, LLC	Task 2.4 – Intersection Survey	$4,500.00
e)	PEC Surveying and Mapping, LLC	Task 2.5 – Cross-Sections	$10,300.00
f)	PEC Surveying and Mapping, LLC	Task 2.6 – City Parcels - Boundary Topographic and Tree Location Surveys	$9,250.00
g)	PEC Surveying and Mapping, LLC	Task 2.7 – Jetzano Corridor Topographic Survey	$4,000.00
h)	PEC Surveying and Mapping, LLC	Task 2.8 – Sketch of Legal Description of Jetzano Trail Easement	$750.00
i)	PEC Surveying and Mapping, LLC	Task 2.9 – Jetzano Parent Parcel Eminent Domain Survey	$7,500.00
j)	Terracon Consulting, Inc.	Task 3 – Environmental Resources & Permitting	$12,000.00
k)	Terracon Consulting, Inc.	Task 4 – Geotechnical Engineering	$14,900.00
l)	Florida Bridge and Transportation, Inc.	Task 8 – Structural Engineering	$19,500.00
		Totals	**$96,700.00**

II. REPRODUCTION

Contract Rate

Black / White:	8.5" x 11"	$0.10 / sheet	Color:	8.5" x 11"	$1.20 / sheet
	11" x 17"	$0.20 / sheet		11" x 17"	$2.00 / sheet
	24" x 36"	$3.00 / sheet		24" x 36"	$20.00 / sheet

Job Estimate

	Number of Sheets							
	Black / White			Color				
Document Description	8.5" x 11"	11" x 17"	24" x 36"	8.5" x 11"	11" x 17"	24" x 36"	Number of Sets	Cost
a) Construction Plans - FINAL Submittal		56			1		4	$52.80
						Total Reproduction Costs		**$52.80**

III. MILEAGE / TRAVEL

Contract Rate 0.57 / mile (Current Federal Rate)

	Reason for Trip / Destination	Distance / Mileage (round trip)	Number of Trips	Cost
a)	Kickoff meeting / City Hall	64	1	$36.48
b)	City Council / City Hall	64	1	$36.48
c)	Coordination meetings / City Hall	64	3	$109.44
d)	Field review / project site	66	1	$75.24
e)	Pre-bid meeting / City Hall	64	1	$72.96
f)	Pre-con meeting / City Hall	64	1	$72.96
g)	Construction observation / project site	66	2	$150.48
h)	Final walk-through / project site	66	1	$75.24
		Total Mileage / Travel Costs		**$629.28**

IV. PERMIT REVIEW FEES

Contract Rate Cost

	Description	Estimated Cost	
a)	SJRWMD Major Mod to ERP	$1,190.00	
b)	Volusia County R/W Use Permit	$0.00	application fees to be waived by County
	Total Permit Review Fees	**$1,190.00**	

V. SHIPPING / POSTAGE

Contract Rate Cost

	Description	Estimated Cost
a)	N/A	
b)		
	Total Shipping / Postage Costs	**$0.00**

PEC

Surveying and Mapping

May 13, 2021

Transportation Engineering Data Solutions
Mr. Mikal Hale P.E., Vice President
80 Spring Vista Drive
DeBary, Florida 32713

PS16805r-TED

Re: Port Orange Sea Loop Trail - Surveying and Mapping Services
City of Port Orange, Florida

Dear Mr. Hale:

PEC-Surveying and Mapping (PEC) is pleased to submit our proposal for surveying and mapping services in connection with the above-referenced Project.

DESIGN SURVEY: We propose to perform a Design Survey to support the Engineering of the City of Port Orange Sea Loop Trail Segment. The Project Corridor is depicted on the attached portions of the Preliminary Engineering Report (PER) of the Florida Department of Transportation St Johns River to Sea (SJR2C) Loop Project Development and Environmental (PD&E) Study Dated April of 2020.

The Project Limits are that portion of the Corridor being the entire right-of-way width of Spruce Creek Road together with the Halifax Canal, lying east of the Road Spruce Creek Road, from Station 164 to Station 171; the Spruce Creek Road – Dunlawton Avenue Intersection, north, along Spruce Creek Road through the City Owned Parcels, to 50 feet north of the Herbert Street 6th Street Intersection, as shown in the PD&E Study. This represents a total length of approximately 2,300 feet of corridor.

Right-of-way Surveys: The right-of-way of Spruce Creek Road and the Halifax Canal shall be determined by field Survey.

Baseline: A Baseline will be established in the field and referenced for future use during construction, at 1,000-foot intervals.

Bench Levels: A 4 Mile - Closed Bench Loop will be performed incorporating two Volusia County Published Benchmarks. Elevations will be established along the Project Baseline. Elevations will be relative to the North American Vertical Datum of 1988.

Spruce Creek Road – Dunlawton Avenue Intersection Survey: The Intersection of Spruce Creek Road – Dunlawton Avenue will be Surveyed 150 feet, in all directions from the radius returns. All above ground improvements will be located relative to the roadway right-of-ways. All pavement markings will also be located. Elevations will be obtained on 50-foot cross sections.

Cross-Sections: Cross-sections will be performed of the Project Limits at 50-foot intervals.

City of Port Orange Parcels (CAD only): The Project Alignment traverses the two City owned Parcels: Volusia County Property Appraiser's Alykey Numbers 5080030 and 5578518, between the Spruce Creek Road Northern Terminus and the 6th Street – Herbert Street Intersection. A Boundary and Topographic and Tree Location Survey, of these two parcels will be performed.

Jenzano Corridor Topographic Survey: A Topographic Survey of the westerly 100 feet of the Jenzano Parcel will be performed to include the Halifax Canal.

Sketch of Legal Description of Jenzano Trail Easement: A Sketch of Legal Description for the proposed Trail corridor through the Jenzano ownership will be prepared if required.

Eminent Domain Survey – Jenzano Parent Parcel: If requested the Jenzano ownership will be Surveyed with all above ground improvements located relative to the Boundaries.

Fees: We propose to perform the work for the following Fees:

Right-of-way Surveys:	$ 7,900.00
Baseline Survey:	$ 3,000.00
Bench Levels (4 miles):	$ 4,000.00
Intersection Survey: Spruce Creek Road – Dunlawton Avenue:	$ 4,500.00
Cross Sections:	$ 10, 300.00
City Owned Parcels (2)	
Boundary Topographic and Tree Location Surveys (CAD Only):	$ 9,250.00
Jenzano Corridor Topographic Survey:	$ 4,000.00
Sketch of Legal Description of Jenzano Trail Easement:	$ 750.00
Jenzano Parent Parcel Emminent Domain Survey:	$ 7,500.00

Thank you for the opportunity of submitting this proposal to you. Should you have any questions or comments please advise.

Sincerely

PEC Surveying and Mapping

David A. White P.S.M.

May 6, 2021

Mr. Mikal Hale, P.E.
Traffic Engineering Data Solutions, Inc.
80 Spring Vista Drive
Debary, Florida 32713

Telephone: (386) 753-0558
E-mail: mhale@teds-fl.com

RE: Proposal for Environmental and Geotechnical Services
City of Port Orange – SUN Trail
Port Orange, Volusia County, Florida
Terracon Proposal No. PEQ217222

Dear Mr. Hale:

Terracon Consultants, Inc. (Terracon) appreciates the opportunity to submit this proposal to Traffic Engineering Data Solutions, Inc. (Client) to provide environmental, cultural resource, and geotechnical services for the above referenced project in Port Orange, Florida. This proposal outlines our understanding of the project, our planned work scope and associated fee, and our terms and conditions associated with the performance of this work.

If this proposal meets with your approval, work may be initiated by returning a fully executed copy of the attached Agreement for Services. Please provide the land owner contact information or access information with the signed agreement. The terms, conditions, and limitations stated in the Agreement for Services and sections of this proposal incorporated therein, shall constitute the exclusive terms and conditions and services to be performed for this project.

We appreciate the opportunity to provide this proposal. If you have questions or comments regarding this proposal or require additional services, please give us a call.

Sincerely,
Terracon Consultants, Inc.

Brett Anderson
Senior Project Manager

Gary K. Howalt, PWS
Senior Principal/Department Manager

Attachments: Detailed Scope of Services
Agreement for Services

DETAILED SCOPE OF SERVICES

1.0 PROJECT INFORMATION

The site is located within the City of Port Orange and is part of the St. Johns River to Sea Loop Trail system. This segment, of the much larger trail system, begins south of the intersection of Spruce Creek Road and Selin Circle. The trail will extend northerly along the east side of Spruce Creek Road towards Oak Street. The trail will then continue along Spruce Creek Road from Dunlawton Avenue to Canal View Boulevard. The trail continues through a vacant parcel to Herbert Street, connection to the existing Trail Segment. The total project length is approximately 0.65 miles. If this is not accurate, or if you have additional useful information, please inform us as soon as possible.

Based on Terracon's understanding of the project, TEDS will need support to design the proposed section of trail within the City of Port Orange. Specifically, services to be provided include a natural resource review (wetlands, protected species, essential fish habitat), wetland permitting assistance, and geotechnical services. The following sections outline Terracon's scope and fees to conduct associated environmental and geotechnical services to support permitting efforts.

2.0 ENVIRONMENTAL RESOURCES REPORT

Terracon will perform a detailed natural resource review of the proposed ±0.65-mile section of SUNTrail proposed within the city of Port Orange, Florida. Specifically, Terracon will delineate wetlands within the trail corridor pursuant to the current methodologies of the U.S. Army Corps of Engineers [(USACE) 2010 Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Region (Version 2.0)], Florida Department of Environmental Protection (FDEP) and St. Johns River Water Management District [(SJRWMD) Florida Unified Wetland Delineation Methodology, Chapter 62-340, F.A.C.]. Upon completion of the delineation effort, Terracon will provide the project surveyor with a flagging key map showing the approximate location of the wetland line.

In addition, Terracon will perform a protected species review of the proposed trail corridor. This investigation will survey the proposed corridor for the presence of any state or federally protected wildlife species and their habitat. If protected species or habitats are encountered, Terracon will perform preliminary mapping of the potential habitat area.

Implications to development associated with any identified wetlands and/or protected species will be addressed in an Environmental Resources Report to be provided at the completion of the field investigation efforts.

**Based on the Preliminary Engineering Report (PER) prepared by Scalar Consulting Group, Inc. (Scalar), it is anticipated that wetlands will be found within the project corridor. However, protected*

species impacts are not anticipated based on the Scalar PER. Should Terracon identify any protected species concerns, a supplemental change order may need to be requested to address any necessary surveying, agency coordination, and/or permitting efforts associated with those findings.

3.0 ENVIRONMENTAL PERMITTING

Based on the PER prepared by Scalar on behalf of FDOT, it is anticipated that wetland permitting efforts will be required to address the portion of the trail south of Herbert Street. It is Terracon's understanding that a portion of this section of trail will be an elevated boardwalk within the wetland. Terracon will acquire the necessary wetland authorization from SJRWMD to allow for the proposed wetland impact.

Based on a preliminary review, it is anticipated that the subject wetland would be non-jurisdictional under Section 404 of the Clean Water Act. Therefore, Terracon will submit a No Permit Required Verification Request to the Florida Department of Environmental Protection (jointly with the SJRWMD submittal). Should the wetland be deemed jurisdictional under Section 404 of the Clean Water Act, federal authorization may be necessary, and a supplemental change order may be required.

This fee does not include any application fees charged by the regulatory agencies or any mitigation fees associated with proposed wetland impacts.

4.0 GEOTECHNICAL SERVICES

The following summarizes our assumptions regarding the project:

- We will be granted access by our drill rig and crew to perform the required soil borings for the project elements.
- No roadway lane or shoulder closures are anticipated in order to perform the soil borings. Any necessary Maintenance of Traffic (MOT) will be performed in accordance with the Florida Department of Transportation (FDOT) Standard Plans.
- Survey support will be provided by others.

The following presents the number and depth of soil borings proposed for the project elements described above. Survey control in the field will be needed, as necessary, to assist our crews locate borings.

Boardwalk

Based on provided information, our field program includes performing a total of four Standard Penetration Test (SPT) borings to a depth of 40 feet each. Perform soil probing along the boardwalk alignment.

Following completion of the drilling services described above, the following geotechnical services are proposed for this project:

- Perform visual classification and limited laboratory testing of the soil samples obtained from the borings described above.
- Laboratory testing will include grain size analysis, organic content tests, moisture content tests, and/or Atterberg limits analysis, as appropriate, to aid visual classification of soil types. Laboratory testing will also include limited corrosion series testing.
- Engineering services will include coordination and supervision of all field and laboratory testing as well as engineering analysis of the field and laboratory test results. Specifically, geotechnical analysis and recommendations will be made for the following:
  - Boardwalk: Davisson capacity curves based on SPT boring results, observed groundwater tables, results of soil probing, timber pile driving recommendations, vibration recommendations, as needed, and soil parameters for lateral stability analysis (to be performed by others), if necessary.
- After completion of the field phase of the project, a preliminary report will be prepared for review and comment. After appropriate review, a final report will be prepared.

5.0 ADDITIONAL SERVICES NOT INCLUDED

Should it be necessary to expand our services beyond those outlined in this proposal, we will notify you and send a supplemental proposal stating the additional services and fee. We will not proceed without your authorization.

6.0 SCOPE AND REPORT LIMITATIONS

Client shall secure all necessary site related approvals, permits, licenses, and consents necessary to commence and complete the Services and will execute any necessary site access agreement. Consultant will be responsible for supervision and site safety measures for its own employees but shall not be responsible for the supervision or health and safety precautions for any third parties, including Client's contractors, subcontractors, or other parties present at the site. In addition, Consultant retains the right to stop work without penalty at any time Consultant

believes it is in the best interests of Consultant's employees or subcontractors to do so in order to reduce the risk of exposure to the coronavirus. Client agrees it will respond quickly to all requests for information made by Consultant related to Consultant's pre-task planning and risk assessment processes. Client acknowledges its responsibility for notifying Consultant of any circumstances that present a risk of exposure to the coronavirus or individuals who have tested positive for COVID-19 or are self-quarantining due to exhibiting symptoms associated with the coronavirus.

The findings and conclusions presented in the final report will be based on the site's current utilization, the anticipated future use of the site, if provided to Terracon, and the information collected as discussed in this proposal. Please note that we do not warrant database or third-party information (such as from interviewees) or regulatory agency information used in the compilation of plans or reports. No warranties, express or implied, are intended or made.

7.0 SCHEDULE

Terracon is prepared to begin upon receipt of written notice to proceed. It is anticipated that preliminary efforts (desktop background research, initial planning) will begin within five business days of NTP, while initial field efforts will begin within 10 business days of NTP, weather dependent.

8.0 COMPENSATION

Task	Fees
Environmental Resources Report	**$6,000.00**
Environmental Permitting	**$6,000.00**
Geotechnical Services	**$14,000.00**

The project will be invoiced on a percent complete basis monthly. Payments on invoices will be due in full within 30 days from the date of the invoice.

9.0 OUR COMMITMENT TO SAFETY

Safety is one of Terracon's core values and our commitment to an Incident and Injury-Free® philosophy is one of the pillars of our current Strategic Plan. Incident and Injury-Free (IIF) is about care and concern for our people. It is our personal and organizational commitment at all levels of the company to everyone going home safe to their family every day. It is where safety is held as a core value as well as an operational priority. Working safely is an inseparable part of working correctly, just as much as other operational priorities, in particular quality, profitability and

schedule. IIF is our commitment to our people, who we value for who they are and what they do. We strive to build health and safety into all aspects of our business and into the thinking of our employees.

Terracon

Reference Number: PEQ217222

AGREEMENT FOR SERVICES

This **AGREEMENT** is between Traffic Engineering Data Solutions, Inc. ("Client") and Terracon Consultants, Inc. ("Consultant") for Services to be provided by Consultant for Client on the City of Port Orange - SUN Trail project ("Project"), as described in Consultant's Proposal dated 05/06/2021 ("Proposal"), including but not limited to the Project Information section, unless the Project is otherwise described in Exhibit A to this Agreement (which section or Exhibit is incorporated into this Agreement).

1. **Scope of Services.** The scope of Consultant's services is described in the Proposal, including but not limited to the Scope of Services section ("Services"), unless Services are otherwise described in Exhibit B to this Agreement (which section or exhibit is incorporated into this Agreement). Portions of the Services may be subcontracted. Consultant's Services do not include the investigation or detection of, nor do recommendations in Consultant's reports address the presence or prevention of biological pollutants (e.g., mold, fungi, bacteria, viruses, or their byproducts) or occupant safety issues, such as vulnerability to natural disasters, terrorism, or violence. If Services include purchase of software, Client will execute a separate software license agreement. Consultant's findings, opinions, and recommendations are based solely upon data and information obtained by and furnished to Consultant at the time of the Services.
2. **Acceptance/ Termination.** Client agrees that execution of this Agreement is a material element of the consideration Consultant requires to execute the Services, and if Services are initiated by Consultant prior to execution of this Agreement as an accommodation for Client at Client's request, both parties shall consider that commencement of Services constitutes formal acceptance of all terms and conditions of this Agreement. Additional terms and conditions may be added or changed only by written amendment to this Agreement signed by both parties. In the event Client uses a purchase order or other form to administer this Agreement, the use of such form shall be for convenience purposes only and any additional or conflicting terms it contains are stricken. This Agreement shall not be assigned by either party without prior written consent of the other party. Either party may terminate this Agreement or the Services upon written notice to the other. In such case, Consultant shall be paid costs incurred and fees earned to the date of termination plus reasonable costs of closing the Project.
3. **Change Orders.** Client may request changes to the scope of Services by altering or adding to the Services to be performed. If Client so requests, Consultant will return to Client a statement (or supplemental proposal) of the change setting forth an adjustment to the Services and fees for the requested changes. Following Client's review, Client shall provide written acceptance. If Client does not follow these procedures, but instead directs, authorizes, or permits Consultant to perform changed or additional work, the Services are changed accordingly and Consultant will be paid for this work according to the fees stated or its current fee schedule. If project conditions change materially from those observed at the site or described to Consultant at the time of proposal, Consultant is entitled to a change order equitably adjusting its Services and fee.
4. **Compensation and Terms of Payment.** Client shall pay compensation for the Services performed at the fees stated in the Proposal, including but not limited to the Compensation section, unless fees are otherwise stated in Exhibit C to this Agreement (which section or Exhibit is incorporated into this Agreement). If not stated in either, fees will be according to Consultant's current fee schedule. Fee schedules are valid for the calendar year in which they are issued. Fees do not include sales tax. Client will pay applicable sales tax as required by law. Consultant may invoice Client at least monthly and payment is due upon receipt of invoice. Client shall notify Consultant in writing, at the address below, within 15 days of the date of the invoice if Client objects to any portion of the charges on the invoice, and shall promptly pay the undisputed portion. Client shall pay a finance fee of 1.5% per month, but not exceeding the maximum rate allowed by law, for all unpaid amounts 30 days or older. Client agrees to pay all collection-related costs that Consultant incurs, including attorney fees. Consultant may suspend Services for lack of timely payment. It is the responsibility of Client to determine whether federal, state, or local prevailing wage requirements apply and to notify Consultant if prevailing wages apply. If it is later determined that prevailing wages apply, and Consultant was not previously notified by Client, Client agrees to pay the prevailing wage from that point forward, as well as a retroactive payment adjustment to bring previously paid amounts in line with prevailing wages. Client also agrees to defend, indemnify, and hold harmless Consultant from any alleged violations made by any governmental agency regulating prevailing wage activity for failing to pay prevailing wages, including the payment of any fines or penalties.
5. **Third Party Reliance.** This Agreement and the Services provided are for Consultant and Client's sole benefit and exclusive use with no third party beneficiaries intended. Reliance upon the Services and any work product is limited to Client, and is not intended for third parties other than those who have executed Consultant's reliance agreement, subject to the prior approval of Consultant and Client.
6. **LIMITATION OF LIABILITY. CLIENT AND CONSULTANT HAVE EVALUATED THE RISKS AND REWARDS ASSOCIATED WITH THIS PROJECT, INCLUDING CONSULTANT'S FEE RELATIVE TO THE RISKS ASSUMED, AND AGREE TO ALLOCATE CERTAIN OF THE ASSOCIATED RISKS. TO THE FULLEST EXTENT PERMITTED BY LAW, THE TOTAL AGGREGATE LIABILITY OF CONSULTANT (AND ITS RELATED CORPORATIONS AND EMPLOYEES) TO CLIENT AND THIRD PARTIES GRANTED RELIANCE IS LIMITED TO THE GREATER OF $50,000 OR CONSULTANT'S FEE, FOR ANY AND ALL INJURIES, DAMAGES, CLAIMS, LOSSES, OR EXPENSES (INCLUDING ATTORNEY AND EXPERT FEES) ARISING OUT OF CONSULTANT'S SERVICES OR THIS AGREEMENT. PRIOR TO ACCEPTANCE OF THIS AGREEMENT AND UPON WRITTEN REQUEST FROM CLIENT, CONSULTANT MAY NEGOTIATE A HIGHER LIMITATION FOR ADDITIONAL CONSIDERATION IN THE FORM OF A SURCHARGE TO BE ADDED TO THE AMOUNT STATED IN THE COMPENSATION SECTION OF THE PROPOSAL. THIS LIMITATION SHALL APPLY REGARDLESS OF AVAILABLE PROFESSIONAL LIABILITY INSURANCE COVERAGE, CAUSE(S), OR THE THEORY OF LIABILITY, INCLUDING NEGLIGENCE, INDEMNITY, OR OTHER RECOVERY. THIS LIMITATION SHALL NOT APPLY TO THE EXTENT THE DAMAGE IS PAID UNDER CONSULTANT'S COMMERCIAL GENERAL LIABILITY POLICY.**
7. **Indemnity/Statute of Limitations.** Consultant and Client shall indemnify and hold harmless the other and their respective employees from and against legal liability for claims, losses, damages, and expenses to the extent such claims, losses, damages, or expenses are legally determined to be caused by their negligent acts, errors, or omissions. In the event such claims, losses, damages, or expenses are legally determined to be caused by the joint or concurrent negligence of Consultant and Client, they shall be borne by each party in proportion to its own negligence under comparative fault principles. Neither party shall have a duty to defend the other party, and no duty to defend is hereby created by this indemnity provision and such duty is explicitly waived under this Agreement. Causes of action arising out of Consultant's Services or this Agreement regardless of cause(s) or the theory of liability, including negligence, indemnity or other recovery shall be deemed to have accrued and the applicable statute of limitations shall commence to run not later than the date of Consultant's substantial completion of Services on the project.
8. **Warranty.** Consultant will perform the Services in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions in the same locale. **EXCEPT FOR THE STANDARD OF CARE PREVIOUSLY STATED, CONSULTANT MAKES NO WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, RELATING TO CONSULTANT'S SERVICES AND CONSULTANT DISCLAIMS ANY IMPLIED WARRANTIES OR WARRANTIES IMPOSED BY LAW, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**
9. **Insurance.** Consultant represents that it now carries, and will continue to carry: (i) workers' compensation insurance in accordance with the laws of the states having jurisdiction over Consultant's employees who are engaged in the Services, and employer's liability insurance ($1,000,000); (ii) commercial general liability insurance ($1,000,000 occ / $2,000,000 agg); (iii) automobile liability insurance ($1,000,000 B.I. and P.D. combined single limit); and (iv) professional liability insurance ($1,000,000 claim / agg). Certificates of insurance will be provided upon request. Client and Consultant shall waive subrogation against the other party on all general liability and property coverage.

10. **CONSEQUENTIAL DAMAGES.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR LOSS OF PROFITS OR REVENUE; LOSS OF USE OR OPPORTUNITY; LOSS OF GOOD WILL; COST OF SUBSTITUTE FACILITIES, GOODS, OR SERVICES; COST OF CAPITAL; OR FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT, PUNITIVE, OR EXEMPLARY DAMAGES.
11. **Dispute Resolution.** Client shall not be entitled to assert a Claim against Consultant based on any theory of professional negligence unless and until Client has obtained the written opinion from a registered, independent, and reputable engineer, architect, or geologist that Consultant has violated the standard of care applicable to Consultant's performance of the Services. Client shall provide this opinion to Consultant and the parties shall endeavor to resolve the dispute within 30 days, after which Client may pursue its remedies at law. This Agreement shall be governed by and construed according to Florida law.
12. **Subsurface Explorations.** Subsurface conditions throughout the site may vary from those depicted on logs of discrete borings, test pits, or other exploratory services. Client understands Consultant's layout of boring and test locations is approximate and that Consultant may deviate a reasonable distance from those locations. Consultant will take reasonable precautions to reduce damage to the site when performing Services; however, Client accepts that invasive services such as drilling or sampling may damage or alter the site. Site restoration is not provided unless specifically included in the Services.
13. **Testing and Observations.** Client understands that testing and observation are discrete sampling procedures, and that such procedures indicate conditions only at the depths, locations, and times the procedures were performed. Consultant will provide test results and opinions based on tests and field observations only for the work tested. Client understands that testing and observation are not continuous or exhaustive, and are conducted to reduce - not eliminate - project risk. Client shall cause all tests and inspections of the site, materials, and Services performed by Consultant to be timely and properly scheduled in order for the Services to be performed in accordance with the plans, specifications, contract documents, and Consultant's recommendations. No claims for loss or damage or injury shall be brought against Consultant by Client or any third party unless all tests and inspections have been so performed and Consultant's recommendations have been followed. Unless otherwise stated in the Proposal, Client assumes sole responsibility for determining whether the quantity and the nature of Services ordered by Client is adequate and sufficient for Client's intended purpose. Client is responsible (even if delegated to contractor) for requesting services, and notifying and scheduling Consultant so Consultant can perform these Services. Consultant is not responsible for damages caused by Services not performed due to a failure to request or schedule Consultant's Services. Consultant shall not be responsible for the quality and completeness of Client's contractor's work or their adherence to the project documents, and Consultant's performance of testing and observation services shall not relieve Client's contractor in any way from its responsibility for defects discovered in its work, or create a warranty or guarantee. Consultant will not supervise or direct the work performed by Client's contractor or its subcontractors and is not responsible for their means and methods. The extension of unit prices with quantities to establish a total estimated cost does not guarantee a maximum cost to complete the Services. The quantities, when given, are estimates based on contract documents and schedules made available at the time of the Proposal. Since schedule, performance, production, and charges are directed and/or controlled by others, any quantity extensions must be considered as estimated and not a guarantee of maximum cost.
14. **Sample Disposition, Affected Materials, and Indemnity.** Samples are consumed in testing or disposed of upon completion of the testing procedures (unless stated otherwise in the Services). Client shall furnish or cause to be furnished to Consultant all documents and information known or available to Client that relate to the identity, location, quantity, nature, or characteristic of any hazardous waste, toxic, radioactive, or contaminated materials ("Affected Materials") at or near the site, and shall immediately transmit new, updated, or revised information as it becomes available. Client agrees that Consultant is not responsible for the disposition of Affected Materials unless specifically provided in the Services, and that Client is responsible for directing such disposition. In no event shall Consultant be required to sign a hazardous waste manifest or take title to any Affected Materials. Client shall have the obligation to make all spill or release notifications to appropriate governmental agencies. The Client agrees that Consultant neither created nor contributed to the creation or existence of any Affected Materials conditions at the site and Consultant shall not be responsible for any claims, losses, or damages allegedly arising out of Consultant's performance of Services hereunder, or for any claims against Consultant as a generator, disposer, or arranger of Affected Materials under federal, state, or local law or ordinance.
15. **Ownership of Documents.** Work product, such as reports, logs, data, notes, or calculations, prepared by Consultant shall remain Consultant's property. Proprietary concepts, systems, and ideas developed during performance of the Services shall remain the sole property of Consultant. Files shall be maintained in general accordance with Consultant's document retention policies and practices.
16. **Utilities.** Unless otherwise stated in the Proposal, Client shall provide the location and/or arrange for the marking of private utilities and subterranean structures. Consultant shall take reasonable precautions to avoid damage or injury to subterranean structures or utilities. Consultant shall not be responsible for damage to subterranean structures or utilities that are not called to Consultant's attention, are not correctly marked, including by a utility locate service, or are incorrectly shown on the plans furnished to Consultant.
17. **Site Access and Safety.** Client shall secure all necessary site related approvals, permits, licenses, and consents necessary to commence and complete the Services and will execute any necessary site access agreement. Consultant will be responsible for supervision and site safety measures for its own employees, but shall not be responsible for the supervision or health and safety precautions for any other parties, including Client, Client's contractors, subcontractors, or other parties present at the site. In addition, Consultant retains the right to stop work without penalty at any time Consultant believes it is in the best interests of Consultant's employees or subcontractors to do so in order to reduce the risk of exposure to the coronavirus. Client agrees it will respond quickly to all requests for information made by Consultant related to Consultant's pre-task planning and risk assessment processes. Client acknowledges its responsibility for notifying Consultant of any circumstances that present a risk of exposure to the coronavirus or individuals who have tested positive for COVID-19 or are self-quarantining due to exhibiting symptoms associated with the coronavirus.

PURSUANT TO SECTION 558.0035 OF FLORIDA STATUTES, AN INDIVIDUAL EMPLOYEE OR AGENT OF CONSULTANT MAY NOT BE HELD INDIVIDUALLY LIABLE.

Consultant:	**Terracon Consultants, Inc.**	Client:	**Traffic Engineering Data Solutions, Inc.**
By:	Date: **5/6/2021**	By:	Date:
Name/Title:	**Gary K Howalt / Principal/Department Manager I**	Name/Title:	**Mikal R. Hale, P.E. /**
Address:	**8001 Baymeadows Way Ste 1** **Jacksonville, FL 32256-7521**	Address:	**80 Spring Vista Dr** **Debary, FL 32713-1821**
Phone:	**(904) 900-6494** Fax: **(904) 268-5255**	Phone:	**(386) 753-0558** Fax:
Email:	**Gary.Howalt@terracon.com**	Email:	**mhale@teds-fl.com**

Florida Bridge and Transportation, Inc.
Structural Engineers

April 22, 2021

Mr. Mikal Hale, PE
Traffic Engineering Data Solutions, Inc.
80 Spring Vista Drive
DeBary, Florida 32713
386.753.0558 (o) 386.547.4535 (c)

RE: SJR2C SunTrail
Timber Boardwalk
Proposal for Structural Analysis
FBT Project #21-31.01

Dear Mikal:

Florida Bridge and Transportation, Inc. (FBT) is pleased to submit this proposal to Traffic Engineering Data Solutions, Inc. (TEDS) for engineering services for the above referenced project. The scope of design services for this project includes the following:

1) FBT will provide the structural design calculations and plan sheets for a 12-ft wide by approximately 250-ft long timber boardwalk with wood decking as part of the SunTrail Pathway project within a wetland area. The pedestrian walkway will be designed in accordance with AASHTO's LRFD Guide Specifications for Design of Pedestrian Bridges.

2) Prepare drawings showing the one typical span for the pedestrian walkway in section, elevation, and plan with accompanying necessary details. The overall bridge plan and profile of the walkway will be shown on the trail plans to be prepared by others.

3) Gravity wall abutments will be detailed for each abutment. The gravity walls will reference FDOT design standards for design.

4) Respond to review comments from the client regarding the structural design of the boardwalk. This proposal has an allotment of up to eight (8) hours for responding to comments.

5) The final project deliverables will consist of signed and sealed calculations and plan sheets detailing the boardwalk.

We propose a lump sum fee of $19,500.00 for the basic structural engineering services indicated above.

The scope and fee indicated above does not include the following services:

- A plan and elevation sheet showing the overall boardwalk and geometry. This will be provided on overall trail plans by others.
- Field Reviews or attendance at meetings beyond the allotment shown above
- Construction Inspection/Observation of installation and on-going construction
- Specifications - FDOT standard specifications will be referenced
- Preparation of as-built or record drawings

- Post design services

The items indicated above, or any other services not included in the basic scope of design services described above, may be provided for an additional fee. A supplemental agreement must be negotiated prior to the additional work being performed by FBT. Additional services required for this project may be provided based on an addendum to this agreement. Fees for additional services will be addressed on a case by case basis.

In order for FBT to perform these services, we will need the following information from others:

- Trail plans (plan and profile)
- Soil borings (SPT) with Davisson Capacity Curves, groundwater elevations, muck probing along the alignment, timber pile/post driving recommendations, vibration recommendations, and related geotechnical property recommendations

TEDS shall indemnify and hold harmless FBT and all of its personnel from and against any and all claims, damages, losses and expenses (including reasonable attorneys fees) arising out of or resulting from the performance of the services, provided that any such claims, damage, loss or expense is caused in whole or in part by the negligent act or omission and/or strict liability of TEDS, anyone directly or indirectly employed by TEDS (except FBT) or anyone for whose acts any of them may be liable.

This agreement is intended to benefit TEDS and FBT exclusive. Any benefit conferred upon a third party is incidental to this agreement.

This proposal will become invalid if not executed within 90 days. We are prepared to commence the structural design services upon receipt of a written notice to proceed.

We appreciate this opportunity to be of service to Traffic Engineering Data Solutions, Inc.

Very truly yours,
Florida Bridge and Transportation, Inc.

Bassel Kassem

Bassel Kassem, P.E.
Vice President

Traffic Engineering Data Solutions, Inc.

MEMORANDUM

DATE: January 4, 2021

SUBJECT: Signature Authority
Traffic Engineering Data Solutions, Inc.

I, Deanna F. Ferrell, as the President of Traffic Engineering Data Solutions, Inc., am the only person in the firm authorized to sign contracts. However, the following Sr. Vice Presidents, Chris J. Walsh, PE; Richard B. Morrow, PE; and P. Halley Ferrell may sign the following documents for the firm:

- Sub-consultant agreements;
- Invoices;
- Proposal forms;
- Local government contracts; and
- Private development contracts.

This authorization is effective immediately and remains in place until modified at a future date by similar memorandum signed by me, Deanna F. Ferrell.

TRAFFIC ENGINEERING DATA SOLUTIONS, INC.

Deanna F. Ferrell, MBA
President

80 Spring Vista Drive • DeBary, Fl 32713 • Phone 386.753.0558 • Fax 386.753.0778
www.teds-fl.com

CHANGE ORDER NO. 1
To Master Contract dated 2/14/2017
Task Authorization #9 (6/15/2021)
TRAFFIC ENGINEERING DATA SOLUTIONS, INC. (TEDS), Contractor

Project: FPN 439865-3-34-01 SUN Trail SJR2C Loop Trail
Project XSG200

The following changes are hereby made to the Contract Documents:

CHANGE IN CONTRACT PRICE:	**CHANGE IN CONTRACT TIMES:**
Original Contract Price: $190,317.08	Original Contract Times Final Completion for Tasks 1 – 10 of Task Authorization No. 9: June 30, 2022 (NTP issued on July 6, 2021) Final Completion for Tasks 11 – 12 of Task Authorization No. 9: September 30,2023 (NTP not issued yet)
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: $190,317.08	Contract Completion Date prior to this Change Order: Final Completion: No change
Net Increase (decrease) of this Change Order No. 1: $2,000.00	Changes in contract time requested this Change Order No. 1: (Requires Council Approval) N/A
Contract Price with all approved Change Orders: $192,317.08	Contract Times with all approved Change Orders: Final Completion for Tasks 1 – 10 of Task Authorization No. 9: June 30, 2022 Final Completion for Tasks 11 – 12 of Task Authorization No. 9: September 30,2023

CHANGES ORDERED:

I. GENERAL: This Change Order is necessary to cover changes in the work to be performed under the Master Contract entered into by and between the parties on February 14, 2017 and Task Authorization No. 9 dated June 15, 2021.

II. REQUIRED CHANGES:

To provide for additional professional services to file for a General Permit with the Federal Department of Environmental Protection (FDEP).

No goods shall be delivered, nor services commenced hereunder until this Change Order has been fully executed by all parties.

III. JUSTIFICATION:
Although it was known that wetlands exist on the City-owned parcel (#6304-06-00-008A) located to the north of the intersection of Spruce Creek Road and Canalview Boulevard, it was previously anticipated that filing a No Permit Required (NPR) with the FDEP would be sufficient. However, once surveying and field verification began, a drainage ditch was revealed running along the western boundary of the City-owned parcel. This ditch connects to the Halifax Canal and, therefore, in accordance with current FDEP regulations, it is necessary to file for a General Permit with FDEP.

IV. PAYMENT: Payment for this Change Order shall be made in accordance with the terms of the Contract subject to a limit not to exceed $2,000.00 per TEDS change order proposal dated October 13, 2021. 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:
COMMUNITY DEVELOPMENT
Department Project Manager

By: Lisa Epstein
Printed Name: Lisa Epstein
Title: Project Manager

Date Signed: 12/10/2021

ACCEPTED BY:
TRAFFIC DATA ENGINEERING SOLUTIONS, INC.
Contractor

By: Deanna F. Ferrell
Printed Name: Deanna F. Ferrell
Title: President

Date Signed: 12/3/2021

RECOMMENDED BY:
COMMUNITY DEVELOPMENT
Division Manager

By: Margaret Tomlinson
Printed Name: Margaret Tomlinson
Title: Construction & Engineering Manager

Date Signed: 12/10/2021

APPROVED BY:
CITY OF PORT ORANGE
Department Head

By: _____
Printed Name: Tim Burman
Title: Community Development Director

Date Signed: 12-10-2021

City Manager

By: _____
Printed Name: Wayne Clark
Title: City Manager

Date Signed: 12/15/2021

Affirmed:

_____
Robin L. Fenwick, MMC, City Clerk

Date Signed: 12/15/2021

If Council approval is required:

By: N/A
Printed Name: Donald O. Burnette
Title: Mayor

Date Signed: _____

EXHIBIT "1"

Contractor's Quote

Consisting of 1 Page

Traffic Engineering Data Solutions, Inc.

PROPOSAL
CHANGE ORDER No. 1
to Task Authorization No. 09

Contract:	Master Contract for Engineering Services dated February 14, 2017
Task Authorization No.:	09
Project Name:	SJR2C Loop Trail (Spruce Creek Rd) from South of Selin Circle to Herbert St (FPN 439865-3-34-01)
TEDS Project Number:	10962
Date:	October 13, 2021 *Revised December 2, 2021*

Traffic Engineering Data Solutions, Inc. (TEDS) is pleased to offer this proposal to the City of Port Orange (City) for providing additional design services on the above referenced project.

PROJECT UNDERSTANDING

- As of July 6, 2021, TEDS received Purchase Order #001376 to provide roadway design services for this project, which is to be constructed through the Shared Use Nonmotorized (SUN) Trail Program, with state funding allocated under FPID 439865-3-34-01 to be administered by the Florida Department of Transportation (FDOT).
- As referenced within the original Exhibit A – Scope of Services, based on preliminary review it was previously anticipated that the subject wetland would be non-jurisdictional under Section 404 of the Clean Water Act, such that required permitting would've only included a No Permit Required Verification Request to the Florida Department of Environmental Protection (FDEP). However, after completing their field review, Terracon Consultants, Inc. (Terracon) discovered a ditch alongside the wetlands that contained a pipe connection to the Halifax Canal, suggesting the wetlands would be jurisdictional to FDEP under the State 404 program, thereby requiring further permitting. Further the guiding jurisdictional framework (Navigable Waters Protection Rule [NWPR]) was recently vacated and remanded in federal court. Therefore, wetlands were instead evaluated under the previous jurisdictional framework known as the "Waters of the United States" (WOTUS). Based on field reviews, the wetlands within the project area meet the jurisdictional definition under WOTUS and therefore require a permit from FDEP under the State 404 program.

SUPPLEMENTAL SERVICES

Task 3 – Supplemental Environmental Services

TEDS will retain Terracon Consultants, Inc. (Terracon) to prepare and submit a Notice of Intent to Use a General Permit to FDEP.

FEES

TEDS shall conduct the work in the tasks described above for the lump sum fees indicated below:

Task	Fee
Task 3 – Supplemental Environmental Services	$2,000.00
Net Additional Fee	**$2,000.00**

CHANGE ORDER NO. 2
To Construction Contract dated 2/14/2017
Task Authorization #9 (6/15/2021)
TRAFFIC ENGINEERING DATA SOLUTIONS, INC, Contractor

Project: FPN 439865-3-34-01 SUN Trail SJR2C Loop Trail
Project XSG200

The following changes are hereby made to the Contract Documents:

CHANGE IN CONTRACT PRICE:	**CHANGE IN CONTRACT TIMES**:
Original Contract Price: $190,317.08	Original Contract Times: Final Completion for Tasks 1-10 of Task Authorization No. 9: June 30, 2022 (NTP issued on July 6, 2021) Final Completion for Tasks 11-12 of Task Authorization No. 9: September 30, 2023 (NTP not issued yet)
Net changes from previous Change Order: No.1: $2,000.00	Changes in contract time from previous Change Orders: No.1: 0 days
Contract Price prior to this Change Order: $192,317.08	Contract Completion Date prior to this Change Order: Final Completion: No change
Net Increase (decrease) of this Change Order No. 2: $96,700.00	Changes in contract time requested this Change Order No.2: (Requires Council Approval) Final Completion for Tasks 11-18 of Task Authorization No.9: September 30, 2023
Contract Price with all approved Change Orders: $289,017.08	Contract Times with all approved Change Orders: Final Completion for Tasks 1-10 of Task Authorization No. 9: June 30, 2022 Final Completion for Tasks 11-18 of Task Authorization No. 9: September 30, 2023 (NTP not issued yet)

CHANGES ORDERED:

I. GENERAL: This Change Order is necessary to cover changes in the work to be performed under the Master Contract entered into by and between the parties on February 14, 2017 and Task Authorization No. 9 dated June 15, 2021.

II. REQUIRED CHANGES:

To provide for additional professional services for the design of safety lighting and right-of-way or easement acquisition services.

No goods shall be delivered, nor services commenced hereunder until this Change Order has been fully executed by all parties.

III. JUSTIFICATION:

In follow up to approval of Resolutions 22-33 and 22-34 accepting State Funded Grants totaling $111,065 in additional FDOT funding for safety lighting design ($33,075) and right-of-way acquisition services ($77,990), (no City match(es) required), Community Development staff have negotiated terms of a change order with Traffic Engineering Data Solutions, Inc. (TEDS) for the related design services.

The additional lighting design services covered by the proposed change order include:
(1) The boardwalk section of the trail on the city-owned parcel from Canal View Blvd and Herbert Street,
(2) At the proposed crosswalk across Herbert Street at 6th Street,
(3) At the proposed crosswalk across Spruce Creek Road near Selin Circle, and
(4) At the proposed crosswalk across Spruce Creek Road at Oak Street.

As noted in TEDS' original proposal for the design project, right-of-way and/or an easement is required across a privately-owned parcel in order to maintain the trail entirely on the east side of the Halifax Canal. In order to comply with all FDOT guidelines and US Federal Highway Administration's Uniform Act property acquisition policy process, and in view of the ROW Agent's retirement, City staff requested additional financial funding from FDOT for consultant services to assist and provide assurances of compliance.

In the event negotiations are not able to continue to facilitate the trail to be constructed completely on the east side of the Halifax Canal, the proposed change order includes "Additional Lighting Design (if required)" for the proposed crosswalks across Spruce Creek Road (Locations 3 & 4 listed above).

IV. PAYMENT: Payment for this Change Order shall be made in accordance with the terms of the Contract subject to a limit not to exceed $96,700.00. 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. This modification shall not extinguish the right of either party to bring a claim under the original contract as modified hereby.

RECOMMENDED BY:
COMMUNITY DEVELOPMENT
Department Project Manager

By: Lisa Epstein
Printed Name: Lisa Epstein
Title: Project Manager

Date Signed: 10-25-2022

ACCEPTED BY:
TRAFFIC ENGINEERING DATA SOLUTIONS, INC.
Contractor

By:
Printed Name: Chris Walsh, P.E.
Title: Client Service Manager

Date Signed: 10-24-22

APPROVED BY:
CITY OF PORT ORANGE
Department Head

By:
Printed Name: Tim Burman
Title: Community Development Director

Date Signed: 10-25-2022

City Manager

By: N/A
Printed Name: Wayne Clark
Title: City Manager

Date Signed:_____

Affirmed:

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

Date Signed: 11/1/2022

If Council approval is required:

By:_____
Printed Name: Donald O. Burnette
Title: Mayor

Date Signed: 11/1/2022

CHANGE ORDER NO. 3
To Construction Contract dated 2/14/2017
Task Authorization #9 (6/15/2021)
TRAFFIC ENGINEERING DATA SOLUTIONS, INC, Contractor

Project: FPN 439865-3-34-01 SUN Trail SJR2C Loop Trail
Project XSG200

The following changes are hereby made to the Contract Documents:

CHANGE IN CONTRACT PRICE:	**CHANGE IN CONTRACT TIMES:**
Original Contract Price: $190,317.08	Original Contract Times: Final Completion for Tasks 1-10 of Task Authorization No. 9: June 30, 2022 (NTP issued on July 6, 2021) Final Completion for Task 11-12 of Task Authorization No. 9 September 30, 2023 (NTP not issued yet) Final Completion for Tasks 13-18 of Task Authorization No. 9: September 30, 2023 (NTP issued January 19, 2023)
Net changes from previous Change Order: No.1: $ 2,000.00 No.2: $ 96,700.00	Changes in contract time from previous Change Orders: No.1: No extension of time requested No.2: Requested Final Completion for Tasks 11-18 of Task Authorization No.9: September 30, 2023
Contract Price prior to this Change Order: $ 289,017.08	Contract Completion Date prior to this Change Order: Final Completion: Tasks 11-18 of Task Authorization No. 9 September 30, 2023
Net Increase (decrease) of this Change Order No. 3: N/A	Changes in contract time requested this Change Order No.3: (Requires Council Approval) Final Completion for Tasks 11-18 of Task Authorization No.9: January 31, 2024
Contract Price with all approved Change Orders: $289,017.08	Contract Times with all approved Change Orders: Final Completion for Tasks 1-10 of Task Authorization No. 9: June 30, 2022 Final Completion for Tasks 11-18 of Task Authorization No. 9: January 31, 2024 (NTP not issued yet for Task 11-12 NTP issued January 19, 2023 for Tasks 13-18)

CHANGES ORDERED:

I. GENERAL: This Change Order is necessary to cover changes in the work to be performed under the Master Contract entered into by and between the parties on February 14, 2017 and Task Authorization No. 9 dated June 15, 2021.

II. REQUIRED CHANGES:

To provide for an extension of time to allow for the ongoing efforts for the acquisition of an easement located at 820 Oak Street. This will allow the City to remain in compliance with the terms of the FDOT Funding Agreement. During this time the Department will continue to move forward with the completion of design plans for the trail, which will require an extension of time through January 31, 2024, with no additional funding required.

No goods shall be delivered, nor services commenced hereunder until this Change Order has been fully executed by all parties.

III. JUSTIFICATION:
To provide for an extension of time to allow for the ongoing efforts for the acquisition of an easement located at 820 Oak Street. This will allow the City to remain in compliance with the terms of the FDOT Funding Agreement. During this time the Department will continue to move forward with the completion of design plans for the trail, which will require an extension of time through January 31, 2024, with no additional funding required.

IV. PAYMENT: Payment for this Change Order shall be made in accordance with the terms of the Contract subject to a limit not to exceed a total Contract price of $289,017.08. 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. This modification shall not extinguish the right of either party to bring a claim under the original contract as modified hereby.

RECOMMENDED BY:
COMMUNITY DEVELOPMENT
Department Project Manager

By: Lisa Epstein
Printed Name: Lisa Epstein
Title: Project Manager

Date Signed: September 13, 2023

ACCEPTED BY:
TRAFFIC ENGINEERING DATA SOLUTIONS, INC.
Contractor

By:
Printed Name: Richard B. Morrow, PE
Title: Senior Engineering Manager

Date Signed: September 12, 2023

APPROVED BY:
CITY OF PORT ORANGE
Department Head

By: Tim Burman
Printed Name: Tim Burman
Title: Community Development Director

Date Signed: September 13, 2023

City Manager

By: N/A
Printed Name: Wayne Clark
Title: City Manager

Date Signed:

Attest:
~~Affirmed~~:

By:
Robin L. Fenwick, MMC, City Clerk

Date Signed: 9/19/2023

CITY OF PORT ORANGE 1867 FLORIDA

If Council approval is required:

By:
Printed Name: Donald O. Burnette
Title: Mayor

Date Signed: 9/19/2023

CHANGE ORDER NO. 4
To Construction Contract dated 2/14/2017
Task Authorization #9 dated 6/15/2021
TRAFFIC ENGINEERING DATA SOLUTIONS, INC, Contractor

Project: FPN 439865-3-34-01 SUN Trail SJR2C Loop Trail
Project XSG200

The following changes are hereby made to the Contract Documents:

CHANGE IN CONTRACT PRICE:	**CHANGE IN CONTRACT TIMES:**
Original Contract Price: $190,317.08	Original Contract Times: Final Completion for Tasks 1-10 of Task Authorization No. 9: June 20, 2022 (NTP issued on July 6, 2021) Final Completion for Tasks 11 & 12 of Task Authorization No.9: September 30, 2023 (NTP for Task 11 issued 1/16/24; NTP for Task 12 not issued yet) Final Completion for Tasks 13-18 of Task Authorization No. 9: September 30, 2023 (NTP issued on 1/19/2023)
Net changes from previous Change Order: No.1: $2,000.00 No.2: $96,700.00	Changes in contract time from previous Change Orders: No.1: No extension of time requested No.2: Requested Final Completion for Tasks 11-18 of Task Authorization No. 9: September 30, 2023 No.3: Requested Final Completion for Tasks 11-18 of Task Authorization No. 9: January 31, 2024
Contract Price prior to this Change Order: $289,017.08	Contract Completion Date prior to this Change Order: Final Completion: Tasks 11-18 of Task Authorization No. 9: January 31, 2024
Net Increase (decrease) of this Change Order No. 4: N/A	Changes in contract time requested this Change Order No.4: (Requires Council Approval) Final Completion for Tasks 11 -18 of Task Authorization No.9: July 31, 2024
Contract Price with all approved Change Orders: $289,017.08	Contract Times with all approved Change Orders: Final Completion for Tasks 1-10 of Task Authorization No. 9: June 20, 2022 Final Completion for Tasks 11-18 of Task Authorization No. 9: July 31, 2024 (NTP issued on 1/19/2023 & 1/16/24) (NTP not yet issued for Task 12)

CHANGES ORDERED:

I. GENERAL: This Change Order is necessary to cover changes in the work to be performed under the Master Contract entered into by and between the parties on February 14, 2017 and Task Authorization No. 9 dated June 15, 2021.

II. REQUIRED CHANGES:

To provide for additional time to complete the coordination of permitting with St Johns River Water Management District (SJRWMD) and utility providers (specifically, FPL).

No goods shall be delivered, nor services commenced hereunder until this Change Order has been fully executed by all parties.

III. JUSTIFICATION:

Due to the length of time expired in efforts to coordinate with St. John's River Water Management District (SJRWMD) and FPL, TEDS/Stanley Consultants requests a 4-month extension to complete the 100% plans and specs, SJRWMD permitting, and bid phase documents, including typical SJRWMD and FDOT reviews and response time frames. The requested completion date of July 31, 2024, is in compliance with the current FDOT State-Funded Grant Agreement expiration date. This Change Order does not require additional funds.

IV. PAYMENT: Payment for this Change Order shall be made in accordance with the terms of the Contract subject to a limit not to exceed a total Contract price of $289,017.08. 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. This modification shall not extinguish the right of either party to bring a claim under the original contract as modified hereby.

RECOMMENDED BY:
COMMUNITY DEVELOPMENT
Department Project Manager

By: Lisa Epstein
Printed Name: Lisa Epstein
Title: Project Manager

Date Signed: 2-1-2024

ACCEPTED BY:
TRAFFIC ENGINEERING DATA SOLUTIONS, INC. DBA STANLEY CONSULTANTS
Contractor

By: Rick Morrow
Printed Name: Rick Morrow
Title: Client Services Manager

Date Signed: 2024-01-23

APPROVED BY:
CITY OF PORT ORANGE
Department Head

By: Tim Burman
Printed Name: Tim Burman
Title: Community Development Director

Date Signed: 02-01-2024

City Manager

By: N/A
Printed Name: Wayne Clark
Title: City Manager

Date Signed:

If Council approval is required:

By:
Donald O., Burnette, Mayor

Date Signed: 2/6/2024

Affirmed:

By:
Robin L. Fenwick, MMC, City Clerk

Date Signed: 2/6/2024

CHANGE ORDER NO. 5
To Construction Contract dated 2/14/2017
Task Authorization #9 (6/15/2021)
STANLEY CONSULTANTS, INC.
F/K/A TRAFFIC ENGINEERING DATA SOLUTIONS, INC, Contractor

Project: FPN 439865-3-34-01 SUN Trail SJR2C Loop Trail
Project XSG200

The following changes are hereby made to the Contract Documents:

CHANGE IN CONTRACT PRICE:	**CHANGE IN CONTRACT TIMES**:
Original Contract Price: $190,317.08	Original Contract Times: Final Completion for Tasks 1-10 of Task Authorization No. 9: June 20, 2022 (NTP issued on July 6, 2021) Final Completion for Tasks 11 & 12 of Task Authorization No.9: September 30, 2023 (NTP for Task 11 issued 1/16/24; NTP for Task 12 not issued yet) Final Completion for Tasks 13-18 of Task Authorization No. 9: September 30, 2023 (NTP issued on 1/19/2023)
Net changes from previous Change Order: No.1: $2,000.00 No.2: $96,700.00	Changes in contract time from previous Change Orders: No.1: No extension of time requested No.2: Requested Final Completion for Tasks 11-18 of Task Authorization No. 9: September 30, 2023 No.3: Requested Final Completion for Tasks 11-18 of Task Authorization No. 9: January 31, 2024 No.4: Requested Final Completion for Tasks 11-18 of Task Authorization No. 9: July 31, 2024
Contract Price prior to this Change Order: $289,017.08	Contract Completion Date prior to this Change Order: Final Completion: Tasks 11-18 of Task Authorization No. 9: January 31, 2024

Net Increase (decrease) of this Change Order No. 5: $20,690.00	Changes in contract time requested this Change Order No.5: (Requires Council Approval) Addition of Tasks 19 - 21 Final Completion for Tasks 11 -21 of Task Authorization No.9: February 28, 2025
Contract Price with all approved Change Orders: $309,707.08	Contract Times with all approved Change Orders: Final Completion for Tasks 1-10 of Task Authorization No. 9: June 20, 2022 Final Completion for Tasks 11-21 of Task Authorization No. 9: February 28, 2025 (NTP issued on 1/19/2023 & 1/16/24) (NTP not yet issued for Tasks 12, 19 - 21)

Remainder of page intentionally left blank

CHANGES ORDERED:

I. GENERAL: This Change Order is necessary to cover changes in the work to be performed under the Master Contract entered into by and between the parties on February 14, 2017 and Task Authorization No. 9 dated June 15, 2021.

II. REQUIRED CHANGES:

To provide for additional time to complete the coordination of permitting with St Johns River Water Management District (SJRWMD) and US Army Corps of Engineers.

No goods shall be delivered, nor services commenced hereunder until this Change Order has been fully executed by all parties.

III. JUSTIFICATION:
Changes in scope require Council approval. Is this a scope change? No
Due to the length of time and efforts coordinating with St. John's River Water Management District (SJRWMD), Florida Department of Environmental Protection (FDEP), and the related Federal court order issued on February 15, 2024, divesting FDEP of its authority to issue State 404 Program Permits in Florida, an approved Jurisdictional Determination, and individual permit or nationwide permit verification will need to be obtained from the US Army Corps of Engineers. TEDS/Stanley Consultants requests a 7-month extension to complete the 100% plans and specs, required environmental permitting, and bid phase documents, including typical agency and FDOT reviews and response time frames. The requested completion date of February 28, 2025, is in compliance with the current FDOT State-Funded Grant Agreement expiration date.

IV. PAYMENT: Payment for this Change Order shall be made in accordance with the terms of the Contract subject to a limit not to exceed a total Contract price of $309,707.08. 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. This modification shall not extinguish the right of either party to bring a claim under the original contract as modified hereby.

RECOMMENDED BY:
COMMUNITY DEVELOPMENT
Department Project Manager

By: Lisa Epstein
Printed Name: Lisa Epstein
Title: Project Manager

Date Signed: 6/3/2024

ACCEPTED BY:
STANLEY CONSULTANTS, INC.
F/K/A TRAFFIC ENGINEERING DATA SOLUTIONS, INC.
Contractor

By: Robert B Morrow
Printed Name: Rick Morrow
Title: Client Services Manager

Date Signed: May 24, 2024

APPROVED BY:
CITY OF PORT ORANGE
Department Head

By: Tim Burman
Printed Name: Tim Burman
Title: Community Development Director

Date Signed: 5-30-24

City Manager

By: N/A
Printed Name: Wayne Clark
Title: City Manager

Date Signed: N/A

If Council approval is required:

By: Donald O., Burnette, Mayor
Date Signed: 6/4/2024

Affirmed:

By: Robin L. Fenwick, MMC, City Clerk

Date Signed: 6/4/2024

PROPOSAL
CHANGE ORDER No. 5
to Task Authorization No. 09

Contract:	Master Contract for Engineering Services dated February 14, 2017
Task Authorization No.:	09
Project Name:	SJR2C Loop Trail (Spruce Creek Rd) from South of Selin Circle to Herbert St (FPN 439865-3-34-01)
SCI Project Number:	10962
Date:	May 7, 2024

Stanley Consultants, Inc. (SCI) is pleased to offer this proposal to the City of Port Orange (City) for providing additional design services on the above referenced project.

PROJECT UNDERSTANDING

- As of July 6, 2021, SCI received Purchase Order #001376 to provide roadway design services for this project, which is to be constructed through the Shared Use Nonmotorized (SUN) Trail Program, with state funding allocated under FPID 439865-3-34-01 to be administered by the Florida Department of Transportation (FDOT).
- On January 16, 2024 SCI submitted the plans and environmental documentation to the Saint John's River Water Management District (SJRWMD) to be reviewed for an Environmental Resource Permit (ERP).
- On January 17, 2024 the SJRWMD forwarded the request to the Department of Environmental Protection (DEP) for the State 404 assumed waters permit coordination.
- On February 15, 2024 a federal court issued a ruling formally vacating the Environmental Protection Agency's (EPA) December 2020 decision to allow the state of Florida to assume permitting authority for section 404 of the Clean Water Act.
- Based on the above-mentioned federal court ruling, an approved Jurisdictional Determination and individual permit or nationwide permit verification will need to be obtained from the United States Army Corps of Engineers (USACE). It is anticipated that the design schedule should be extended for an additional seven (7) months with a completion date of February 28, 2025.

SUPPLEMENTAL SERVICES

Task 19 – Project Extension and Permit Coordination

SCI will complete additional project management and administrative services related to the additional project duration and additional environmental support services, including the following:

- Additional general coordination with the CITY to discuss project issues or provide status updates on current progress over the extended duration of design
- Additional setup of sub-consultant contract(s) and administration, including monthly invoicing
- Cost estimate and plan updates to the CITY and FDOT over the extended duration of design
- Once all required permits are obtained, SCI will review the design plans and bid documents with the current FDOT Standard Plans and Design Manual to ensure compliance

Task 20 – Supplemental Environmental Services

SCI will retain Terracon Consultants, Inc. (Terracon) to prepare and submit a Notice of Intent to Use a General Permit to USACE as described in the attached proposal dated April 12, 2024.

Task 21 – Plan updates – (if required)

If significant changes are made to the FDOT Standard Plans or the FDOT Design Manual which require a plans update, SCI will update the plans and bid documents.

FEES

SCI shall conduct the work in the tasks described above for the lump sum fees indicated below:

Task	Fee
Task 19 – Project Extension and Permit Coordination	$5,010.00
Task 20 – Supplemental Environmental Services	$6,500.00
Task 21 – Plan Update	$9,180.00
Net Additional Fee	**$20,690.00**

An estimate of man-hours and expenses is provided on the following pages.

CITY OF PORT ORANGE
MAN-HOUR ESTIMATE

Stanley Consultants

May 7, 2024

SCI PROJECT No.: 10962
CONTRACT DESCRIPTION: Master Contract for Engineering Services (February 14, 2017)
PRIME CONSULTANT: Stanley Consultants, Inc.

CHANGE ORDER No.: 05 (Project Extension & 404 Permitting)
TASK AUTHORIZATION No.: 09
PROJECT DESCRIPTION: SJR2C Loop Trail (Spruce Creek Rd) from South of Selin Circle to Herbert St (FPN 439865-3-34-01)
ESTIMATE PREPARED BY: Karen O'Neill

ACTIVITY	Chief Engineer / Vice President		Engineer		Engineer Intern		Sr. Designer		Senior Technician		Admin. Assistant		TOTAL		
	Rate/Hr:	$180.00	Rate/Hr:	$115.00	Rate/Hr:	$85.00	Rate/Hr:	$100.00	Rate/Hr:	$60.00	Rate/Hr:	$65.00			
	Man Hours	Cost by Pos & Act	Man Hours	Cost by Pos & Act	Man Hours	Cost by Pos & Act	Man Hours	Cost by Pos & Act	Man Hours	Cost by Pos & Act	Man Hours	Cost by Pos & Act	Man-hours By Activity	Activity Cost	Avg. Hourly Rate
Task 19 – Project Extension	**6.0**	**1,080.00**	**29.0**	**3,335.00**	**7.0**	**595.00**	**0.0**	**0.00**	**0.0**	**0.00**	**0.0**	**0.00**	**42.0**	**5,010.00**	**119.29**
General coordination / progress status updates	2.0		13.0		2.0								17.0		
Initial setup & admin of sub-contracts / monthly invoicing	2.0		3.0		3.0								8.0		
Review Current FDOT Standards prior to bid	2.0		13.0		2.0								17.0		
Task 21 – Plans Update (if required)	**16.0**	**2,880.00**	**40.0**	**4,600.00**	**20.0**	**1,700.00**	**0.0**	**0.00**	**0.0**	**0.00**	**0.0**	**0.00**	**76.0**	**9,180.00**	**120.79**
Update Plans	4.0		20.0		10.0								34.0		
QA QC	8.0		10.0		10.0								28.0		
Final Plans Package	4.0		10.0										14.0		
TOTALS	**22.0**	**3,960.00**	**69.0**	**7,935.00**	**27.0**	**2,295.00**	**0.0**	**0.00**	**0.0**	**0.00**	**0.0**	**0.00**	**118.0**	**14,190.00**	**120.25**

SCI LABOR	**$14,190.00**
EXPENSES *(Refer to backup provided on the following page)*	
Sub-Consultant Fees	
I. SUB-CONSULTANT FEES	**$6,500.00**
Direct Expenses	
II. REPRODUCTION	**$0.00**
III. MILEAGE / TRAVEL	**$0.00**
IV. PERMIT REVIEW FEES	**$0.00**
V. SHIPPING / POSTAGE	**$0.00**
Sub-Total Direct Expenses	**$0.00**
SUB-TOTAL EXPENSES	**$6,500.00**
TOTAL LUMP SUM CONTRACT AMOUNT	**$20,690.00**

SUPPLEMENT TO AGREEMENT FOR SERVICES

CHANGE TO
SCOPE OF SERVICES AND FEES

This **SUPPLEMENT to AGREEMENT FOR SERVICES** to the original Agreement for Services (original Agreement dated 05/06/2021) is between Stanley Consultants Company ("Client") and Terracon Consultants, Inc. ("Consultant") for additional or changed Services to be provided by Consultant for Client on the Project, as described in the Agreement for Services. This Supplement is incorporated into and part of the Agreement for Services.

1. **Scope of Services**. The scope of the additional or changed Services are described in the Scope of Services section of the Consultant's Supplemental Proposal, unless Services are otherwise described below or in Exhibit B to this Supplement (which section or exhibit are incorporated into the Supplement).

   United States Army Corps of Engineers (USACE) Permitting

   Terracon will prepare and submit the necessary information for obtaining an Approved Jurisdictional Determination (AJD) and individual permit (IP) or nationwide permit verification from USACE for proposed site wetland impacts for impacts proposed to jurisdictional waters to USACE. This task includes preparation of an Environmental Documentation Report, avoidance and minimization analysis, alternatives analysis, application package, UMAM data sheets, USACE data sheets, preliminary jurisdictional assessment (WOTUS FORMS), and mitigation plan for off-site mitigation. If an alternate form of mitigation is required (on or off-site enhancement, creation, or preservation), then Terracon will coordinate the additional scope and fees with the client. Should USACE determine that the wetlands are isolated and/or non-jurisdictional, Terracon will request an NPR determination. This would require preparation of a submittal package and documentation demonstrating that the wetlands or surface waters are isolated from WOTUS. The task includes responding to one RAI from USACE regarding the IP, NPR, or GP Verification, and one field visit to review the wetlands.

2. **Compensation.** Client shall pay compensation for the additional or changed Services performed at the fees stated in the Supplemental Proposal unless fees are otherwise stated below or in Exhibit C to this Supplement (which section or exhibit are incorporated into the Supplement).

   Lump Sum - $6,500

All terms and conditions of the **Agreement for Services** shall continue in full force and effect. This Supplement is accepted and Consultant is authorized to proceed.

Consultant:	**Terracon Consultants, Inc.**	Client:	**Stanley Consultants Company**
By:	Brian Brandon Date: **4/12/2024**	By:	Date:
Name/Title:	**Brian P. Brandon / Department Manager III**	Name/Title:	
Address:	**1675 Lee Rd** **Winter Park, FL 32789-2207**	Address:	**80 Spring Vista Dr** **Debary, FL 32713-1821**
Phone:	**(407) 740-6110** Fax: **(407) 740-6112**	Phone:	**(386) 753-0558** Fax:
Email:	**Brian.Brandon@terracon.com**	Email:	

PROPOSAL
AMENDMENT No. 1
to Task Authorization No. 09

Contract:	Master Contract for Engineering Services dated February 14, 2017
Task Authorization No.:	09
Project Name:	SJR2C Loop Trail (Spruce Creek Rd) from South of Selin Circle to Herbert St (FPN 439865-3-34-01)p
SCI Project Number:	10962
Date:	May 7, 2025

Below is our proposal for **AMENDMENT No. 01** to **Work Order No. 09** previously issued by the City of Port Orange (City) to Stanley Consultants, Inc. (SCI) on **June 7, 2021** for the above referenced project. We are requesting a time extension and removing post design services from the contract.

PROJECT UNDERSTANDING

- As of July 6, 2021, SCI received Purchase Order #001376 to provide roadway design services for this project, which is to be constructed through the Shared Use Nonmotorized (SUN) Trail Program, with state funding allocated under FPID 439865-3-34-01 to be administered by the Florida Department of Transportation (FDOT).
- On January 16, 2024 SCI submitted the plans and environmental documentation to the Saint John's River Water Management District (SJRWMD) to be reviewed for an Environmental Resource Permit (ERP).
- On January 17, 2024 the SJRWMD forwarded the request to the Department of Environmental Protection (DEP) for the State 404 assumed waters permit coordination.
- On February 15, 2024 a federal court issued a ruling formally vacating the Environmental Protection Agency's (EPA) December 2020 decision to allow the state of Florida to assume permitting authority for section 404 of the Clean Water Act.
- On March 19, 2025 the U.S. Army Corps of Engineers grated authorization for the project.
- The State Funded Grant Agreement (SFGA) for the subject project will expire on June 30, 2025.
- The Project is proposed to be bid by June 30, 2025 so Task 11 – Bid Phase Services will continue beyond the June 30, 2025 expiration date.
- Based on the above-mentioned USACE approval, it is anticipated that the design schedule should be extended for an additional four (4) months with a completion date of October 28, 2025.
- It is our understanding that the City and SCI will be entering into a new Work Order to include Task 12- Limited Post Design Services under the new Master Contract for Professional Engineering Services.

CITY OF PORT ORANGE
MASTER CONTRACT FOR ENGINEERING SERVICES

This Master Contract for Engineering Services ("Contract") is entered into this 14th day of February, 2017, by and between the **CITY OF PORT ORANGE**, a Florida municipal corporation, whose principal address is 1000 City Center Circle, Port Orange, Florida 32129 (the "City"), and **TRAFFIC ENGINEERING DATA SOLUTIONS, INC.** ("Contractor" or "Engineer"), a Florida corporation, whose principal address is 80 Spring Vista Drive, DeBary, Florida 32713-1821 (collectively "the Parties).

The City and the Engineer for Ten Dollars ($10.00) and other good and valuable consideration hereby covenant and agree as set forth below.

1. *Provision of Services*. These services shall be performed in accordance with Request for Statement of Qualifications No. 16-32 ("RFSQ 16-32") and Engineer's proposal in response thereto. A true and correct copy of RFSQ 16-32 and Engineer's proposal is available in the Office of the City Clerk, City Hall, 1000 City Center Circle, Port Orange.

(a) The Engineer hereby agrees to provide the following services to the City of Port Orange:

(i) Civil Engineering, Traffic Engineering and Transportation Planning, Landscape Architectural, Environmental and Planning Services, Geotechnical Engineering Services and related services for the City for preparation of a variety of projects administered by various departments within the City, including but not limited to paragraph 5 and the following:

(1) Investigation of existing structures or sites and preparation of drawings, reports, calculations, cost estimates, schedules; coordination of special services such as testing and surveying;

(2) Studies and planning for construction projects, preparation of drawings, reports, calculations, cost estimates, schedules; coordination of special services such as testing and surveying;

(3) Engineering services required to construct a variety of projects and related site work; preparation of design, construction documents, plans, specifications, calculations, cost estimates, reports and schedules; coordination of special services such as testing and surveying; preparation of required documents and services to obtain all construction permits; assisting the City project manager with bidding and construction administration, including field visits, shop drawing review, applications for payment, punch list and certification;

(4) Preparation of presentation boards and electronic graphic photo/realistic renderings;

(5) Oral presentations and PowerPoint audio visual presentations; and

(6) Leading project meetings, preparing and distributing meeting minutes

(7) Projects may include City of Port Orange existing or proposed sites which require evaluation and/or site design for facilities with uses including Parks and Recreation, Fire and Police, flood control and/or stormwater treatment. Projects may also include review of development projects, traffic simulation/operations analysis models such as HCS, ARTPLAN, SYNCHRO, CUBE, and CFRPM, Traffic Impact Analysis creation and review, signal timing, traffic calming, intersection analyses, traffic improvement justification reports, Traffic Impact Analysis Methodology review, conducting traffic counts, creation and review of roadway classification and Level of Service (LOS) capacity reports.

(8) Plans will be drawn in AutoCAD format unless otherwise directed.

(9) All documents resulting from any project performed hereunder shall become the sole property of the City.

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

Term: The term of this Contract shall commence on the date this Contract is signed by both of the Parties, and shall continue for a period of three (3) years thereafter or until either party provides the other party written notice of its intent to terminate this Contract.

Renewals: Upon written agreement of the Parties and appropriation by City Council, this Contract may be renewed for up to two (2) additional two (2) year terms. The City reserves the right to revise rates for consistency with current market trend at least annually.

Manner and Place: The Engineer shall perform the services as outlined in each project assignment, in accordance with Standard Construction Details as required on all City owned facilities and properties (i.e. rights-of-way) and in a manner as required by all current federal, state, county, fire, building and land development codes, laws, ordinances and regulations, and with applicable permits and licenses per the City Code of Ordinances. Engineer shall not deliver goods or services without a fully executed task authorization and a written purchase order, signed by an authorized agent of the City of Port Orange.

Time and Essence: Engineer acknowledges that time is of the essence in the completion of the services contemplated by this contract. Engineer shall complete all services within the timeline specified in the project, and as reflected on the Notice to Proceed.

2. *Authorization for Services*. This Contract standing alone does not authorize the performance of any work or services to be provided by the Engineer or require the City to place any orders for work or service. Authorization for performance of services by the Engineer under this Contract shall be in the form of written Task Authorization(s) issued and executed by the City and signed by the Engineer. A sample Task Authorization is attached hereto as Exhibit "1." The City makes no covenant or promise as to the number of orders placed, nor that the City shall place any orders for goods or services during the life of this Contract. The City reserves the right to contract with other parties for the goods and services contemplated by this Contract, as determined in the City's sole and absolute discretion. Furthermore, the City reserves the right, at its sole discretion, to utilize the Master Contract for Engineering Services entered into between the Parties on March 17, 2015 pursuant to Request for Statement of Qualifications No. 14-23, for the scope of services set forth therein, as long as the Contract remains valid.

3. *City Obligations*. The City reserves the right to utilize either (i) lump sum or (ii) hourly rate compensation as set forth in Exhibit "2" attached hereto. The City's obligation to pay Engineer under this Contract is limited to the

approved Contract fees and the budgeted amount for the fiscal year approved by the Port Orange City Council for the then current fiscal year. All payments shall be governed by the Local Government Prompt Payment Act as set forth in Sections 218.70 through 218.79, Florida Statutes, as amended. The Engineer shall be paid compensation for all services, labor and material required thereby, and for all expenditures as specified in each Task Authorization. The fee shall be negotiated for each Project Task Authorization to this Contract. The Engineer shall submit a monthly statement for professional services rendered and expenses incurred to date of the statement. The statements for lump sum shall be based upon Engineer's estimate of the proportion of the total services actually completed at the time of billing to the total services to be performed. Such estimates are to be prepared by the Engineer and accompanied by such supporting data as may be required by the Contract Administrator. Compensation for any authorized cost which is not set forth in the Contract shall not exceed the actual, documented out-of-pocket cost to the Engineer plus ten (10%) percent if approved by the City. The Contract and Task Authorization(s) do not include retainer fees, nor is there a minimum fee guaranteed during the Contract period.

4. *Contract Administration*. The Department Head requesting service ("Contract Administrator"), shall perform contract administration of this Contract. For notice provisions, see the paragraph below entitled "Notice." The work shall be reviewed by the authorized Contract Administrator, or designee, who shall have final decision authority for pay requests on all approved phases of the work, including general direction, review, and approval of the work. Neither the Contract Administrator's review, approval or acceptance of, nor payment for, any of the services required under this contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and the Engineer shall be and remain liable to the City for all costs of any kind which were incurred by the City as a result of the Engineer's negligent performance of the services furnished under this Contract.

5. *Additional Statement of Engineering Services*. The Engineer shall:

(a) Provide all certifications ("Engineer of Record" function) surveys, calculations, drawings, and any other documents required for special permits and authorizations from various government bodies or agencies having jurisdiction over the project;

(b) Prepare a time scaled diagram showing the dates of completion of various design phases and scheduled completion of working drawings and specifications and submit for Contract Administrator's review and approval;

(c) Verify and evaluate technical proposals furnished by the construction contractor if requested by the City and provide such amplifications and explanations that may be necessary to clarify the intent of the drawings and specifications;

(d) Furnish consultation and advice as requested by the City during the construction of project, including Construction Administration Services (unless otherwise stipulated in a specific amendment attached hereto and made a part thereof);

(e) Furnish all other engineering services including without limitation those specified hereinafter and those required for the completion of specific projects as described in amendments and task authorizations for this contract:

(i) *Site Visits/Special Permits*. The Engineer shall visit the site and shall initiate and hold such conferences with representatives of the City and other agencies, boards or government bodies having jurisdiction over the area the project covers and take such other action as may be necessary to obtain permits and authorizations; except that building construction permits shall be specifically requested in a task authorization; and provide other data upon which to develop the design and preliminary sketches showing the contemplated project.

(ii) *Preliminary Sketches and Opinion of Probable Construction Costs*. The preliminary sketches shall include plans, elevations and sections developed in such detail and with such descriptive specifications as will clearly indicate the scope of work, and make possible a reasonable opinion of the construction cost and satisfy the requirements of permitting and regulatory agencies having jurisdiction. An opinion of probable construction costs shall be prepared.

(iii) *Working Drawings and Specifications*. After the preliminary sketches and opinion of probable construction costs have been approved by the Contract Administrator; the Engineer shall proceed with the preparation of working drawings and specifications as required by the Contract Administrator for the construction of said project. Working drawings, specifications and estimates shall be delivered to the Contract Administrator in such sequence and at such times as required by the City such that the construction work can be initiated promptly, procurement of materials made without delay and continuous prosecution of the work promoted, all in strict accordance with the approved design schedule as provided in Paragraph 5 (b) above. Working drawings and specifications shall be revised as necessary and as required by the Contract Administrator. After working drawings and specifications have been approved by the Contract Administrator, the Engineer shall furnish such number of sets of prints of the approved working drawings and such number of sets of the approved specifications, as may be required by the Contract Administrator.

(iv) *Original Drawings - Final Plans*. Upon approval of final plans the Engineer shall deliver to the City one set of original drawings, in such medium and on such materials, as may be required by the Contract Administrator, suitable for blueprinting, showing approved constructed requirements (not of "as-built" construction unless otherwise stipulated), provided, however, that should this Contract be terminated by the City, the Engineer shall deliver to the City one digital and one paper full scale set of originals as they exist at the time of termination. All plans shall be and remain the property of the City during preparation and upon delivery.

(v) *Revision of Final Drawings and Specifications*. The engineer shall without additional fee correct and revise the drawings, specifications, or other materials furnished under this Contract, if the Contract Administrator finds that such revision is necessary to correct errors or deficiencies for which the Engineer is responsible.

(vi) *Bidding*. The Engineer shall perform all necessary engineering services required in connection with the competitive bidding for construction of the project and the preparation of all documents required thereof, including preparation of documents for separate bid packages for multiple contractors if so required by Contract Administrator; coordination with the City Attorney and follow-up on contractor execution and delivery to the City Attorney of the original contract and original bond for recording in the public records.

(vii) *Bonding*. The Engineer shall coordinate the delivery to the City Attorney of original bonds for recording. All construction contracts shall require two (2) original Bonds in the form approved by the City Attorney. Engineer shall not require duplicate original bond documents in the draft construction documents and agreement for the City.

6. *Responsibility of the Engineer*. The Engineer shall be responsible for the professional and technical accuracy and the coordination of all designs, drawings, and specifications; contract documentation and other work or materials

furnished by the Engineer under this contract. The Engineer shall without additional cost or fee to the City, correct or revise any errors or deficiencies in the Engineer's performance.

7. *Reuse of Documents*. The City shall have unlimited rights, for the benefit of the City in all drawings, designs, specifications, notes and other engineer's work produced in the performance of this contract, or in contemplation thereof, and all as-built drawings produced after completion of the work, including the right to use same on any other City work without additional cost to the City. All documents including Drawings and Specifications prepared by Engineer pursuant to this Contract are instruments of service in respect of the Project. They are not intended or represented to be suitable for reuse by City or others for any other project. Reuse for another project without written verification or adaption by Engineer for the specific purpose intended will be at City's risk. Any such verification or adaption performed by Engineer shall entitle Engineer to further compensation at rates to be agreed upon by City and Engineer. A reproducible electronic and paper set of plans and specifications shall be delivered to and become the property of the City upon completion of the Project by the Engineer.

8. *Expert Witness*. The Engineer shall serve as an expert witness for the City in any legal proceedings regarding this project if the City so requests. The expert witness fee for Engineer shall be negotiated at the time the Engineer is called as an expert.

9. *Modifications to Scope of Work/Change Orders*

(a) Change Orders. The Contract Administrator, upon written approval as required by the City's finance ordinances and policies, shall without notice to any sureties, have the authority to order changes in this Contract which affect the cost or time of performance. Such changes shall be ordered in writing specifically designated to be a change order. Such orders shall be limited to reasonable changes in one or more of the following: the services to be performed, the contract price or the time of the performance. The City will not be held liable for any changes which have not been properly authorized and approved in accordance with this Contract.

(b) If any change under this clause causes an increase or decrease in Engineer's cost of, or time required for the performance of the work hereunder, Engineer shall notify the City requesting an equitable adjustment and the contract shall be modified in writing as mutually agreed by the Parties. Any change order shall include all costs and time extensions related to or incidental to such change.

(c) Any claim by the Engineer for adjustment under this clause shall be asserted in writing within thirty (30) days from the date of receipt by the Engineer of the notification of change unless the Contract Administrator grants a further period of time before the date of final payment under the contract. The Engineer shall proceed with the prosecution of the work as changed. Except as provided in this Contract, the Engineer shall not be entitled to payment for a charge for any extra work or material.

10. *Subcontractors and Outside Associates and Consultants*. Any subcontractors and outside associates or consultants required by the Engineer in connection with the services covered by the Contract will be limited to such individuals or firms as are specifically identified in the task authorization amendment. Any substitution in such subcontractors, associates, or consultants shall be subject to the prior approval of the Contract Administrator.

11. Termination

(a) The performance of work under this Contract may be terminated by the City in accordance with this clause in whole, or from time to time in part, whenever the Contract Administrator shall determine that such termination is in the best interest of the City. Any such termination shall be effected by delivery to the Engineer of a Notice of Termination specifying the extent to which performance of work under the Contract is terminated, and the date upon which such termination becomes effective.

(b) After receipt of a Notice of Termination, and except as otherwise directed by the Contract Administrator, the Engineer shall:

(i) Stop work under the Contract on the date and to the extent specified in the Notice of Termination.

(ii) Place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of such portion of the work under the Contract as it is not terminated.

(iii) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination.

(iv) Assign to the City in the manner, at the times and to the extent directed by the Contract Administrator, all of the right, title, and interest of the Engineer under the orders and subcontracts so terminated, in which case the City shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

(v) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Contract Administrator, to the extent the City may require which approval or ratification shall be final for all the purposes of this clause. If the City terminates the Engineer for failure to adhere to project time lines for completion of the Engineering work, then the City may deduct from amounts owed on the Engineer termination claim, the City's increased costs directly resulting from the failure of the Engineer to timely perform. The Engineer shall not be responsible for a delay in Engineering work that is beyond the Engineer's reasonable control.

(vi) Transfer title and deliver to the City in the manner, at the times, and to the extent, if any, directed by the Contract Administrator.

(1) The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination; and

(2) The completed or partially completed plans, drawings, information, and other property which, if the contract has been completed, would have been required to be furnished to the City.

(vii) Complete performance of such part of the work as shall not have been terminated by the Notice of Termination.

(c) After receipt of a Notice of Termination, the Engineer shall submit to the City's Contract Administrator its termination claim, in the form and with certification prescribed by the Contract Administrator. Such claim shall be submitted promptly but in no event later than thirty (30) days from the effective date of termination, unless one or more extensions in writing are granted by the Contract Administrator, upon request of the Engineer made in writing within such thirty (30) days period or authorized extension thereof. Upon failure of the Engineer to submit the termination claim within the time allowed, the Contract Administrator may determine on the basis of information available to them, the amount, if any, due to the Engineer by reason of the termination and shall thereupon pay to the Engineer the amount so determined, so long as all final documentation for the project has been delivered to the Contract Administrator.

(d) Subject to the provisions of Paragraph 11 (c), the Engineer and the Contract Administrator may agree upon the whole or any part of the amount or amounts to be paid the Engineer by reason of the total or partial

termination of work pursuant to this clause, the total or partial termination of work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on work done; provided, that such agreed amount or amounts exclusive of settlement costs, shall not exceed the contract price for work completed that has been accepted by the Contract Administrator, as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. The Contract shall be amended accordingly and the Engineer shall be paid the agreed amount. Nothing in Paragraph 11 prescribing the amount to be paid to the Engineer, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid.

(e) In the event of the failure of the Engineer and the Contract Administrator to agree as provided in Paragraph 11 (d), upon the whole amount to be paid to the Engineer by reason of the termination of work pursuant to this subparagraph, the Contract Administrator shall pay to the Engineer the amounts determined by the Contract Administrator, but without duplication of any amounts agreed upon, as follows:

(i) For completed work and services accepted by the City, the price or prices specified in the contract for such work, less any payments previously made.

(ii) The total of:

(1) The costs incurred in the performance of the work and service terminated, including initial costs and preparatory expenses allocable thereto, but exclusive of any costs attributable to the work and services paid or to be paid for under Paragraph 11 (e)(i) hereof;

(2) The cost of settling and paying claims arising out of the termination of work or services under subcontracts or orders as provided in Paragraph 11 (b)(v) above, which are properly chargeable to the terminated portion of the contract exclusive of amounts paid or payable on account of work or services delivered or furnished by subcontractors prior to the effective date of termination, which amounts shall be included in the costs payable under Paragraph 11 (a) above; and

(3) A sum, as profit on Paragraph 11, determined by the Contract Administrator to be fair and reasonable, not to exceed 5% of the Task Authorization.

(iii) In the event the contract is terminated because of Engineer's default, the City may take over the work and services and complete the same by contract or otherwise, and the Engineer shall be liable to the City for any increased cost of the project.

12. *Examination of Records*

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

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

(c) The period of access provided in subparagraphs (a) and (b) above for records, books, documents and papers which may relate to any arbitration, litigation, or the settlement of claims arising out of the performance

of this contract or any subcontract shall continue until any appeals, arbitration, litigation or claims shall have been finally disposed of.

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

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

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

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

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

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

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

14. *Termination for Non-Appropriation of Funds*. If funds are not appropriated for any succeeding fiscal years subsequent to the one in which this contract is entered into, for the purpose of this Contract, then the City may terminate this Contract upon thirty (30) days prior written notice to the Engineer. Should termination be accomplished in accordance with this Section, the City shall be liable only for payments due through the date of termination. The City agrees that should it terminate in accordance with this Section, it shall not obtain services which are substantially equal to or similar to those for which this contract was entered into. This provision shall survive any termination of the Contract.

15. *Insurance*

(a) Engineer shall maintain insurance during the life of this Contract. Engineer shall provide to the City a certificate of insurance identifying the City of Port Orange as an additional insured. The Engineer shall furnish policies and certificates of insurance to the City for review and approval on initial contract date and thereafter at least on each anniversary of the contract effective date. Failure of the Engineer to maintain a certificate of insurance in compliance or approval by the City of any policy of insurance shall not, relieve the Engineer from its responsibilities to provide the insurance coverage required herein. The certificates shall clearly indicate that the Engineer has obtained insurance of the type, amount and classification required by these provisions. No work shall be commenced until City has approved the policies. This Contract may be terminated by the City without penalty or expense, if policies requested hereunder are not provided to and approved by the City within thirty (30) days of the date hereof. The Engineer shall notify the City and to the City's designated insurance Risk Manager of any changes in or cancellations of coverage.

(b) For workers' compensation coverage, the bidder's insurance certificate shall include the insurer's waiver of subrogation in lieu of naming the city as an additional insured for workers' compensation. Policies other

than Workers' Compensation shall be issued by insurers licensed and/or duly authorized under Florida Law to do business in the State of Florida and all insuring companies are required to have a minimum rating of "A" in the "Best Key Rating Guide" published by A.M. Best & Company, Inc. Policies for Workers' Compensation may be issued by companies authorized as a group self-insurer by F.S. 440.572. Engineer shall not commence work under this Agreement until the City has received a certificate or certificates of insurance and endorsement evidencing the required insurance. Engineer shall be solely responsible to provide the City written original certificate, notice of cancellation, nonrenewal or any other changes in coverage no later than ten (10) days prior to the effective date of the change.

The City reserves the right to increase insurance coverage as determined for higher risk contracts and shall reimburse the Engineer for the reasonable additional costs of increased coverage. The Engineer shall maintain the following coverages:

Required Insurance	Insurance	Standards	Comments
☒	Workers' Compensation Limits: Additional Coverage:	Coverage A - Statutory Coverage B - $100,000 All States (Broad Form) Voluntary Compensation	If the contract requires work on or about navigable waters, require Longshoreman's and Harbor Workers' Coverage. If vessels involved, require Jones Act coverage with limits of $500,000.
☒	Comprehensive General Liability (including Completed Operations and Contractual Liability Limits:	Combined Single Limit Bodily Injury and Property damage $500,000 occurrence $1,000,000 Aggregate	When the Contract work on or under Railroad rights of way or properties, the Engineer shall take out and maintain during the life of the Contract, Railroad protective liability and property damage insurance in amounts as requested by the Railroad.
☒	Comprehensive Business, Automobile Liability to include all automobiles. Limits: Additional Coverage:	Auto Liability Body Injury: $100,000 each person $300,000 each occurrence. Property Damage Liability $100,000 each occurrence. Non-Owned, Hired Car	Or $500,000 Combined Single Limit for Bodily Injury and Property Damage.
☒	Professional Liability (Errors & Omissions) Limits:	Coverage- $1,000,000 minimum	

16. *Sovereign Immunity*. The City expressly retains all rights, benefits and immunities of sovereign immunity in accordance with Section 768.28, Florida Statutes. Notwithstanding anything set forth in any section of this Contract to the contrary, nothing in this Contract shall be deemed as a waiver of immunity or limits of liability of the City beyond any statutory limited waiver of immunity or limits of liability which may have been adopted by the Florida Legislature

or may be adopted by the Florida Legislature and the cap on the amount and liability of the City for damages regardless of the number or nature of claims in tort or equity shall not exceed the dollar amount set by the legislature for tort. Nothing in this Contract shall inure to the benefit of any third party for the purpose of allowing any claim against the City which would otherwise be barred under the Doctrine of Sovereign Immunity or operation of law.

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

18. *Non-discrimination*. During the performance of this Contract, Engineer agrees as follows:

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

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

(c) Engineer shall be solely responsible for compliance with all federal, state and local laws, rules and regulations prohibiting discrimination of its officers, agents, employees and subcontractors. Engineer shall post notices, advertisements and solicitations in accordance with federal law, rule or regulation. Engineer shall include the provisions of the foregoing subparagraphs (a), (b), and (c) in every subcontract or purchase order of over $10,000 so that the provisions will be binding upon each subcontractor or vendor.

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

20. *Disputes*. The City Manager, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to Engineer, shall decide disputes with respect to this Contract in the first instance. The decision shall be final and binding unless, within ten (10) days from the date of receipt of the decision of the City Manager, appeal is made to the City Council. The decision of the City Council shall be final and binding unless set aside by a court of competent jurisdiction as fraudulent, capricious, arbitrary, or so grossly erroneous as necessary to imply bad faith, or not to be supported by any evidence. Pending a final determination of a properly appealed decision of the City Council, Engineer shall proceed diligently with the performance of this Contract in accordance with that decision.

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

22. *Controlling Law*. **THIS AGREEMENT CONTAINS IMPORTANT MATTERS AFFECTING LEGAL RIGHTS AND IS ACCEPTED AND ENTERED INTO IN FLORIDA AND ANY QUESTION REGARDING ITS VALIDITY, CONSTRUCTION, ENFORCEMENT, OR PERFORMANCE SHALL BE GOVERNED BY FLORIDA LAW. ANY LEGAL PROCEEDING ARISING FROM OR IN ANY WAY REGARDING THE AGREEMENT SHALL HAVE ITS VENUE LOCATED EXCLUSIVELY IN THE CIRCUIT COURT OF VOLUSIA COUNTY, FLORIDA, AND THE PARTIES HEREBY EXPRESSLY CONSENT AND SUBMIT THEMSELVES TO THE PERSONAL JURISDICTION AND VENUE OF THE COURT.**

23. *Additional Provisions*. This Contract includes all additional provisions as may have been outlined in Request for Statement of Qualifications identified herein and any attachments or exhibits to this Contract whether delivered herewith or subsequently approved as a part hereof.

24. *Integration*. This Contract and the documents incorporated herein by reference shall constitute the whole agreement between the parties. There are no promises, terms, conditions, or obligations other than those contained herein, and this Contract shall supersede all previous communications, representations, or agreements, written or verbal, between the parties hereto.

25. *Notice*. For purposes of this agreement, notices shall be sent as follows:

City:
City of Port Orange
Attention: City Manager
1000 City Center Circle
Port Orange, Florida 32129
(386) 506-5501

Copy to:
City of Port Orange
Attention: *(Department Head Requesting Service)*
1000 City Center Circle
Port Orange, Florida 32129
(386) 506-5500

Engineer:
Traffic Engineering Data Solutions, Inc.
Attention: Deanna F. Ferrell, President
80 Spring Vista Drive
DeBary, Florida 3217432713-1821
(386) 753-0558 – Telephone
(386) 753-0778 – Facsimile
dferrell@teds-fl.com

Any notice or other communication given under the Contract will be in writing and delivered by hand, sent by facsimile (provided acknowledgement of receipt thereof is delivered to the sender), sent by certified, registered mail, or sent by any nationally recognized overnight courier service to the addresses provided herein. The parties may, from time to time and at any time, change their respective addresses and each will have the right to specify as its address any other address by at least 10 days written notice to the other party.

26. *Contract Construction*

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. The delivery by facsimile or e-mail of an executed copy of this Agreement shall be deemed valid as if an original signature was delivered except for the bond. No contract shall be formed between Engineer and the City until the City signs this Agreement.

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:

Brooke Markham
Printed Name: Brooke Markham

Eileen Wright
Printed Name: Eileen Wright

Traffic Engineering Data Solutions, INC.

By: Deanna F. Ferrell
Deanna F. Ferrell, 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: FEB 9, 2017

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 9 day of FEB., 2017, by Deanna F. Ferrell, as President of Traffic Engineering Data Solutions, Inc., a Florida corporation, and who:

[Notary: Please select one]

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

SANDRA COUNCIL NOTARY PUBLIC STATE OF FLORIDA COMMISSION EXPIRES January 7, 2018 #FF 081250 Bonded thru Notary Public Underwriters

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

Witnesses:

Cynthia K Rivera
Printed Name: Cynthia K. Rivera

Barbara J Abbate
Printed Name: Barbara J. Abbate

CITY OF PORT ORANGE

By: _____
Donald O. Burnette, Mayor

Date: 2/14/17

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 14th day of February, 2017, by Donald O. Burnette, as Mayor of the City of Port Orange, a Florida municipal corporation, on behalf of the city, and who is personally known to me.

Notary Public State of Florida
Barbara J Abbate
My Commission EE 884422
Expires 04/26/2017

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

Witnesses:

Cynthia K Rivera
Printed Name: Cynthia K. Rivera

Barbara J Abbate
Printed Name: Barbara J. Abbate

ATTEST:

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

Date: 2/14/17

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 14th day of February, 2017, by Robin L. Fenwick, as City Clerk of the City of Port Orange, a Florida municipal corporation, on behalf of the city, and who is personally known to me.

Notary Public State of Florida
Barbara J Abbate
My Commission EE 884422
Expires 04/26/2017

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

[CA 5671]

EXHIBIT "1"

(Consisting of 3 pages)

TASK AUTHORIZATION NO. __
Standard Contract for Services dated _____
Between the City of Port Orange, Florida and Traffic Engineering Data Solutions, 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 **TRAFFIC ENGINEERING DATA SOLUTIONS, INC.**, a Florida corporation with its principal place of business at 80 Spring Vista Drive, Debary, Florida 32713-1821 ("Contractor"), and hereinafter collectively referred to as the "Parties," and is to that certain Master Contract for Engineering Services dated _____, and any amendments thereto, hereinafter collectively referred to as the "Contract." The Parties, in exchange for the mutual covenants contained herein and in the Contract, agree as follows:

1. This Task Authorization expressly modifies the Contract and in the event of a conflict, the terms and conditions of this Task Authorization shall prevail.

2. The Contract Administrator may be contacted as follows:

   Name: _____

   Address: _____

   Phone: _____

   Mobile: _____

   E-Mail: _____

3. In addition to all other terms and conditions contained in the Contract, Contractor shall provide services relating to _____ as more particularly described in the Scope of Services attached hereto and incorporated herein as Task Authorization Exhibit "A."

4. Contractor shall complete the services to be provided herein within _____ days of the date of written notice by the City to the Contractor.

5. In return for the services identified above, the City agrees to compensate Contractor at the prices set forth in Exhibit "__" attached hereto and made a part hereof for all purposes, subject to a limit up to but not to exceed $_____. All payments shall be governed by the Local Government Prompt Payment Act as set forth in Sections 218.70 through 218.79, Florida Statutes, as amended.

6. Contractor shall provide a 100% Combination Payment and Performance Bond in accordance with Florida Statutes Section 255.05, including the Front Page and Certificate for Filing in Public Records, in a form substantially similar to the forms attached hereto as Task Authorization Exhibit "B," and acceptable to the Port Orange City Attorney, and recorded with the Clerk of Volusia County at Contractor's expense. A separate bond shall be provided from the Surety which identifies and covers the scope of work for the project stated in this Task Authorization along with all other provisions of this Task Authorization with the penal sum of such bond being not less that the contract sum described in this Task Authorization. If any surety bond furnished in connection with this Task Authorization becomes unacceptable to the City, Contractor shall promptly furnish such additional security as may be required from time to time to protect the interests of the City and a person supplying labor and materials in the prosecution of work contemplated by this Task Authorization No. __.

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

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

Witnesses:

TRAFFIC ENGINEERING DATA SOLUTIONS, INC.

_____ By:_____

Printed Name:_____ Deanna F. Ferrell, 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:_____

Printed Name:_____

Witnesses:

CITY OF PORT ORANGE

_____ By:_____
Printed Name:_____ Donald O. Burnette, Mayor

_____ Date:_____
Printed Name:_____

Witnesses:

ATTEST:

_____ By:_____
Printed Name:_____ Robin L. Fenwick, CMC, City Clerk

_____ Date:_____
Printed Name:_____

[CA 5671]

HOURLY RATE SCHEDULE

CONTRACT FOR PROFESSIONAL ENGINEERING SERVICES
CITY OF PORT ORANGE RFSQ # 16-32

The following schedule provides a maximum direct salary hourly rate for the disciplines, which are likely to be engaged for projects associated with the contract referenced above for the City of Port Orange.

COMPANY NAME: TRAFFIC ENGINEERING DATA SOLUTIONS, INC.

LABOR CATEGORY	HOURLY RATES
President	$200.00
Chief Engineer / Sr. Vice President	$180.00
Sr. Engineer / Vice President	$180.00
Project Engineer / Project Planner	$125.00
Engineer / Planner	$115.00
Engineer Intern	$85.00
Sr. Designer	$100.00
Designer	$60.00
Senior Technician	$60.00
Technician	$55.00
Administrative Assistant	$65.00
Secretary	$45.00

NON-LABOR CATEGORY		RATES
Reproduction:		
Black & White:		
	8.5 x 11	$0.10 / sheet
	11 x 17	$0.20 / sheet
	24 x 36	$3.00 / sheet
Color:		
	8.5 x 11	$1.00 / sheet
	11 x 17	$2.00 / sheet
	24 X 36	$20.00 / sheet
Mileage (travel to meetings and project site)		Current Federal Rate
Shipping / Postage		Cost

EXHIBIT "2"

CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 5/20/2025

SUBJECT: (C7c) Approval of Task Authorization No. 4 to the Continuing Services Contract with Stanley Consultants, Inc. (#CA8377) for Post-Design Services for the SJR2C Loop SUN Trail Project

DEPARTMENT: Community Development

GOAL: 1 - Public Safety
2 - Infrastructure
3 - Quality of Life

RECOMMENDED MOTION: Move to approve Task Authorization No. 4 to the Continuing Services Contract with Stanley Consultants, Inc. (#CA8377) for Post-Design Services for the SJR2C Loop SUN Trail Project and authorize Mayor and City Clerk to sign all necessary documents.

SUMMARY: At its April 15 meeting, the City Council accepted a Florida Department of Transportation (FDOT) State Funded Grant for construction of the Port Orange segment of the St. John's River to Sea (SJR2C) Loop Trail (FDOT #439865; CIP #CD221). The SJR2C Loop is a 260-mile regional trail system that runs through five Florida counties (Putnam, St. Johns, Volusia, Brevard, and Flagler) and includes the entire Palatka-to-St. Augustine State Trail and is part of the 3,000-mile East Coast Greenway. Similar SJR2C Loop Trail segments are programmed for construction in Edgewater, New Smyrna Beach, and South Daytona.

The segment of the SJR2C Loop Trail in Port Orange between New Smyrna Beach and South Daytona is located along McDonald Road, Spruce Creek Road, Nova Road, and Ridgewood Avenue and consists of existing trail segments along McDonald Road between South Daytona and Herbert Street and Spruce Creek Road and Nova Road, south of Dunlawton Avenue to Ridgewood Avenue. As part of this project, trail segments to fill gaps along the trail route will be constructed along Spruce Creek Road, north of Dunlawton Avenue, to Herbert Street, along with midblock crossings on Spruce Creek Road, north of Selin Circle.

The project is anticipated to go out to bid in late May 2025, with construction anticipated to begin in late August 2025 and be completed in May 2026. The proposed Task Authorization with Stanley Consultants, Inc., designer of the project, is for Post-Design Services throughout project construction to ensure the project is built in accordance with the design intent, codes, and specifications, respond to requests for clarification from the contractor, assist in review of any change orders, provide project as-built surveys, and prepare required completion certifications as Engineer of Record for SJRWMD,

FDOT, and the City. These are services typical for a project of this type. No additional funds are required by the city with this Task Authorization.

The proposed Task Authorization with Stanley Consultants, Inc., the design engineer for the project, includes Post-Design Services to be provided throughout the construction of the project. These services ensure that the project is built in accordance with the approved design intent, all applicable codes, and specifications, assisting in the review and evaluation of any change orders, providing project as-built surveys, and preparing the required completion certifications as the Engineer of Record for St. Johns River Water Management District (SJRWMD), the Florida Department of Transportation (FDOT), and the City. These services are typical for a project of this type. No additional City funding is required under this Task Authorization.

PRESENTER: Tim Burman

ATTACHMENTS:

1.	Stanley Consultants Inc. Task Authorization No. 4 - Post Design Services for SJR2C Loop SUN Trail Project	Stanley Consultants Inc. Task Authorization No. 4 - Post Design Services for SJR2C Loop SUN Trail Project.pdf
2.	2025-05-01 Scope and Fee Proposal CSC 31733.04	2025-05-01 Scope and Fee Proposal CSC 31733.04.pdf
3.	Stanley Consultants,Inc Master Contract	Stanley Consultants,Inc Master Contract.pdf

Lisa Epstein	Created/Initiated - 4/29/2025
Tim Burman	Approved - 5/6/2025
Mark Simpson	Approved - 5/7/2025
Shannon Balmer	Approved - 5/8/2025
Wayne Clark	Final Approval - 5/8/2025

TASK AUTHORIZATION NO. 4
Master Contract for Professional Engineering Services dated March 19, 2024
Between the City of Port Orange, Florida and Stanley Consultants, 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 **Stanley Consultants, Inc.** ("Engineer"), an Iowa corporation, registered to transact business in Florida, with its principal place of business at 225 Iowa Avenue, Muscatine, Iowa 52761-3764, and hereinafter collectively referred to as the "Parties," and is to that certain Master Contract relating to Professional Engineering 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 No. 4 expressly modifies the Contract and in the event of a conflict, the termsand conditions of this Task Authorization shall prevail.

2. In addition to all other terms and conditions contained in the Contract, Engineer shall provide Post-Design Services for the SJR2C Loop SUN Trail Project**,** and 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 from the date of written notice by the City to the Engineer and continue until April 30, 2026.

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 **$29,025.10**. 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:

STANLEY CONSULTANTS, INC.

_____

Printed Name: _____

By: _____

Brent A. Lenzen, Vice 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.

_____

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:_____
Scott Stiltner, Mayor

Date:_____

ATTEST:

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

Date:_____

EXHIBIT "1"

Engineer's Quote

Consisting of 6 Pages

Stanley Consultants INC.

80 Spring Vista Drive
Suite 100
DeBary, FL 32713

386.753.0558
stanleyconsultants.com

April 30, 2025

Contract:	Master Contract for Professional Engineering Services dated March 19, 2024
Task Authorization No.:	04
Project Name:	SJR2C Loop Trail (Spruce Creek Rd) from South of Selin Circle to Herbert St – Post Design Services (FPN 439865-3-54-01)
SCI Project Number:	31733.04
Date:	May 1, 2025

Stanley Consultants, Inc. (Stanley) is pleased to offer this scope of services to the City of Port Orange (City) for providing professional engineering services for the above referenced project.

PROJECT UNDERSTANDING

- The current Post Design Services Task-12 from the Contract Task Work Order No. 09 from the Master Contract for Engineering Services dated February 14, 2017 will expire prior to the beginning of construction. It is our understanding that the City would like to enter into a new Contract Task Work Order under the Master Contract for Professional Services dated March 19, 2024.

SCOPE OF SERVICES

Task 1 – Limited Post-Design Services

As Engineer of Record for the project, TEDS will provide support to the CITY in administering the construction contract through completion of the project construction, including the following limited post-design services:

- Attendance at a pre-construction meeting
- Provide review of civil-related shop drawing submittals for approval (to be received from the contractor in one (1) single package)
- Attend up to five (5) meetings at the CITY or the project site for general coordination or to complete limited construction observation
- Review and respond to up to five (5) Requests for Information (RFI's) during construction
- Provide up to 20 hours of general construction administration assistance, such as review of change order(s)
- Review As-Built surveys provided by contractor with overlay of CAD files on design
- Prepare certification package for submittal to Volusia County for R/W Use Permit close-out
- Prepare a MSSW/Stormwater As-Built Certification By A Registered Professional Engineer for submittal to the SJRWMD for permit closure

- Prepare Engineer's Certification of Completion
  (to serve as Exhibit C to State Funded Grant Agreement with FDOT)

Task 2 – Structural Support for Limited Post-Design Services

Stanley will retain Florida Bridge and Transportation, Inc. (FBT) to provide the Post Design structural services for the boardwalk lighting system as described in the attached proposal for FBT Project #21-31.01 dated April 30, 2025.

FEES

Description	*Fee*
Task 1 – Limited Post-Design Services	**$22,097.50**
Task 2 – Structural Support for Limited Post-Design Services (Lighting)	**$6,600.00**
Direct Expenses	**$327.60**
Total	**$29,025.10**

An estimate of man-hours and expenses is provided on the following pages.

CITY OF PORT ORANGE
MAN-HOUR ESTIMATE
May 1, 2025

SCI PROJECT No.: 31733
TASK AUTHORIZATION No.: 04
CONTRACT DESCRIPTION: Master Contract for Engineering Services (March 19, 2024)
PROJECT DESCRIPTION: SJR2C Loop Trail (Spruce Creek Rd) from South of Selin Circle to Herbert St Post Design Services
PRIME CONSULTANT: Stanley Consultants, Inc.
ESTIMATE PREPARED BY: Karen O'Neill

ACTIVITY	Chief Engineer / Vice President		Engineer		Engineer Intern		Sr. Designer		Senior Technician		Engineering Tech		TOTAL		
	Rate/Hr:	$298.50	Rate/Hr:	$266.50	Rate/Hr:	$168.00	Rate/Hr:	$200.00	Rate/Hr:	$152.00	Rate/Hr:	$137.50			
	Man Hours	Cost by Pos & Act	Man Hours	Cost by Pos & Act	Man Hours	Cost by Pos & Act	Man Hours	Cost by Pos & Act	Man Hours	Cost by Pos & Act	Man Hours	Cost by Pos & Act	Man-hours By Activity	Activity Cost	Avg. Hourly Rate
Task 1 – Limited Post-Design Services	**31.0**	**9,253.50**	**40.0**	**10,660.00**	**13.0**	**2,184.00**	**0.0**	**0.00**	**0.0**	**0.00**	**0.0**	**0.00**	**84.0**	**22,097.50**	**263.07**
Attend pre-con meeting	3.0												3.0		
Shop drawing review	2.0		8.0										10.0		
Attend (5) meetings at City	10.0		5.0										15.0		
Review and respond to (5) RAI's	2.0		3.0		5.0								10.0		
General construction administration	10.0		20.0										30.0		
Review As-Builts / overlay CAD files on design	1.0		1.0		2.0								4.0		
Certification package for Volusia County R/W Use	1.0		1.0		2.0								4.0		
Certification package for SJRWMD ERP Mod	1.0		1.0		2.0								4.0		
Engineer's Certification of Completion for FDOT	1.0		1.0		2.0								4.0		
TOTALS	**31.0**	**9,253.50**	**40.0**	**10,660.00**	**13.0**	**2,184.00**	**0.0**	**0.00**	**0.0**	**0.00**	**0.0**	**0.00**	**84.0**	**22,097.50**	**263.07**

TEDS LABOR	**$22,097.50**
EXPENSES ***(Refer to backup provided on the following page)***	
Sub-Consultant Fees	
I. SUB-CONSULTANT FEES	**$6,600.00**
Direct Expenses	
II. REPRODUCTION	**$0.00**
III. MILEAGE / TRAVEL	**$327.60**
IV. PERMIT REVIEW FEES	**$0.00**
V. SHIPPING / POSTAGE	**$0.00**
Sub-Total Direct Expenses	**$327.60**
SUB-TOTAL EXPENSES	**$6,927.60**
TOTAL LUMP SUM CONTRACT AMOUNT	**$29,025.10**

CITY OF PORT ORANGE
EXPENSES
May 1, 2025

SCI PROJECT No.: 31733.04
TASK AUTHORIZATION No.: 04
CONTRACT DESCRIPTION: Master Contract for Engineering Services (March 19, 2024)
PROJECT DESCRIPTION: SJR2C Loop Trail (Spruce Creek Rd) from South of Selin Circle to Herbert St Post Design Services
PRIME CONSULTANT: Stanley Consultants, Inc.
ESTIMATE PREPARED BY: Karen O'Neill

I. SUB-CONSULTANT FEES

	Sub-Consultant	Description of Services	Fee
a)	Florida Bridge and Transportation, Inc.	Task 2 – Structural Support for Limited Post-Design Services (Lighting)	$6,600.00
		Totals	**$6,600.00**

II. REPRODUCTION

Total Reproduction Costs **$0.00**

III. MILEAGE / TRAVEL

Contract Rate 0.70 / mile (Current Federal Rate)

	Reason for Trip / Destination	Distance / Mileage (round trip)	Number of Trips	Cost
a)	Pre-bid meeting / City Hall	64	1	$44.80
b)	Pre-con meeting / City Hall	64	1	$44.80
c)	Construction observation / project site	68	3	$142.80
d)	Final walk-through / project site	68	1	$95.20

Total Mileage / Travel Costs **$327.60**

IV. PERMIT REVIEW FEES

Total Permit Review Fees **$0.00**

V. SHIPPING / POSTAGE

Total Shipping / Postage Costs **$0.00**

Florida Bridge and Transportation, Inc.
Structural Engineers

April 30, 2025

Ms. Karen O'Neill, EI
STANLEY CONSULTANTS
80 Spring Vista Drive
DeBary, Florida 32713

RE: SJR2C SunTrail-Orange City
Timber Boardwalk
Proposal for Structural Post Design Services
FBT Project #21-31.01 (assume 4 shop drawings at 4 hours each)

Dear Karen:

Florida Bridge and Transportation, Inc. (FBT) is pleased to submit this proposal to Stanley Consultants (STANLEY) for engineering services for the above-referenced project. The scope of design services for this project includes the following:

1) FBT will provide the structural post design services for the subject project.

1. FBT will review contractor submitted structural shop drawings (assume 3 shop drawings at 4 hours each)
2. FBT will review RFI's and RFM's for structure-related items (assume 4 RFI/RFM's at 2 hours each)
3. FBT will make site visits as requested by the contractor regarding non-conforming construction or unanticipated field conditions (assume 3 site visits at 4 hours each)
4. FBT will process plan revisions for changed conditions (assume 2 plan revisions at 4 hours each)

We propose a lump sum fee of $6,600.00 for the basic structural engineering services indicated above.

The scope and fee indicated above do not include the following services:

- Construction Inspection/Observation of installation and on-going construction
- Preparation of as-built or record drawings

The items indicated above, or any other services not included in the basic scope of design services described above, may be provided for an additional fee. A supplemental agreement must be negotiated prior to the additional work being performed by FBT. Additional services required for this project may be provided based on an addendum to this agreement. Fees for additional services will be addressed on a case-by-case basis.

STANLEY shall indemnify and hold harmless FBT and all of its personnel from and against any and all claims, damages, losses, and expenses (including reasonable attorneys fees) arising out of or resulting from the performance of the services, provided that any such claims, damage, loss or expense is caused in whole or in part by the negligent act or omission and/or strict liability of STANLEY, anyone directly or indirectly employed by STANLEY (except FBT) or anyone for whose acts any of them may be liable.

This agreement is intended to benefit STANLEY and FBT exclusive. Any benefit conferred upon a third party is incidental to this agreement.

This proposal will become invalid if not executed within 90 days. We are prepared to commence the structural design services upon receipt of a written notice to proceed.

We appreciate this opportunity to be of service to STANLEY.

Very truly yours,
Florida Bridge and Transportation, Inc.



Mark Niedermann, P.E.
Vice President

Stanley Consultants INC.

80 Spring Vista Drive
Suite 100
DeBary, FL 32713

386.753.0558
stanleyconsultants.com

April 30, 2025

Contract:	Master Contract for Professional Engineering Services dated March 19, 2024
Task Authorization No.:	04
Project Name:	SJR2C Loop Trail (Spruce Creek Rd) from South of Selin Circle to Herbert St – Post Design Services (FPN 439865-3-54-01)
SCI Project Number:	31733.04
Date:	May 1, 2025

Stanley Consultants, Inc. (Stanley) is pleased to offer this scope of services to the City of Port Orange (City) for providing professional engineering services for the above referenced project.

PROJECT UNDERSTANDING

- The current Post Design Services Task-12 from the Contract Task Work Order No. 09 from the Master Contract for Engineering Services dated February 14, 2017 will expire prior to the beginning of construction. It is our understanding that the City would like to enter into a new Contract Task Work Order under the Master Contract for Professional Services dated March 19, 2024.

SCOPE OF SERVICES

Task 1 – Limited Post-Design Services

As Engineer of Record for the project, TEDS will provide support to the CITY in administering the construction contract through completion of the project construction, including the following limited post-design services:

- Attendance at a pre-construction meeting
- Provide review of civil-related shop drawing submittals for approval (to be received from the contractor in one (1) single package)
- Attend up to five (5) meetings at the CITY or the project site for general coordination or to complete limited construction observation
- Review and respond to up to five (5) Requests for Information (RFI's) during construction
- Provide up to 20 hours of general construction administration assistance, such as review of change order(s)
- Review As-Built surveys provided by contractor with overlay of CAD files on design
- Prepare certification package for submittal to Volusia County for R/W Use Permit close-out
- Prepare a MSSW/Stormwater As-Built Certification By A Registered Professional Engineer for submittal to the SJRWMD for permit closure

- Prepare Engineer's Certification of Completion
  (to serve as Exhibit C to State Funded Grant Agreement with FDOT)

Task 2 – Structural Support for Limited Post-Design Services

Stanley will retain Florida Bridge and Transportation, Inc. (FBT) to provide the Post Design structural services for the boardwalk lighting system as described in the attached proposal for FBT Project #21-31.01 dated April 30, 2025.

FEES

Description	*Fee*
Task 1 – Limited Post-Design Services	**$22,097.50**
Task 2 – Structural Support for Limited Post-Design Services (Lighting)	**$6,600.00**
Direct Expenses	**$327.60**
Total	**$29,025.10**

An estimate of man-hours and expenses is provided on the following pages.

CITY OF PORT ORANGE
MAN-HOUR ESTIMATE
May 1, 2025

SCI PROJECT No.: 31733
TASK AUTHORIZATION No.: 04
CONTRACT DESCRIPTION: Master Contract for Engineering Services (March 19, 2024)
PROJECT DESCRIPTION: SJR2C Loop Trail (Spruce Creek Rd) from South of Selin Circle to Herbert St Post Design Services
PRIME CONSULTANT: Stanley Consultants, Inc.
ESTIMATE PREPARED BY: Karen O'Neill

ACTIVITY	Chief Engineer / Vice President		Engineer		Engineer Intern		Sr. Designer		Senior Technician		Engineering Tech		TOTAL		
	Rate/Hr:	$298.50	Rate/Hr:	$266.50	Rate/Hr:	$168.00	Rate/Hr:	$200.00	Rate/Hr:	$152.00	Rate/Hr:	$137.50			
	Man Hours	Cost by Pos & Act	Man Hours	Cost by Pos & Act	Man Hours	Cost by Pos & Act	Man Hours	Cost by Pos & Act	Man Hours	Cost by Pos & Act	Man Hours	Cost by Pos & Act	Man-hours By Activity	Activity Cost	Avg. Hourly Rate
Task 1 – Limited Post-Design Services	**31.0**	**9,253.50**	**40.0**	**10,660.00**	**13.0**	**2,184.00**	**0.0**	**0.00**	**0.0**	**0.00**	**0.0**	**0.00**	**84.0**	**22,097.50**	**263.07**
Attend pre-con meeting	3.0												3.0		
Shop drawing review	2.0		8.0										10.0		
Attend (5) meetings at City	10.0		5.0										15.0		
Review and respond to (5) RAI's	2.0		3.0		5.0								10.0		
General construction administration	10.0		20.0										30.0		
Review As-Builts / overlay CAD files on design	1.0		1.0		2.0								4.0		
Certification package for Volusia County R/W Use	1.0		1.0		2.0								4.0		
Certification package for SJRWMD ERP Mod	1.0		1.0		2.0								4.0		
Engineer's Certification of Completion for FDOT	1.0		1.0		2.0								4.0		
TOTALS	**31.0**	**9,253.50**	**40.0**	**10,660.00**	**13.0**	**2,184.00**	**0.0**	**0.00**	**0.0**	**0.00**	**0.0**	**0.00**	**84.0**	**22,097.50**	**263.07**

TEDS LABOR	**$22,097.50**
EXPENSES ***(Refer to backup provided on the following page)***	
Sub-Consultant Fees	
I. SUB-CONSULTANT FEES	**$6,600.00**
Direct Expenses	
II. REPRODUCTION	**$0.00**
III. MILEAGE / TRAVEL	**$327.60**
IV. PERMIT REVIEW FEES	**$0.00**
V. SHIPPING / POSTAGE	**$0.00**
Sub-Total Direct Expenses	**$327.60**
SUB-TOTAL EXPENSES	**$6,927.60**
TOTAL LUMP SUM CONTRACT AMOUNT	**$29,025.10**

CITY OF PORT ORANGE
EXPENSES
May 1, 2025

SCI PROJECT No.: 31733.04
TASK AUTHORIZATION No.: 04
CONTRACT DESCRIPTION: Master Contract for Engineering Services (March 19, 2024)
PROJECT DESCRIPTION: SJR2C Loop Trail (Spruce Creek Rd) from South of Selin Circle to Herbert St Post Design Services
PRIME CONSULTANT: Stanley Consultants, Inc.
ESTIMATE PREPARED BY: Karen O'Neill

I. SUB-CONSULTANT FEES

	Sub-Consultant	Description of Services	Fee
a)	Florida Bridge and Transportation, Inc.	Task 2 – Structural Support for Limited Post-Design Services (Lighting)	$6,600.00
		Totals	**$6,600.00**

II. REPRODUCTION

Total Reproduction Costs **$0.00**

III. MILEAGE / TRAVEL

Contract Rate 0.70 / mile (Current Federal Rate)

	Reason for Trip / Destination	Distance / Mileage (round trip)	Number of Trips	Cost
a)	Pre-bid meeting / City Hall	64	1	$44.80
b)	Pre-con meeting / City Hall	64	1	$44.80
c)	Construction observation / project site	68	3	$142.80
d)	Final walk-through / project site	68	1	$95.20

Total Mileage / Travel Costs **$327.60**

IV. PERMIT REVIEW FEES

Total Permit Review Fees **$0.00**

V. SHIPPING / POSTAGE

Total Shipping / Postage Costs **$0.00**

Florida Bridge and Transportation, Inc.
Structural Engineers

April 30, 2025

Ms. Karen O'Neill, EI
STANLEY CONSULTANTS
80 Spring Vista Drive
DeBary, Florida 32713

RE: SJR2C SunTrail-Orange City
Timber Boardwalk
Proposal for Structural Post Design Services
FBT Project #21-31.01 (assume 4 shop drawings at 4 hours each)

Dear Karen:

Florida Bridge and Transportation, Inc. (FBT) is pleased to submit this proposal to Stanley Consultants (STANLEY) for engineering services for the above-referenced project. The scope of design services for this project includes the following:

1) FBT will provide the structural post design services for the subject project.

1. FBT will review contractor submitted structural shop drawings (assume 3 shop drawings at 4 hours each)
2. FBT will review RFI's and RFM's for structure-related items (assume 4 RFI/RFM's at 2 hours each)
3. FBT will make site visits as requested by the contractor regarding non-conforming construction or unanticipated field conditions (assume 3 site visits at 4 hours each)
4. FBT will process plan revisions for changed conditions (assume 2 plan revisions at 4 hours each)

We propose a lump sum fee of $6,600.00 for the basic structural engineering services indicated above.

The scope and fee indicated above do not include the following services:

- Construction Inspection/Observation of installation and on-going construction
- Preparation of as-built or record drawings

The items indicated above, or any other services not included in the basic scope of design services described above, may be provided for an additional fee. A supplemental agreement must be negotiated prior to the additional work being performed by FBT. Additional services required for this project may be provided based on an addendum to this agreement. Fees for additional services will be addressed on a case-by-case basis.

STANLEY shall indemnify and hold harmless FBT and all of its personnel from and against any and all claims, damages, losses, and expenses (including reasonable attorneys fees) arising out of or resulting from the performance of the services, provided that any such claims, damage, loss or expense is caused in whole or in part by the negligent act or omission and/or strict liability of STANLEY, anyone directly or indirectly employed by STANLEY (except FBT) or anyone for whose acts any of them may be liable.

This agreement is intended to benefit STANLEY and FBT exclusive. Any benefit conferred upon a third party is incidental to this agreement.

This proposal will become invalid if not executed within 90 days. We are prepared to commence the structural design services upon receipt of a written notice to proceed.

We appreciate this opportunity to be of service to STANLEY.

Very truly yours,
Florida Bridge and Transportation, Inc.



Mark Niedermann, P.E.
Vice President

CITY OF PORT ORANGE MASTER CONTRACT FOR PROFESSIONAL ENGINEERING SERVICES

This Master Contract for Professional Engineering Services ("Contract") is entered into this 19 day of March, **2024**, 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 **Stanley Consultants, Inc.** ("Engineer"), an Iowa corporation, registered to transact business in Florida, with its principal place of business at 225 Iowa Avenue, Muscatine, Iowa 52761-3764. 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) Engineer hereby agrees to provide continuous professional engineering services, pursuant to and in compliance with the Competitive Consultants Negotiation Act, Florida Statutes 287, Section 287.055. Services may include but not necessarily be limited to: Planning and Feasibility studies; Surveying, Environmental, Geotechnical, and related support services; Design, Permitting, Construction Engineering and Inspection, and/or Plan Review; Permitting Services; Grant Support Services; Coordination Services; Additional services as needed for Capital Projects, Infrastructure Management, and Property Transactions; and as more specifically described in Request for Statement of Qualifications No. 23-18 ("RFSQ 23-18"), and Engineer's Proposal dated December 6, 2023, Addendum No. 1, and RFSQ 23-18 Section 3 – Scope of Services and Requirements, attached hereto as Exhibit "1." In the event of any inconsistencies or conflicts between this Contract, RFSQ 23-18, Engineer's Proposal, and Addendum No. 1, precedence shall be given to the documents in the following order: 1) the terms and conditions of this Contract; 2) Addendum No. 1; 3) RFSQ 23-18, and 4) Engineer's Proposal. Complete copies of RFSQ No. 23-18 and Engineer's Submittal is available in the Office of the City Clerk, City Hall, 1000 City Center Circle, Port Orange, Florida 32129.

(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: This Contract may be renewed for up to two (2), two-year periods, upon mutual written agreement of the Parties, City Manager approval, and budget appropriation.

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.

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 said Task Authorization have been approved and accepted by the City's Contract Administrator. The obligations entered herein by both Parties under this Contract and said Task Authorization 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 in to 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 compensation at the hourly rates and related allowable costs, as set forth in Exhibit "1." 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 markups for Outside Reimbursables and Subcontractors, if any, as provided in Exhibit "1." This Contract does not include retainer fees, nor is there a minimum fee guaranteed during the Contract period. 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.

4. *Contract Administration* The Community Development Director, Tim Burman ("Contract Administrator"), shall perform contract administration of this Contract. Department Heads requesting services under this Contract shall be responsible for their respective Purchase Orders in accordance with their appropriated budgets. For notice provisions, see the paragraph 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;

(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 hereof;

(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 of governments 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 developments 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 specification 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 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 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 the 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-builts 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 the City or others for any other project. Reuse for another project without written verification or adaptation by Engineer for the specific purpose intended will be at City's risk. Any such verification or adaptation will entitle Engineer to further compensation at rates to be agreed upon by the 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 proceeding regarding a 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 or 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 charged. Except as provided in this Contract, the Engineer shall not be entitled to payment for any extra work or materials.

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; and

(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*. 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, as provided in the records management section at: 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, or the requisite time set forth in Section 14 above, whichever is longer, 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 and Professional Liability and Errors and Omissions coverage, the Engineer's insurance certificate shall include the insurer's waiver of subrogation in lieu of endorsing the City as an additional insured. 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 subcontractor 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 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 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 & Errors and Omissions	Limits: Coverage - $1,000,000	
☐	Installation Floater (IT)	Limits: Coverage - $ To be determined.	
☐	Engineer Pollution Liability	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 $200,000.00.**		
☐	**Unless otherwise required by law, City Manager waives Insurance for FOB goods.**		

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. *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 Engineer's cost of, or time required for the performance of the work hereunder, Engineer shall receive an equitable adjustment in accordance with subparagraph (d), which shall include all compensation to the Engineer, or the City, of any kind in connection with such change, including all costs and damages related to or incidental to such change.

(c) Engineer 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.

20. *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.

21. *Liability for Loss or Damage*.

Engineer shall indemnify and hold harmless the City, and its officers and employees from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Engineer, his/its agents, servants and employees and other persons employed or utilized by the Engineer in the performance of the Contract. 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.

17. *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.

18. *E-Verify.* Engineer shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Engineer during the term of this Contract and shall expressly require any 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.

19. *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 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.

20. *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.

21. *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.**

22. *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.

23. *Compliance with Other Federal Standards.*

(a) Termination for Default. Administrative, contractual, or legal remedies in instances where the Engineer violates or breaches Contract terms are set forth in Paragraph 8, hereinabove.

(b) Termination for Convenience and Non-Appropriation of Funds. Termination for convenience by the City, including how it will be carried out and the basis for settlement is set forth in Paragraph 6, hereinabove. Termination for non-appropriation of funds is set forth in Paragraph 11, hereinabove.

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

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

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

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

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

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

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

(vi) The Engineer will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the

Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

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

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

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

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

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

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

compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

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

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

> 29 C.F.R. § 5.5 Contract provisions and related matters.
> (a) The Agency head shall cause or require the contracting officer to insert in full in any contract in excess of $2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1, the following clauses (or any modifications thereof to meet the particular needs of the agency, *Provided*, That such modifications are first approved by the Department of Labor):
> (1) Minimum wages.
> (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Engineer and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis–Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill,

except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein:

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

(ii)

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

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

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

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

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

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

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

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

(iv) If the Engineer does not make payments to a trustee or other third person, the Engineer may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*,

That the Secretary of Labor has found, upon the written request of the Engineer, that the applicable standards of the Davis–Bacon Act have been met. The Secretary of Labor may require the Engineer to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding.

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

(3) Payrolls and basic records.

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

(ii)

(A) The Engineer shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the Engineer will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency). The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only

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

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

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

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

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

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

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

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

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

(4) Apprentices and trainees.

(i) Apprentices.
Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Engineer as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Engineer is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Engineer's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Engineer will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
(ii) Trainees.
Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who

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

(iii) Equal employment opportunity.

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

(5) Compliance with Copeland Act requirements.

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

(6) Subcontracts.

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

(7) Contract termination: debarment.

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

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

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

(9) Disputes concerning labor standards.

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

(10) Certification of eligibility.

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

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

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

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

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

(f) Contract Work Hours and Safety Standards Act:

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

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

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

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

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

(4) *Subcontracts.* The Engineer or subcontractor shall insert in any subcontracts the clauses set

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

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

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

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

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

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

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

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

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

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

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

Clean Air Act

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

Federal Water Pollution Control Act

(1) The Engineer agrees to comply with all applicable standards, orders, or regulations issued pursuant to the federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq.
(2) The Engineer agrees to report each violation to the City and understands and agrees that the City, in turn, report each violation as required to assure notification to the Florida Division of Emergency Management ("FDEM"), Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office.
(3) The Engineer agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with federal assistance provided by FEMA.

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

(1) This Contract is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 3000. As such, the Engineer is required to verify that none of the Engineer's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
(2) The Engineer must comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
(3) **This certification, included in the solicitation referenced hereinabove and made a part hereof by this reference**, is a material representation of fact relied upon by City. If it is later determined that the Engineer did not comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, in addition to remedies available to City, the federal government may pursue available remedies, including but not limited to suspension and/or debarment.
(4) The Engineer 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 Engineer further agrees to include a provision requiring such compliance in its lower-tier covered transactions.

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

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

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

(1) In the performance of this contract, the Engineer shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired.
   (i) Competitively within a timeframe providing for compliance with the contract performance schedule;
   (ii) Meeting contract performance requirements; or
   (iii) At a reasonable price.

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

(3) The Engineer also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

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

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

(2) *Prohibitions.*

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

(ii) Unless an exception in paragraph (iii) of this clause applies, the Engineer and its

subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:

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

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

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

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

(3) *Exceptions.*

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

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

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

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

a. Covered telecommunications equipment or services that:

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

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

(4) *Reporting requirement.*

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

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

a. Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if

known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

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

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

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

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

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

(n) Access to Records and Reports:

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

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

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

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

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

Contract addresses any potential requests for modifications or changes to the Contract terms as contained hereinabove.

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

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

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

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

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

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

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

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

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

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

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

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

24. *Notice* For purposes of this agreement, notices shall be sent as follows:

City:
City of Port Orange
Attention: City Manager
1000 City Center Circle
Port Orange, Florida
32129
(386) 506-5501

Copy to:
City of Port Orange
Attention: Tim Burman, Community Development Director
1000 City Center Circle
Port Orange, Florida 32129
(386) 506-5674

Engineer:
Stanley Consultants, Inc.
Attention: Kate C. Harris, CEO
225 Iowa Avenue
Muscatine, Iowa
Telephone: (386) 753-0558
E-Mail: MorrowRick@StanleyGroup.com

80 Spring Vista Drive
Suite 100
DeBary, Florida 32713

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.

25. *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.

26. *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.

27. *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.

28. *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: Catherine A. Kibble

Printed Name: Jean A Kennedy

STANLEY CONSULTANTS, INC.

By: John Lazzara

John Lazzara, Transportation Market Leader

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: 3/11/2024

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: _____
Donald O. Burnette, Mayor

Date: 3/19/2024

ATTEST:

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

Date: 3/19/2024

EXHIBIT "1"

Engineer's Pricing and
RFSQ 23-18 Section 3 - Scope of Services and Requirements

Consisting of 4 Pages

Hourly Rates

Stanley Consultants INC.

Compensation for office-based personnel in the U.S. for time in the performance of the work, including travel time, shall be in accordance with the following Hourly Rates.

Client	**City of Port Orange - Continuing Services RFSQ #23-18**
Description	**Professional Engineering Services**
Location	**Port Orange, FL**

Hourly Rates subject to revision on or after . . . . . 1 Feb 2027

Billing Title	Hourly Rate
Engineering Tech	$137.50
Sr. Engineering Tech	$152.00
Engineer Intern 1	$168.00
Engineer Intern 2	$184.00
Sr. Designer	$200.00
Engineer 1	$216.50
Engineer 2	$250.00
Senior Engineer 1	$266.50
Senior Engineer 2	$298.50
Chief Engineer 1	$320.00
Chief Engineer 2	$367.00

(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

DESCRIPTION OF WORK

The City of Port Orange is soliciting qualification statements from qualified firms for professional continuous engineering consulting services.

The City of Port Orange, pursuant to and in compliance with the Competitive Consultants Negotiation Act, Florida Statutes 287, Section 287.055 is seeking Letters of Interest, Statements of Qualifications and technical proposals from qualified professional individuals and/or firms interested in providing Civil Engineering, Traffic Engineering and Transportation Planning, Landscape Architectural, Environmental and Planning Services, Geotechnical Engineering Services, Hydrologic and hydraulic analysis and design, Feasibility and due-diligence studies, Drainage studies, Master planning and Grant procurement and Grant administration services and related services for the City of Port Orange for preparation of a variety of projects being administered by various City departments. Plans will be drawn in AutoCAD format unless otherwise directed. Work will normally be under the direction of the Community Development Director or assigned designee.

The City will select a minimum of three, and up to seven 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 Geotechnical 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.

The scope may also include, but are not necessarily limited to any of the following:

- **Planning and Feasibility Studies:**

o Hydrologic and hydraulic analysis and design
o Feasibility and due-diligence studies
o Traffic studies and traffic counts
o Transportation planning
o Grant-specific studies such as transportation funding
o Highway and Roadway safety analysis and recommendations
o Financial planning
o Civil infrastructure forensic analysis
o Drainage studies and hydrologic and hydraulic analysis
o Vulnerability assessments
o Master planning
o Grant procurement and grant administration services including Local Agency Program (LAP) compliance
o Alignment Studies
o Typical Road section analysis

o Trail Route study
o Constructability reviews
o Stakeholder coordination
o ROW Study
o Pond Siting

• **Survey, Environmental, Geotechnical, and other support services:**
o Topographic survey
o ROW survey
o Deed and Title work research
o Environmental analysis
o Contamination Screening
o Cultural Resource Assessment
o NEPA compliance
o Public Meeting support
o Preparation of Project Graphics
o Geotechnical investigations and recommendations
o Forensic analysis

• **Design, Permitting, Construction Engineering and Inspection, and/or Plan Review of the following:**
o Stormwater management systems
o Site and subdivision developments and improvements
o Road and highway widening
o Road and roadside safety improvements
o Pedestrian safety improvements
o Roadway capacity improvements
o Parks and recreational facilities
o Minor/routine utility improvements
o Sidewalk, multi-use path, and other pedestrian or bicycle facilities
o Grading and drainage improvements
o Structures such as boardwalks, boat docks, pedestrian or vehicle bridges, retaining walls
o Traffic signal improvements
o Municipal/county infrastructure developments and improvements
o Other paved/pavement improvements
o Structural design services
o Structural peer review of structural designs
o Forensic analysis of structural or other failures

• **Permitting services such including but not to:**
o Environmental Resource Permitting
o Applicable planning and zoning or site development approvals
o SJRWMD, SHPO, USACOE, USFWS, FFWC, FDEP, FAA, FDOT, FHWA, or any other permitting agency
o Building permits
o NEPA clearance
o Other federal, state, local, or private agency permitting

• **Grant Support Services including but not to:**
o Preparation of figures and graphics in support of grant applications
o Completing grant application forms
o HUD/CDBG – Community Development Block Grant
o Coordination with interested stakeholders and gathering support documentation
o Preparation of grant-specific studies
o Analysis of roadway crash data, traffic volumes, capacity, and safety
o Research of infrastructure grant opportunities

Application and supporting documentation from the following funding sources and/or grant administration of the following:

- River to Sea Transportation Planning Organization (TPO) – Traffic Operations, Safety and Local Initiatives Projects
- TPO – Bicycle and Pedestrian Projects
- TPO – Transportation Planning Studies
- FDOT – Safety Funds
- FDOT – Safe Routes to Schools
- FDOT – Sun Trail
- FHWA/USDOT – TIGER grant
- FHWA/USDOT – MAP-21 grant
- SJRWMD – Cost Share funding
- FDEP – State Revolving Fund
- FEMA – HMGP and FMA funding
- Other infrastructure related grant opportunities

• **Coordination with:**
o Regulatory agencies
o Funding sources
o The general public
o Cities and other municipal agencies
o Economic Development opportunities
o Other interested stakeholders

Additional services as needed for capital projects, infrastructure management, property transactions.

SECTION 4 – STANDARD PURCHASING DEFINITIONS

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

1. **Addendum** is a formal written document, released prior to the public opening that modifies any aspect of a Solicitation. Plural: Addenda
2. **Alternate Bid** means multiple Bids with substantive variations from the same Bidder in response to a Solicitation.
3. **Amendment** is a formal written agreement, signed by both parties, that modifies an existing contractual agreement.
4. **Appropriate, Appropriated, or Appropriation** means the adoption by the City Council of the City of a budget for a fiscal year that includes payments to be made under the Contract during the respective fiscal year.
5. **Best Value** means the highest overall value to the City based on factors that include, but are not limited to, price, quality, design, and workmanship.
6. **Bid** is a complete, properly signed response to an Invitation to Bid, which if accepted, would bind the Bidder to perform the resultant Contract.
7. **Bid Guaranty (Bid Bond)** guarantees that the Bidder (a) will not withdraw the Bid within the period specified for acceptance, and (b) will execute a Contract and furnish required bonds and any necessary insurance within the time specified in the Solicitation, unless a longer time is allowed by the City. The guarantee will be returned to the Bidder upon execution of a Contract.
8. **Bidder/Proposer/Respondent** is a person, firm, or entity that that submits a Response to a Solicitation. Any Bidder/Proposer/Respondent may be represented by an agent after submitting evidence demonstrating the agent's authority. The agent cannot certify as to his own agency status.
9. **City** means the City of Port Orange.
10. **Competitive Negotiation** means a method for acquiring goods, services, and construction for public use in which discussions or negotiations may be conducted with responsible offerors who submit Responses through a Request for Statements of Qualifications.

EXHIBIT "2"

Sample Task Authorization

Consisting of 4 Pages

TASK AUTHORIZATION NO. ___
Master Contract for Professional Engineering Services dated _____
Between the City of Port Orange, Florida and Stanley Consultants, 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 **Stanley Consultants, Inc.** ("Engineer"), an Iowa corporation, registered to transact business in Florida, with its principal place of business at 225 Iowa Avenue, Muscatine, Iowa 52761-3764, and hereinafter collectively referred to as the "Parties," and is to that certain Master Contract relating to Professional Engineering 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 _____ from 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 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:

STANLEY CONSULTANTS, INC.

_____

Printed Name: _____

By: _____

Kate C. Harris, 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.

_____

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:_____
Donald O. Burnette, Mayor

Date:_____

ATTEST:

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

Date:_____

CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 5/20/2025

SUBJECT: (C7d) Approval of Task Authorization No. 1 to the Continuing Services Contract (CA #8360) with Kimley-Horn for Construction Engineering Inspections Services (CEI) for the SJR2C Loop SUN Trail Project

DEPARTMENT: Community Development

GOAL: 1 - Public Safety
2 - Infrastructure

RECOMMENDED MOTION: Move to Approve Task Authorization No. 1 to the Continuing Services Contract (CA #8360) with Kimley-Horn for Construction Engineering Inspections Services (CEI) for the SJR2C Loop SUN Trail Project for an amount not to exceed $411,925, and authorize Mayor and City Clerk to sign all necessary documents.

SUMMARY: This Task Authorization to the Continuing Services Contract (CA #8360) with Kimley-Horn is for Construction Engineering Inspection (CEI) Services for the construction of improvements (boardwalk, sidewalk, grading, midblock crossings, etc.) associated with the Port Orange segment of the St Johns River To Sea (SJR2C) Loop Shared-Use Nonmotorized (SUN)Trail (FDOT #439865). The SJR2C Loop is a 260-mile regional trail system that runs through five Florida counties (Putnam, St. Johns, Volusia, Brevard, and Flagler) and includes the entire Palatka-to-St. Augustine State Trail and is part of the 3,000-mile East Coast Greenway. Similar SJR2C Loop Trail segments are programmed for construction in Edgewater, New Smyrna Beach, and South Daytona. CEI Services are required for this project to ensure that the contractor adheres to the safety standards and regulatory requirements and completes the project in accordance with the approved plans and specifications.

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 and CEI Services for the Port Orange segment of the SJR2C Loop SUN Trail project, identified as Port Orange Project #CD221.

The Port Orange segment of the SJR2C Loop Trail is between New Smyrna Beach and South Daytona and consists of existing trail segments along McDonald Road between South Daytona and Herbert Street, and Spruce Creek Road and Nova Road, south of Dunlawton Avenue to Ridgewood Avenue. The improvements associated with this project that will be constructed and require CEI services include segments (sidewalk and wood boardwalk) to fill gaps along Spruce Creek Road, north of Dunlawton Avenue, to Herbert Street, midblock crossings, signage, pavement markings, and drainage and

grading improvements along Spruce Creek Road, north of Selin Court.

The negotiated CEI fee for this project is $411,925.00. Funds are budgeted and available in Project #CD221 for this purpose. Approval of this Task Authorization will facilitate the issuance of a Notice to Proceed to Kimley-Horn in the summer of 2025, which aligns with the project construction schedule.

PRESENTER: Tim Burman

ATTACHMENTS:

1.	Kimley Horn Task Authorizsation No. 1 - CEI Services for SJR2C SUN Loop Trail Project	Kimley Horn Task Authorizsation No. 1 - CEI Services for SJR2C SUN Loop Trail Project.pdf
2.	Kimley-Horn Master Contract	Kimley-Horn Contract (2).pdf
3.	Kimley-Horn Sun Trail Loop CEI Proposal_REV1_3.24.2025	Sun Trail Loop CEI Proposal_Port Orange_REV1_3.24.2025.pdf
4.	439865-3-54-01 (FY 25) SFGA - SJR2C Loop SUN Trail Spruce Creek Rd	439865-3-54-01 (FY 25) SFGA - SJR2C Loop SUN Trail Spruce Creek Rd.pdf
5.	439865 CCNA - ROW Certification	439865 CCNA - ROW Certification.pdf

Amanda Bonin	Created/Initiated - 5/6/2025
Tim Burman	Approved - 5/6/2025
Mark Simpson	Approved - 5/7/2025
Shannon Balmer	Approved - 5/8/2025
Wayne Clark	Final Approval - 5/8/2025

TASK AUTHORIZATION NO. 1
Master Contract for Professional Engineering Services dated March 19, 2024
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.** ("Engineer"), a North Carolina corporation, whose principal place of business is located at 421 Fayetteville Street, Suite 600, Raliegh, North Carolina 27601, and hereinafter collectively referred to as the "Parties," and is to that certain Master Contract relating to Professional Engineering 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 Construction Engineering Inspection ("CEI") Services for the SJR2C Loop SUN Trail Project**,** 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 **270 calendar days** from 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 **$411,925.00**. 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.

_____

Printed Name: _____

By: _____

Brent A. Lenzen, Vice 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.

_____

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:_____
Scott Stiltner, Mayor

Date:_____

ATTEST:

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

Date:_____

EXHIBIT "1"

Engineer's Quote

Consisting of 6 Pages

Kimley»Horn

TASK AUTHORIZATION EXHIBIT 1

For Task Authorization No. 1
Master Contract for Professional Engineering Services dated March 19, 2024
Between the City of Port Orange, Florida and Kimley-Horn and Associates, Inc.

Project Understanding

The proposed improvements for the SJR2C SUN Loop Trail - Spruce Creek Road include construction of a 0.67-mile trail consisting of a 12' asphalt shared use path, 8' concrete sidewalks, and 8' timber boardwalk with associated concrete gravity retaining walls. Traffic Engineering Data Solutions, Inc. is the design engineer for the project ("Design Engineer"). The City has yet to procure and select a construction contractor ("Contractor") for the project.

The City is requesting construction observation services ("Construction Engineering & Inspection" or "CEI") for the duration of the project construction only as specifically defined in this Scope of Services. These CEI services include quality assurance materials testing performed by a third-party subconsultant to Kimley-Horn. The Contractor will be solely responsible for performing tests for quality control and compliance with the Contract Documents.

Specific Scope of Basic Services:

Task 1: Construction Observations and Administration

A. *On-Site Observation of Construction.* Consultant will provide on-site construction observation services averaging 8 hours per day through the duration of the Schedule. Observations are to be limited to spot checking, selective measurement, and similar methods of general observation of the Work based on Consultant's exercise of professional judgment. Based on information obtained during such observations, Consultant will evaluate whether Contractor's work is generally proceeding in accordance with the Contract Documents, and Consultant will keep Client informed of the general progress and quality of the Work. Accordingly, the Consultant will provide Client with construction observation reports once weekly. This task includes record-keeping for test results, concrete or asphalt delivery tickets, and other documentation required for final acceptance in Task 2.

   The purpose of Consultant's observations will be to enable Consultant to better carry out the duties and responsibilities specifically assigned in this Task Authorization to Consultant, and to provide Client a greater degree of confidence that the completed Work will conform in general to the Contract Documents. Consultant shall not, during or as a result of such observations of Contractor's work in progress, supervise, direct, or have control over Contractor's work, nor shall Consultant have authority over or responsibility for the means, methods, techniques, equipment choice and usage, sequences, schedules, or procedures of construction selected by Contractor, for safety precautions and programs incident to Contractor's work, nor for any failure of Contractor to comply with laws and regulations applicable to Contractor's furnishing and performing the Work. Accordingly, Consultant neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Contract Documents.

B. *Recommendations with Respect to Defective Work.* Consultant will recommend to Client that Contractor's work be disapproved and rejected while it is in progress if, on the basis of such observations, Consultant believes that such work will not produce a completed Project that conforms generally to Contract Documents.

C. *Clarifications and Interpretations.* Consultant will respond to reasonable and appropriate Contractor requests for information and issue necessary clarifications and interpretations of the Contract Documents to Client and Design Engineer as appropriate for the orderly completion of Contractor's work. Any clarifications or interpretations that require or authorize any variations from the Contract Documents will be made by Client and Design Engineer.

D. *Change Orders.* Consultant may recommend Change Orders to Client and will review and make recommendations related to Change Orders as submitted or proposed by the Contractor. Any Change Orders will be approved by Client with input from the Design Engineer.

E. *Substitutes and "or-equal."* Consultant will evaluate and may recommend the acceptance of substitute or "or- equal" materials and equipment proposed by Contractor in accordance with the Contract Documents, but subject to the provisions of applicable standards of state or local government entities. Any substitutes or “or-equal” materials and equipment will be approved by Client with input from the Design Engineer.

F. *Inspections and Tests.* The Contract Documents may require special inspections or tests of Contractor's work, and Contract Documents may require review of certificates of inspections within Design Engineer’s area of responsibility or of tests and approvals required by laws and regulations or the Contract Documents. Consultant’s review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Contract Documents. Consultant shall be entitled to rely on the results of such tests and the facts being certified.

   An allowance for third-party geotechnical construction testing has been added to this Task Authorization. As indicated in Task 3 below, the third-party geotechnical firm will provide density and concrete compressive strength testing for quality assurance. This testing does not relieve the Contractor from required quality control testing as specified by the Contract Documents.

G. *Disagreements between Client and Contractor.* Consultant will, if requested by Client, render written decision on all claims of Client and Contractor relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the progress of Contractor's work. In rendering such decisions, Consultant shall be fair and not show partiality to Client or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.

Task 2: Meeting Coordination, Documentation and Acceptance

A. *Pre-Bid Contract Document Constructability Review.* Consultant will coordinate and attend a pre-bid Contract Document Constructability review and meeting with the Client and Design Engineer. The review and meeting will be coordinated with the Design Engineer’s schedule and purpose is to assist in the early identification of issues to be addressed in the Contract Documents by the Design Engineer before bidding. The review will focus on identifying refinements to the design in the plans, specifications, invitation for bid, and schedule of quantities, that if agreed to by the Client and Design Engineer are intended to improve or simplify construction techniques and sequences.

B. *Pre-Construction Meeting.* Consultant will coordinate and attend a pre-construction meeting with the Client, Contractor and Design Engineer. The pre-construction meeting will serve as a high-level plan review with all parties to identify potential challenges, questions, and concerns with the Contract Documents prior to commencement of construction.

C. *Construction Progress Meeting Coordination.* Consultant will coordinate and conduct bi-weekly construction progress meetings with Client, Contractor, and Design Engineer to review and discuss Contractor's work status and upcoming work objectives. The purpose of these meetings will also be to provide the Contractor an opportunity to address issues encountered and identify potential areas of concern. It is anticipated that these meetings will take place on-site or nearby the project site at a location to be determined. Upon project construction start, Consultant will coordinate with Client and Contractor to determine location and time for meeting at bi-weekly intervals acceptable to all parties.

   Construction meetings will not serve as a form of construction management and the Consultant shall have no responsibility for any Contractor's means, methods, techniques, equipment choice and usage, schedule, safety programs, or safety practices that may be discussed in the meetings. Consultant shall have no authority or responsibility to stop or direct the work of any Contractor.

D. *Construction Meeting Agenda and Minutes.* The Consultant will prepare meeting agendas prior to each construction meeting and distribute advance copies to Client, Contractor, and Design Engineer. The Contractor in the Contract Documents will be required to provide a two-week look ahead for review by Consultant and Client, which will be discussed at each construction meeting for upcoming work agenda and anticipated challenges or concerns. Consultant will lead each construction meeting and record notes related to items outlined in the meeting agenda, look ahead, and discussed as new issues or open dialogue. Minutes will be prepared following the conclusion of each construction meeting, summarizing topics of discussion and action items for Consultant, Client, Contractor, and Design Engineer. The Consultant will distribute the meeting minutes to Client, Contractor, and Design Engineer.

E. *Pay Application Review Meetings and Recommendation of Payment.* Consultant will meet once monthly with Contractor to review Contractor's application for payment of completed work. Based on Consultant's observations, meetings with Contractor, and on review of applications for payment and accompanying supporting documentation, Consultant will determine the amounts that Consultant recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute Consultant's representation to Client, based on such observations and review, that, to the best of Consultant's knowledge, information and belief, Contractor's work has progressed to the point indicated and that such work-in-progress is generally in accordance with the Contract Documents subject to any qualifications stated in the recommendation. In the case of unit price work, Consultant's recommendations of payment will include determinations of quantities and classifications of Contractor's work, based on observations and measurements of quantities performed by the Contractor and provided with pay requests.

   By recommending any payment, Consultant shall not thereby be deemed to have represented that its observations to check Contractor's work have been exhaustive, extended to every aspect of Contractor's work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Consultant in this Task Authorization. It will also not impose responsibility on Consultant to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, nor to determine that title to any portion of the work in progress, materials, or equipment has passed to Client free and clear of any liens, claims, security interests, or encumbrances, nor that there may not be other matters at issue between Client and Contractor that might affect the amount that should be paid.

F. *Substantial Completion.* Consultant will, promptly after notice from Contractor that it considers the entire Work ready for its intended use, in company with Client, Contractor, and Design Engineer conduct a site visit to determine if the Work is substantially complete. Work will be considered substantially complete following satisfactory completion of all items with the exception

of those identified on a final punch list. If after considering any objections of Client or Design Engineer, Consultant considers the Work substantially complete, Consultant will notify Client and Contractor.

G. *Final Notice of Acceptability of the Work.* Consultant will conduct a final site visit, in company with Client, Contractor, and Design Engineer to determine if the completed Work of Contractor is generally in accordance with the Contract Documents and the final punch list so that Consultant may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Consultant shall review as-built drawings provided by the Contractor and coordinate with the Design Engineer to provide a notice that the Work is generally in accordance with the Contract Documents. Consultant shall provide recommendation of final acceptance to Client to the best of Consultant's knowledge, information, and belief based on the extent of its services and based upon information provided to Consultant upon which it is entitled to rely. This recommendation to Client will be a final certification of completion package including all required acceptance documents such as test reports, as-built drawings, and Agency certifications.

H. *Limitation of Responsibilities.* Consultant shall not be responsible for the acts or omissions of any Contractor, or of any of their subcontractors, suppliers, or of any other individual or entity performing or furnishing the Work. Consultant shall have no responsibility for any Contractor's means, methods, techniques, equipment choice and usage, equipment maintenance and inspection, sequence, schedule, safety programs, or safety practices, nor shall Consultant have any authority or responsibility to stop or direct the work of any Contractor. Consultant neither guarantees the performance of Contractors, nor assumes responsibility for any Contractor's failure to perform its work in accordance with the contract documents.

Consultant is not responsible for any duties assigned to it in the construction contract that are not expressly provided for in this Task Authorization. The Client agrees that each contract with any Contractor shall state that the contractor shall be solely responsible for job site safety and its means and methods; that the contractor shall indemnify the Client and Consultant for all claims and liability arising out of job site accidents; and that the Client and Consultant shall be made additional insureds under the Contractor's general liability insurance policy.

Task 3: Subconsultant Management

A. *Preliminary Project Coordination.* Consultant will retain and coordinate with a third-party geotechnical engineering firm (Subconsultant) for project schedule and testing parameters. A Subconsultant Expense Allocation has been included for Consultant to retain Subconsultant following the Contractor selection and determination of Contractors testing firm. Consultant will not retain a firm used by the Contractor for the Work.

B. *Construction QA Testing Coordination.* The Consultant will coordinate with the Subconsultant for regular Quality Assurance (QA) testing to verify densities and concrete compressive strength of the Contractors completed Work. Contractor is solely responsible for performing regular Quality Control (QC) testing for compliance with the Contract Documents. Consultant and Subconsultant are not responsible for failed QA test results or correction of deficient Work, as the purpose of this testing is to identify inconsistencies between Contractors QC test results and third-party QA test results for evaluation of recommendations for payment and acceptance of completed Work.

C. *Pass Through Task Authorization.* Consultant is retaining Subconsultant to provide the services described herein solely for the administrative convenience of the Client. Client acknowledges that Consultant will not be certifying the work product of the Subconsultant and will not be liable for it in any way. If the client has any future claim related to these services, Client will pursue Subconsultant directly and not Consultant.

Schedule:

The schedule is contingent upon the actual planned and realized construction schedule and timing which is currently anticipated to last approximately nine months.

Consultant will perform the Specific Scope of Basic Services in this Task Authorization for up to nine months (270 calendar days) anticipated to be the duration of construction beginning from the Contractors Notice to Proceed date and ending with Final Acceptance.

Excluded Services:

Any services not specifically provided for in the above Specific Scope of Basic Services or as indicated in the Schedule are excluded, including but not limited to:

- Engineering Design, Permitting or Surveying services
- Other construction observation or administration services or meetings
- Other pre-construction & post-construction services

Method of Compensation:

Kimley-Horn will perform these services on a labor fee plus expense basis with the maximum labor fee and expenses shown below. Labor rates, expenses, and invoicing and payment will be in accordance with the terms and conditions of the Master Contract for Professional Engineering Services dated March 19, 2024 ("Contract"). The following task items represent a breakdown of the maximum fee amount for reference:

Task	*Description*	*Fee*
1	Construction Observations and Administration	$274,825
2	Meeting Coordination, Documentation, and Acceptance	$88,300
3	Subconsultant Management	$8,800
	Subconsultant Expenses – Geotechnical Testing Allowance	$25,000
	Mileage Expenses	$9,500
	Field and Office Expenses	$5,500
Maximum Fee		**$411,925**

Kimley-Horn will not exceed the total maximum fee shown without authorization from the Client. A Manhour Chart that provides a breakdown of project roles and estimated hourly task allocations has been included. The Manhour Chart and individual task amounts are provided for budgeting purposes only. Kimley-Horn reserves the right to reallocate amounts among tasks as necessary.

Mileage expenses cover all costs associated with vehicle mileage for project site visits and meetings. Field and office expenses cover all equipment, tools, documentation, and plots required for field observations, measurements, and meetings.

Kimley»Horn

Manhour Chart

				Project Role: Senior Project Engineer				Project Role: Senior Inspector	Project Role: Project Administrator	Project Role: Secretary/Clerk Typist		
Task #	*Task name*	*Senior Professional II ($345/hr)*	*Senior Professional I ($275/hr)*	*Professional II ($235/hr)*	*Professional I ($200/hr)*	*Analyst II ($175/hr)*	*Analyst I ($140/hr)*	*Senior Technical Support Staff ($195/hr)*	*Technical Support Staff ($140/hr)*	*Support Staff ($105/hr)*	*Total Hours*	*Labor Sub-Total*
1	*Construction Observations/Admin*			25				1320	75	10	1430.0	$ 274,825
2	*Meetings, Doc., and Acceptance*			50				100	400	10	560.0	$ 88,300
3	*Subconsultant Management*			15				10	20	5	50.0	$ 8,800
	Total Manhours:			90				1430	495	25		
											Total Expenses:	$40,000
											Total Maximum Fee:	**$411,925**

CITY OF PORT ORANGE MASTER CONTRACT FOR PROFESSIONAL ENGINEERING SERVICES

This Master Contract for Professional Engineering Services ("Contract") is entered into this 19 day of March, **2024**, 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.** ("Engineer"), a North Carolina corporation, registered to transact business in Florida, and whose principal place of business is located at 421 Fayetteville Street, Suite 600, Raliegh, North Carolina 27601. 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) Engineer hereby agrees to provide continuous professional engineering services, pursuant to and in compliance with the Competitive Consultants Negotiation Act, Florida Statutes 287, Section 287.055. Services may include but not necessarily be limited to: Planning and Feasibility studies; Surveying, Environmental, Geotechnical, and related support services; Design, Permitting, Construction Engineering and Inspection, and/or Plan Review; Permitting Services; Grant Support Services; Coordination Services; Additional services as needed for Capital Projects, Infrastructure Management, and Property Transactions; and as more specifically described in Request for Statement of Qualifications No. 23-18 ("RFSQ 23-18"), and Engineer's Proposal dated December 6, 2023, Addendum No. 1, and RFSQ 23-18 Section 3 – Scope of Services and Requirements, attached hereto as Exhibit "1." In the event of any inconsistencies or conflicts between this Contract, RFSQ 23-18, Engineer's Proposal, and Addendum No. 1, precedence shall be given to the documents in the following order: 1) the terms and conditions of this Contract; 2) Addendum No. 1; 3) RFSQ 23-18, and 4) Engineer's Proposal. Complete copies of RFSQ No. 23-18 and Engineer's Submittal is available in the Office of the City Clerk, City Hall, 1000 City Center Circle, Port Orange, Florida 32129.

(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: This Contract may be renewed for up to two (2), two-year periods, upon mutual written agreement of the Parties, City Manager approval, and budget appropriation.

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.

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 said Task Authorization have been approved and accepted by the City's Contract Administrator. The obligations entered herein by both Parties under this Contract and said Task Authorization 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 in to 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 rates and related allowable costs, as set forth in Exhibit "1." 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 markups for Outside Reimbursables, if any, as provided in Exhibit "1." Compensation for any authorized cost related to a Subconsultant, 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%). This Contract does not include retainer fees, nor is there a minimum fee guaranteed during the Contract term(s). 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. 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.

4. *Contract Administration* The Community Development Director, Tim Burman ("Contract Administrator"), shall perform contract administration of this Contract. Department Heads requesting services under this Contract shall be responsible for their respective Purchase Orders in accordance with their appropriated budgets. For notice provisions, see the paragraph 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;

(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 hereof;

(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 of governments 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 developments 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 specification 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 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 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 the 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-builts 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 the City or others for any other project. Reuse for another project without written verification or adaptation by Engineer for the specific purpose intended will be at City's risk. Any such verification or adaptation will entitle Engineer to further compensation at rates to be agreed upon by the 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 proceeding regarding a 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 or 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 charged. Except as provided in this Contract, the Engineer shall not be entitled to payment for any extra work or materials.

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; and

(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*. 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, as provided in the records management section at: 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, or the requisite time set forth in Section 14 above, whichever is longer, 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 and Professional Liability and Errors and Omissions coverage, the Engineer's insurance certificate shall include the insurer's waiver of subrogation in lieu of endorsing the City as an additional insured. 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 subcontractor 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 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 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 & Errors and Omissions	Limits: Coverage - $1,000,000	
☐	Installation Floater (IT)	Limits: Coverage - $ To be determined.	
☐	Engineer Pollution Liability	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 $200,000.00.**		
☐	**Unless otherwise required by law, City Manager waives Insurance for FOB goods.**		

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. *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, and shall be mutually agreed to in writing by the City and Engineer. 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 in accordance with subparagraph (d), which shall include all compensation to the Engineer, or the City, of any kind in connection with such change, including all costs and damages related to or incidental to such change.

(c) Engineer 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.

20. *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.

21. *Liability for Loss or Damage*.

Engineer shall indemnify and hold harmless the City, and its officers and employees from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Engineer, his/its agents, servants and employees and other persons employed or utilized by the Engineer in the performance of the Contract. 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.

17. *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.

18. *E-Verify.* Engineer shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Engineer during the term of this Contract and shall expressly require any 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.

19. *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 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.

20. *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.

21. *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.**

22. *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.

23. *Compliance with Other Federal Standards.*

(a) Termination for Default. Administrative, contractual, or legal remedies in instances where the Engineer violates or breaches Contract terms are set forth in Paragraph 8, hereinabove.

(b) Termination for Convenience and Non-Appropriation of Funds. Termination for convenience by the City, including how it will be carried out and the basis for settlement is set forth in Paragraph 6, hereinabove. Termination for non-appropriation of funds is set forth in Paragraph 11, hereinabove.

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

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

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

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

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

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

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

(vi) The Engineer will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the

Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

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

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

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

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

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

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

compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

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

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

29 C.F.R. § 5.5 Contract provisions and related matters.
(a) The Agency head shall cause or require the contracting officer to insert in full in any contract in excess of $2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1, the following clauses (or any modifications thereof to meet the particular needs of the agency, *Provided*, That such modifications are first approved by the Department of Labor):
(1) Minimum wages.
(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Engineer and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis–Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill,

except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein:

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

(ii)

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

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

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

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

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

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

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

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

(iv) If the Engineer does not make payments to a trustee or other third person, the Engineer may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*,

That the Secretary of Labor has found, upon the written request of the Engineer, that the applicable standards of the Davis–Bacon Act have been met. The Secretary of Labor may require the Engineer to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding.

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

(3) Payrolls and basic records.

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

(ii)

(A) The Engineer shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the Engineer will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency). The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only

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

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

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

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

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

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

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

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

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

(4) Apprentices and trainees.

(i) Apprentices.

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

(ii) Trainees.

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

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

(iii) Equal employment opportunity.

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

(5) Compliance with Copeland Act requirements.

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

(6) Subcontracts.

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

(7) Contract termination: debarment.

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

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

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

(9) Disputes concerning labor standards.

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

(10) Certification of eligibility.

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

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

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

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

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

(f) Contract Work Hours and Safety Standards Act:

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

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

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

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

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

(4) *Subcontracts.* The Engineer or subcontractor shall insert in any subcontracts the clauses set

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

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

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

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

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

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

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

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

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

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

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

Clean Air Act

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

Federal Water Pollution Control Act

(1) The Engineer agrees to comply with all applicable standards, orders, or regulations issued pursuant to the federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq.
(2) The Engineer agrees to report each violation to the City and understands and agrees that the City, in turn, report each violation as required to assure notification to the Florida Division of Emergency Management ("FDEM"), Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office.
(3) The Engineer agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with federal assistance provided by FEMA.

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

(1) This Contract is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 3000. As such, the Engineer is required to verify that none of the Engineer's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
(2) The Engineer must comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
(3) **This certification, included in the solicitation referenced hereinabove and made a part hereof by this reference**, is a material representation of fact relied upon by City. If it is later determined that the Engineer did not comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, in addition to remedies available to City, the federal government may pursue available remedies, including but not limited to suspension and/or debarment.
(4) The Engineer 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 Engineer further agrees to include a provision requiring such compliance in its lower-tier covered transactions.

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

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

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

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

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

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

(2) *Prohibitions.*

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

(ii) Unless an exception in paragraph (iii) of this clause applies, the Engineer and its

subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:

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

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

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

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

(3) *Exceptions.*

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

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

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

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

a. Covered telecommunications equipment or services that:

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

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

(4) *Reporting requirement.*

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

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

a. Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if

known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

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

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

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

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

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

(n) Access to Records and Reports:

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

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

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

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

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

Contract addresses any potential requests for modifications or changes to the Contract terms as contained hereinabove.

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

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

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

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

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

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

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

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

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

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

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

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

24. *Notice* For purposes of this agreement, notices shall be sent as follows:

City:
City of Port Orange
Attention: City Manager
1000 City Center Circle
Port Orange, Florida
32129
(386) 506-5501

Copy to:
City of Port Orange
Attention: Tim Burman, Community Development Director
1000 City Center Circle
Port Orange, Florida 32129
(386) 506-5674

Engineer:
Kimley-Horn ands Associates, Inc.
Attention: Jonathan D. Thigpen, Vice President
189 South Orange Avenue
Suite 1000
Orlando, Florida 32801
Telephone: (407) 898-1511
Facsimile: (561) 863-8175
E-Mail: Jonathan.Martin@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.

25. *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.

26. *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.

27. *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.

28. *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: BRIAN ASHBY

Printed Name: Madison Sarver

KIMLEY-HORN AND ASSOCIATES, INC.

By: BRENT A. LENZEN

~~Jonathan D. Thigpen,~~ Vice 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: 3/14/24

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

CITY OF PORT ORANGE

By: _____
Donald O. Burnette, Mayor

Date: 3/19/2024

ATTEST:

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

Date: 3/19/2024

EXHIBIT "1"

Engineer's Pricing and
RFSQ 23-18 Section 3 - Scope of Services and Requirements

Consisting of 4 Pages

Kimley»Horn

Kimley-Horn and Associates, Inc.

Schedule of Hourly Billing Rates

City of Port Orange
RFSQ #23-18

Classification	*Hourly Rate*
Senior Professional II	$345.00
Senior Professional I	$275.00
Professional II	$235.00
Professional I	$200.00
Analyst II	$175.00
Analyst I	$140.00
Senior Technical Support Staff	$195.00
Technical Support Staff	$140.00
Support Staff	$105.00

Notes:
~~1. Billing rates listed in the table above are for the period from FY2024 through FY2026.~~
2. The salary multiplier billing rates include all payroll burden, overheads, and profit.
3. Subconsultants will be billed at 115% of actual cost.

February 12, 2024

(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

DESCRIPTION OF WORK

The City of Port Orange is soliciting qualification statements from qualified firms for professional continuous engineering consulting services.

The City of Port Orange, pursuant to and in compliance with the Competitive Consultants Negotiation Act, Florida Statutes 287, Section 287.055 is seeking Letters of Interest, Statements of Qualifications and technical proposals from qualified professional individuals and/or firms interested in providing Civil Engineering, Traffic Engineering and Transportation Planning, Landscape Architectural, Environmental and Planning Services, Geotechnical Engineering Services, Hydrologic and hydraulic analysis and design, Feasibility and due-diligence studies, Drainage studies, Master planning and Grant procurement and Grant administration services and related services for the City of Port Orange for preparation of a variety of projects being administered by various City departments. Plans will be drawn in AutoCAD format unless otherwise directed. Work will normally be under the direction of the Community Development Director or assigned designee.

The City will select a minimum of three, and up to seven 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 Geotechnical 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.

The scope may also include, but are not necessarily limited to any of the following:

- **Planning and Feasibility Studies:**

o Hydrologic and hydraulic analysis and design
o Feasibility and due-diligence studies
o Traffic studies and traffic counts
o Transportation planning
o Grant-specific studies such as transportation funding
o Highway and Roadway safety analysis and recommendations
o Financial planning
o Civil infrastructure forensic analysis
o Drainage studies and hydrologic and hydraulic analysis
o Vulnerability assessments
o Master planning
o Grant procurement and grant administration services including Local Agency Program (LAP) compliance
o Alignment Studies
o Typical Road section analysis

o Trail Route study
o Constructability reviews
o Stakeholder coordination
o ROW Study
o Pond Siting

• **Survey, Environmental, Geotechnical, and other support services:**
o Topographic survey
o ROW survey
o Deed and Title work research
o Environmental analysis
o Contamination Screening
o Cultural Resource Assessment
o NEPA compliance
o Public Meeting support
o Preparation of Project Graphics
o Geotechnical investigations and recommendations
o Forensic analysis

• **Design, Permitting, Construction Engineering and Inspection, and/or Plan Review of the following:**
o Stormwater management systems
o Site and subdivision developments and improvements
o Road and highway widening
o Road and roadside safety improvements
o Pedestrian safety improvements
o Roadway capacity improvements
o Parks and recreational facilities
o Minor/routine utility improvements
o Sidewalk, multi-use path, and other pedestrian or bicycle facilities
o Grading and drainage improvements
o Structures such as boardwalks, boat docks, pedestrian or vehicle bridges, retaining walls
o Traffic signal improvements
o Municipal/county infrastructure developments and improvements
o Other paved/pavement improvements
o Structural design services
o Structural peer review of structural designs
o Forensic analysis of structural or other failures

• **Permitting services such including but not to:**
o Environmental Resource Permitting
o Applicable planning and zoning or site development approvals
o SJRWMD, SHPO, USACOE, USFWS, FFWC, FDEP, FAA, FDOT, FHWA, or any other permitting agency
o Building permits
o NEPA clearance
o Other federal, state, local, or private agency permitting

• **Grant Support Services including but not to:**
o Preparation of figures and graphics in support of grant applications
o Completing grant application forms
o HUD/CDBG – Community Development Block Grant
o Coordination with interested stakeholders and gathering support documentation
o Preparation of grant-specific studies
o Analysis of roadway crash data, traffic volumes, capacity, and safety
o Research of infrastructure grant opportunities

Application and supporting documentation from the following funding sources and/or grant administration of the following:

- River to Sea Transportation Planning Organization (TPO) – Traffic Operations, Safety and Local Initiatives Projects
- TPO – Bicycle and Pedestrian Projects
- TPO – Transportation Planning Studies
- FDOT – Safety Funds
- FDOT – Safe Routes to Schools
- FDOT – Sun Trail
- FHWA/USDOT – TIGER grant
- FHWA/USDOT – MAP-21 grant
- SJRWMD – Cost Share funding
- FDEP – State Revolving Fund
- FEMA – HMGP and FMA funding
- Other infrastructure related grant opportunities

• **Coordination with:**
o Regulatory agencies
o Funding sources
o The general public
o Cities and other municipal agencies
o Economic Development opportunities
o Other interested stakeholders

Additional services as needed for capital projects, infrastructure management, property transactions.

SECTION 4 – STANDARD PURCHASING DEFINITIONS

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

1. **Addendum** is a formal written document, released prior to the public opening that modifies any aspect of a Solicitation. Plural: Addenda
2. **Alternate Bid** means multiple Bids with substantive variations from the same Bidder in response to a Solicitation.
3. **Amendment** is a formal written agreement, signed by both parties, that modifies an existing contractual agreement.
4. **Appropriate, Appropriated, or Appropriation** means the adoption by the City Council of the City of a budget for a fiscal year that includes payments to be made under the Contract during the respective fiscal year.
5. **Best Value** means the highest overall value to the City based on factors that include, but are not limited to, price, quality, design, and workmanship.
6. **Bid** is a complete, properly signed response to an Invitation to Bid, which if accepted, would bind the Bidder to perform the resultant Contract.
7. **Bid Guaranty (Bid Bond)** guarantees that the Bidder (a) will not withdraw the Bid within the period specified for acceptance, and (b) will execute a Contract and furnish required bonds and any necessary insurance within the time specified in the Solicitation, unless a longer time is allowed by the City. The guarantee will be returned to the Bidder upon execution of a Contract.
8. **Bidder/Proposer/Respondent** is a person, firm, or entity that that submits a Response to a Solicitation. Any Bidder/Proposer/Respondent may be represented by an agent after submitting evidence demonstrating the agent's authority. The agent cannot certify as to his own agency status.
9. **City** means the City of Port Orange.
10. **Competitive Negotiation** means a method for acquiring goods, services, and construction for public use in which discussions or negotiations may be conducted with responsible offerors who submit Responses through a Request for Statements of Qualifications.

EXHIBIT "2"

Sample Task Authorization

Consisting of 4 Pages

TASK AUTHORIZATION NO. ___
Master Contract for Professional Engineering 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.** ("Engineer"), a 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, and hereinafter collectively referred to as the "Parties," and is to that certain Master Contract relating to Professional Engineering 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 _____ from 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 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.

_____

Printed Name: _____

By: _____

Jonathan D. Thigpen, Vice 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.

_____

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:_____
Donald O. Burnette, Mayor

Date:_____

ATTEST:

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

Date:_____

Kimley»Horn

TASK AUTHORIZATION EXHIBIT 1

For Task Authorization No. 1
Master Contract for Professional Engineering Services dated March 19, 2024
Between the City of Port Orange, Florida and Kimley-Horn and Associates, Inc.

Project Understanding

The proposed improvements for the SJR2C SUN Loop Trail - Spruce Creek Road include construction of a 0.67-mile trail consisting of a 12' asphalt shared use path, 8' concrete sidewalks, and 8' timber boardwalk with associated concrete gravity retaining walls. Traffic Engineering Data Solutions, Inc. is the design engineer for the project ("Design Engineer"). The City has yet to procure and select a construction contractor ("Contractor") for the project.

The City is requesting construction observation services ("Construction Engineering & Inspection" or "CEI") for the duration of the project construction only as specifically defined in this Scope of Services. These CEI services include quality assurance materials testing performed by a third-party subconsultant to Kimley-Horn. The Contractor will be solely responsible for performing tests for quality control and compliance with the Contract Documents.

Specific Scope of Basic Services:

Task 1: Construction Observations and Administration

A. *On-Site Observation of Construction.* Consultant will provide on-site construction observation services averaging 8 hours per day through the duration of the Schedule. Observations are to be limited to spot checking, selective measurement, and similar methods of general observation of the Work based on Consultant's exercise of professional judgment. Based on information obtained during such observations, Consultant will evaluate whether Contractor's work is generally proceeding in accordance with the Contract Documents, and Consultant will keep Client informed of the general progress and quality of the Work. Accordingly, the Consultant will provide Client with construction observation reports once weekly. This task includes record-keeping for test results, concrete or asphalt delivery tickets, and other documentation required for final acceptance in Task 2.

   The purpose of Consultant's observations will be to enable Consultant to better carry out the duties and responsibilities specifically assigned in this Task Authorization to Consultant, and to provide Client a greater degree of confidence that the completed Work will conform in general to the Contract Documents. Consultant shall not, during or as a result of such observations of Contractor's work in progress, supervise, direct, or have control over Contractor's work, nor shall Consultant have authority over or responsibility for the means, methods, techniques, equipment choice and usage, sequences, schedules, or procedures of construction selected by Contractor, for safety precautions and programs incident to Contractor's work, nor for any failure of Contractor to comply with laws and regulations applicable to Contractor's furnishing and performing the Work. Accordingly, Consultant neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Contract Documents.

B. *Recommendations with Respect to Defective Work.* Consultant will recommend to Client that Contractor's work be disapproved and rejected while it is in progress if, on the basis of such observations, Consultant believes that such work will not produce a completed Project that conforms generally to Contract Documents.

C. *Clarifications and Interpretations.* Consultant will respond to reasonable and appropriate Contractor requests for information and issue necessary clarifications and interpretations of the Contract Documents to Client and Design Engineer as appropriate for the orderly completion of Contractor's work. Any clarifications or interpretations that require or authorize any variations from the Contract Documents will be made by Client and Design Engineer.

D. *Change Orders.* Consultant may recommend Change Orders to Client and will review and make recommendations related to Change Orders as submitted or proposed by the Contractor. Any Change Orders will be approved by Client with input from the Design Engineer.

E. *Substitutes and "or-equal."* Consultant will evaluate and may recommend the acceptance of substitute or "or- equal" materials and equipment proposed by Contractor in accordance with the Contract Documents, but subject to the provisions of applicable standards of state or local government entities. Any substitutes or “or-equal” materials and equipment will be approved by Client with input from the Design Engineer.

F. *Inspections and Tests.* The Contract Documents may require special inspections or tests of Contractor's work, and Contract Documents may require review of certificates of inspections within Design Engineer’s area of responsibility or of tests and approvals required by laws and regulations or the Contract Documents. Consultant’s review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Contract Documents. Consultant shall be entitled to rely on the results of such tests and the facts being certified.

   An allowance for third-party geotechnical construction testing has been added to this Task Authorization. As indicated in Task 3 below, the third-party geotechnical firm will provide density and concrete compressive strength testing for quality assurance. This testing does not relieve the Contractor from required quality control testing as specified by the Contract Documents.

G. *Disagreements between Client and Contractor.* Consultant will, if requested by Client, render written decision on all claims of Client and Contractor relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the progress of Contractor's work. In rendering such decisions, Consultant shall be fair and not show partiality to Client or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.

Task 2: Meeting Coordination, Documentation and Acceptance

A. *Pre-Bid Contract Document Constructability Review.* Consultant will coordinate and attend a pre-bid Contract Document Constructability review and meeting with the Client and Design Engineer. The review and meeting will be coordinated with the Design Engineer’s schedule and purpose is to assist in the early identification of issues to be addressed in the Contract Documents by the Design Engineer before bidding. The review will focus on identifying refinements to the design in the plans, specifications, invitation for bid, and schedule of quantities, that if agreed to by the Client and Design Engineer are intended to improve or simplify construction techniques and sequences.

B. *Pre-Construction Meeting.* Consultant will coordinate and attend a pre-construction meeting with the Client, Contractor and Design Engineer. The pre-construction meeting will serve as a high-level plan review with all parties to identify potential challenges, questions, and concerns with the Contract Documents prior to commencement of construction.

C. *Construction Progress Meeting Coordination.* Consultant will coordinate and conduct bi-weekly construction progress meetings with Client, Contractor, and Design Engineer to review and discuss Contractor's work status and upcoming work objectives. The purpose of these meetings will also be to provide the Contractor an opportunity to address issues encountered and identify potential areas of concern. It is anticipated that these meetings will take place on-site or nearby the project site at a location to be determined. Upon project construction start, Consultant will coordinate with Client and Contractor to determine location and time for meeting at bi-weekly intervals acceptable to all parties.

   Construction meetings will not serve as a form of construction management and the Consultant shall have no responsibility for any Contractor's means, methods, techniques, equipment choice and usage, schedule, safety programs, or safety practices that may be discussed in the meetings. Consultant shall have no authority or responsibility to stop or direct the work of any Contractor.

D. *Construction Meeting Agenda and Minutes.* The Consultant will prepare meeting agendas prior to each construction meeting and distribute advance copies to Client, Contractor, and Design Engineer. The Contractor in the Contract Documents will be required to provide a two-week look ahead for review by Consultant and Client, which will be discussed at each construction meeting for upcoming work agenda and anticipated challenges or concerns. Consultant will lead each construction meeting and record notes related to items outlined in the meeting agenda, look ahead, and discussed as new issues or open dialogue. Minutes will be prepared following the conclusion of each construction meeting, summarizing topics of discussion and action items for Consultant, Client, Contractor, and Design Engineer. The Consultant will distribute the meeting minutes to Client, Contractor, and Design Engineer.

E. *Pay Application Review Meetings and Recommendation of Payment.* Consultant will meet once monthly with Contractor to review Contractor's application for payment of completed work. Based on Consultant's observations, meetings with Contractor, and on review of applications for payment and accompanying supporting documentation, Consultant will determine the amounts that Consultant recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute Consultant's representation to Client, based on such observations and review, that, to the best of Consultant's knowledge, information and belief, Contractor's work has progressed to the point indicated and that such work-in-progress is generally in accordance with the Contract Documents subject to any qualifications stated in the recommendation. In the case of unit price work, Consultant's recommendations of payment will include determinations of quantities and classifications of Contractor's work, based on observations and measurements of quantities performed by the Contractor and provided with pay requests.

   By recommending any payment, Consultant shall not thereby be deemed to have represented that its observations to check Contractor's work have been exhaustive, extended to every aspect of Contractor's work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Consultant in this Task Authorization. It will also not impose responsibility on Consultant to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, nor to determine that title to any portion of the work in progress, materials, or equipment has passed to Client free and clear of any liens, claims, security interests, or encumbrances, nor that there may not be other matters at issue between Client and Contractor that might affect the amount that should be paid.

F. *Substantial Completion.* Consultant will, promptly after notice from Contractor that it considers the entire Work ready for its intended use, in company with Client, Contractor, and Design Engineer conduct a site visit to determine if the Work is substantially complete. Work will be considered substantially complete following satisfactory completion of all items with the exception

of those identified on a final punch list. If after considering any objections of Client or Design Engineer, Consultant considers the Work substantially complete, Consultant will notify Client and Contractor.

G. *Final Notice of Acceptability of the Work.* Consultant will conduct a final site visit, in company with Client, Contractor, and Design Engineer to determine if the completed Work of Contractor is generally in accordance with the Contract Documents and the final punch list so that Consultant may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Consultant shall review as-built drawings provided by the Contractor and coordinate with the Design Engineer to provide a notice that the Work is generally in accordance with the Contract Documents. Consultant shall provide recommendation of final acceptance to Client to the best of Consultant's knowledge, information, and belief based on the extent of its services and based upon information provided to Consultant upon which it is entitled to rely. This recommendation to Client will be a final certification of completion package including all required acceptance documents such as test reports, as-built drawings, and Agency certifications.

H. *Limitation of Responsibilities.* Consultant shall not be responsible for the acts or omissions of any Contractor, or of any of their subcontractors, suppliers, or of any other individual or entity performing or furnishing the Work. Consultant shall have no responsibility for any Contractor's means, methods, techniques, equipment choice and usage, equipment maintenance and inspection, sequence, schedule, safety programs, or safety practices, nor shall Consultant have any authority or responsibility to stop or direct the work of any Contractor. Consultant neither guarantees the performance of Contractors, nor assumes responsibility for any Contractor's failure to perform its work in accordance with the contract documents.

Consultant is not responsible for any duties assigned to it in the construction contract that are not expressly provided for in this Task Authorization. The Client agrees that each contract with any Contractor shall state that the contractor shall be solely responsible for job site safety and its means and methods; that the contractor shall indemnify the Client and Consultant for all claims and liability arising out of job site accidents; and that the Client and Consultant shall be made additional insureds under the Contractor's general liability insurance policy.

Task 3: Subconsultant Management

A. *Preliminary Project Coordination.* Consultant will retain and coordinate with a third-party geotechnical engineering firm (Subconsultant) for project schedule and testing parameters. A Subconsultant Expense Allocation has been included for Consultant to retain Subconsultant following the Contractor selection and determination of Contractors testing firm. Consultant will not retain a firm used by the Contractor for the Work.

B. *Construction QA Testing Coordination.* The Consultant will coordinate with the Subconsultant for regular Quality Assurance (QA) testing to verify densities and concrete compressive strength of the Contractors completed Work. Contractor is solely responsible for performing regular Quality Control (QC) testing for compliance with the Contract Documents. Consultant and Subconsultant are not responsible for failed QA test results or correction of deficient Work, as the purpose of this testing is to identify inconsistencies between Contractors QC test results and third-party QA test results for evaluation of recommendations for payment and acceptance of completed Work.

C. *Pass Through Task Authorization.* Consultant is retaining Subconsultant to provide the services described herein solely for the administrative convenience of the Client. Client acknowledges that Consultant will not be certifying the work product of the Subconsultant and will not be liable for it in any way. If the client has any future claim related to these services, Client will pursue Subconsultant directly and not Consultant.

Schedule:

The schedule is contingent upon the actual planned and realized construction schedule and timing which is currently anticipated to last approximately nine months.

Consultant will perform the Specific Scope of Basic Services in this Task Authorization for up to nine months (270 calendar days) anticipated to be the duration of construction beginning from the Contractors Notice to Proceed date and ending with Final Acceptance.

Excluded Services:

Any services not specifically provided for in the above Specific Scope of Basic Services or as indicated in the Schedule are excluded, including but not limited to:

- Engineering Design, Permitting or Surveying services
- Other construction observation or administration services or meetings
- Other pre-construction & post-construction services

Method of Compensation:

Kimley-Horn will perform these services on a labor fee plus expense basis with the maximum labor fee and expenses shown below. Labor rates, expenses, and invoicing and payment will be in accordance with the terms and conditions of the Master Contract for Professional Engineering Services dated March 19, 2024 ("Contract"). The following task items represent a breakdown of the maximum fee amount for reference:

Task	*Description*	*Fee*
1	Construction Observations and Administration	$274,825
2	Meeting Coordination, Documentation, and Acceptance	$88,300
3	Subconsultant Management	$8,800
	Subconsultant Expenses – Geotechnical Testing Allowance	$25,000
	Mileage Expenses	$9,500
	Field and Office Expenses	$5,500
Maximum Fee		**$411,925**

Kimley-Horn will not exceed the total maximum fee shown without authorization from the Client. A Manhour Chart that provides a breakdown of project roles and estimated hourly task allocations has been included. The Manhour Chart and individual task amounts are provided for budgeting purposes only. Kimley-Horn reserves the right to reallocate amounts among tasks as necessary.

Mileage expenses cover all costs associated with vehicle mileage for project site visits and meetings. Field and office expenses cover all equipment, tools, documentation, and plots required for field observations, measurements, and meetings.

Kimley»Horn

Manhour Chart

				Project Role: Senior Project Engineer				Project Role: Senior Inspector	Project Role: Project Administrator	Project Role: Secretary/Clerk Typist		
Task #	*Task name*	*Senior Professional II ($345/hr)*	*Senior Professional I ($275/hr)*	*Professional II ($235/hr)*	*Professional I ($200/hr)*	*Analyst II ($175/hr)*	*Analyst I ($140/hr)*	*Senior Technical Support Staff ($195/hr)*	*Technical Support Staff ($140/hr)*	*Support Staff ($105/hr)*	*Total Hours*	*Labor Sub-Total*
1	*Construction Observations/Admin*			25				1320	75	10	1430.0	$ 274,825
2	*Meetings, Doc., and Acceptance*			50				100	400	10	560.0	$ 88,300
3	*Subconsultant Management*			15				10	20	5	50.0	$ 8,800
	Total Manhours:			90				1430	495	25		
											Total Expenses:	$40,000
											Total Maximum Fee:	**$411,925**

STATE-FUNDED GRANT AGREEMENT

FPN: 439865-3-54-01	Fund: GRTR	FLAIR Category: 088717
	Org Code: 55054010508	FLAIR Obj: 751000
FPN: 439865-3-54-01	Fund: LF	FLAIR Category: N/A
	Org Code: N/A	FLAIR Obj: N/A
FPN:	Fund:	FLAIR Category:
	Org Code:	FLAIR Obj:
County No: 79	Contract No:	Vendor No: F596000412003

THIS STATE-FUNDED GRANT AGREEMENT ("Agreement") is entered into on _____, (This date to be entered by DOT only) by and between the State of Florida Department of Transportation, ("Department"), and City of Port Orange, ("Recipient"). The Department and the Recipient are sometimes referred to in this Agreement as a "Party" and collectively as the "Parties".

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 Sections 334.044, 334.044(7), and (*select the applicable statutory authority for the program(s) below):*
   - ☐ Section 339.2817 Florida Statutes, County Incentive Grant Program (CIGP), (ALN 55.008)
   - ☐ Section 339.2818 Florida Statutes, Small County Outreach Program (SCOP), (ALN 55.009)
   - ☐ Section 339.2816 Florida Statutes, Small County Road Assistance Program (SCRAP), (ALN 55.016)
   - ☐ Section 339.2819 Florida Statutes, Transportation Regional Incentive Program (TRIP), (ALN 55.026)
   - ☒ Section 339.81 Florida Statutes , Florida Shared-use Nonmotorized (SUN) Trail Network Program , CSFA 55.038

   The Recipient by Resolution or other form of official authorization, a copy of which is attached as **Exhibit "D"**, **Recipient Resolution**, 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 SJR2C (St Johns River to Sea) Loop Trail (Spruce Creek Road) from South of Selin Circle to Herbert Street project, as further described in **Exhibit "A", Project Description and Responsibilities**, attached to and incorporated into 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 the Agreement, Commencement and Completion of the Project:** This Agreement shall commence upon full execution by both Parties and the Recipient shall complete the Project on or before November 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 Recipient acknowledges that no funding for the Project will be provided by the State under this Agreement for work on the Project that is not timely completed and invoiced in accordance with the terms of this Agreement, or for work performed prior to full execution of the Agreement. Notwithstanding the expiration of the required completion date provided in this Agreement and the consequent potential unavailability of any unexpended portion of State funding to be provided under this Agreement, the

Recipient shall remain obligated to complete all aspects of the Project identified in **Exhibit "A"** in accordance with the remaining terms of this Agreement, unless otherwise agreed by the Parties, in writing.

Execution of this Agreement by both Parties shall be deemed a Notice to Proceed to the Recipient for the design phase or other non-construction phases of the Project. If the Project involves a construction phase, the Recipient shall not begin the construction phase of the Project until the Department issues a written Notice to Proceed for the construction phase. Prior to commencing the construction work described in this Agreement, the Recipient shall request a Notice to Proceed from the Department.

4. **Amendments, Extensions and Assignment:** This Agreement may be amended or extended upon mutual written agreement of the Parties. This Agreement shall not be assigned, transferred or otherwise encumbered by the Recipient under any circumstances without the prior written consent of the Department.

5. **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 laws or the terms of this Agreement until such time as the event or condition resulting in such suspension has ceased or been corrected. The Department may also terminate this Agreement in whole or in part at any time the interest of the Department requires such termination.

   a. If the Department terminates the Agreement, the Department shall notify the Recipient of such termination in writing within thirty (30) days of the Department's determination to terminate the Agreement, with instructions as to the effective date of termination or to specify the stage of work at which the Agreement is to be terminated.

   b. The Parties to this Agreement may also 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 through mutual written agreement.

   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 an amount which is the same percentage of the contract price as the amount of work satisfactorily completed is a percentage of the total work called for by this Agreement. 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. Upon termination of this Agreement, the Recipient shall, within thirty (30) days, refund to the Department any funds determined by the Department to have been expended in violation of this Agreement.

6. **Project Cost:**

   a. The estimated cost of the Project is $3,067,096.00 (Three Million Sixty Seven Thousand Ninety Six Dollars and No/100). This amount is based upon the Schedule of Financial Assistance in **Exhibit "B", Schedule of Financial Assistance**, attached and incorporated in this Agreement. The Schedule of Financial Assistance may be modified by execution of an amendment of the Agreement by the Parties.

   b. The Department agrees to participate in the Project cost up to the maximum amount of $3,067,096.00 (Three Million Sixty Seven Thousand Ninety Six Dollars and No/100) and, additionally the Department's participation in the Project shall not exceed N/A% of the total cost of the Project, and as more fully described in **Exhibit "B"**. The Department's participation may be increased or reduced upon a determination of the actual bid amounts of the Project by the execution of an amendment. The Recipient agrees to bear all expenses in excess of the amount of the Department's participation and any cost overruns or deficits incurred in connection with completion of the Project.

   c. The Department's participation in eligible Project costs is subject to, but not limited to:

      i. Legislative approval of the Department's appropriation request in the work program year that the Project is scheduled to be committed;

ii. Approval of all plans, specifications, contracts or other obligating documents and all other terms of this Agreement; and

iii. Department approval of the Project scope and budget at the time appropriation authority becomes available.

7. Compensation and Payment:

a. The Department shall reimburse the Recipient for costs incurred to perform services described in the Project Description and Responsibilities in **Exhibit "A**", and as set forth in the Schedule of Financial Assistance in **Exhibit "B"**.

b. 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"**, Project Description and Responsibilities. Any changes to the deliverables shall require an amendment executed by both parties.

c. Invoices shall be submitted no more often than monthly and no less than quarterly by the Recipient in detail sufficient for a proper pre-audit and post-audit, based on the quantifiable, measurable and verifiable deliverables as established in **Exhibit "A"**. Deliverables and costs incurred must be received and approved by the Department prior to reimbursements. 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.

d. If 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 standards or level of service to be performed based on the criteria for evaluating successful completion as specified in **Exhibit "A"** has been 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. Travel expenses are not compensable under this Agreement.

g. Payment shall only be made after receipt and approval of deliverables and costs incurred 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.

Recipients receiving financial assistance from the Department should be aware of the following time frames. Inspection and approval of deliverables and costs incurred 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 deliverables and costs incurred 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), Florida Statutes, 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 a 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 Recipient 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. **Progress Reports.** Upon request, the Recipient agrees to provide progress reports to the Department in the standard format used by the Department and at intervals established by the Department. The Department will be entitled at all times to be advised, at its request, as to the status of the Project and of details thereof.

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 financial assistance for this Project is in multiple fiscal years, a notice of availability of funds from the Department's project manager must be received prior to costs being incurred by the Recipient. See **Exhibit "B"** for funding levels by fiscal year. Project costs utilizing any 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."

n. Any Project funds made available by the Department pursuant to this Agreement which are determined by the Department to have been expended by the Recipient in violation of this Agreement or any other applicable law or regulation, shall be promptly refunded in full to the Department. Acceptance by the Department of any documentation or certifications, mandatory or otherwise permitted, that the Recipient files shall not constitute a waiver of the Department's rights as the funding agency to verify all information at a later date by audit or investigation.

o. In determining the amount of the payment, the Department will exclude all Project costs incurred by the Recipient prior to the execution of this Agreement, costs incurred prior to issuance of a Notice to Proceed, costs incurred after the expiration of the Agreement, costs which are not provided for in the latest approved Schedule of Financial Assistance 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.

8. 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.

a. The Recipient must obtain written approval from the Department prior to performing itself (through the efforts of its own employees) any aspect of the Project that will be funded under this Agreement.

☐ If this box is checked, then the Agency is permitted to utilize its own forces and the following provision applies: **Use of Agency Workforce.** In the event the Agency proceeds with any phase of the Project utilizing its own forces, the Agency will only be reimbursed for direct costs (this excludes general overhead).

b. The Recipient shall provide to the Department certification and a copy of appropriate documentation substantiating that all required right-of-way necessary for the Project has been obtained. 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.

c. 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.

d. The Recipient shall have the sole responsibility for resolving claims and requests for additional work for the Project by the Recipient's contractors and consultants. No funds will be provided for payment of claims or additional work on the Project under this Agreement without the prior written approval of the claim or request for additional work by Department.

9. Contracts of the Recipient

a. The Department has the right to review and approve any and all third party contracts with respect to the Project before the Recipient executes any contract or obligates itself in any manner requiring the disbursement of Department funds under this Agreement, including consultant or construction contracts or amendments thereto. If the Department exercises this right and the Recipient fails to obtain such approval, the Department may deny payment to the Recipient. The Department may 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 hereto that participation by the Department in a project that involves the purchase of commodities or contractual services or the purchasing of capital equipment or the

equipping of facilities, where purchases or costs exceed the Threshold Amount for CATEGORY TWO per Chapter 287.017 Florida Statutes, is contingent on the Recipient complying in full with the provisions of Chapter 287.057 Florida Statutes The Recipient shall certify to the Department that the purchase of commodities or contractual services has been accomplished in compliance with Chapter 287.057 Florida Statutes It shall be the sole responsibility of the Recipient to ensure that any obligations made in accordance with this Section comply with the current threshold limits. Contracts, purchase orders, task orders, construction change orders, or any other agreement that would result in exceeding the current budget contained in **Exhibit "B"**, or that are not consistent with the Project description and scope of services contained in **Exhibit "A"** must be approved by the Department prior to Recipient execution. Failure to obtain such approval, and subsequent execution of an amendment to the Agreement if required, shall be sufficient cause for nonpayment by the Department.

c. Participation by the Department in a project that 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. In all cases, the Recipient shall certify to the Department that selection has been accomplished in compliance with the Consultants' Competitive Negotiation Act.

d. 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.

10. Design and Construction Standards and Required Approvals: In the event the Project includes construction the following provisions are incorporated into this Agreement:

a. The Recipient is responsible for obtaining all permits necessary for the Project.

b. In the event the Project involves construction on the Department's right-of-way, the Recipient shall provide the Department with written notification of either its intent to:

i. Award the construction of the Project to a Department prequalified contractor which is the lowest and best bidder in accordance with applicable state and federal statutes, rules, and regulations. The Recipient shall then submit a copy of the bid tally sheet(s) and awarded bid contract, or

ii. Construct the Project utilizing existing Recipient employees, if the Recipient can complete said Project within the time frame set forth in this Agreement. The Recipient's use of this option is subject to approval by the Department.

c. The Recipient shall hire a qualified contractor using the Recipient's normal bid procedures to perform the construction work for the Project. For projects that are not located on the Department's right-of-way, the Recipient is not required to hire a contractor prequalified by the Department unless the Department notifies the Recipient prior to letting that they are required to hire a contractor prequalified by the Department.

d. The Recipient is responsible for provision of Construction Engineering Inspection (CEI) services. The Department reserves the right to require the Recipient to hire a Department pre-qualified consultant firm that includes one individual that has completed the Advanced Maintenance of Traffic Level Training. Notwithstanding any provision of law to the contrary, design services and CEI services may not be performed by the same entity. Administration of the CEI staff shall be under the responsible charge of a State of Florida Licensed Professional Engineer who shall provide the certification that all design and construction for the Project meets the minimum construction standards established by Department. The Department shall have the right to approve the CEI firm. The Department shall have the right, but not the obligation, to perform independent assurance testing during the course of construction of the Project. Subject to the approval of the Department, the Recipient may choose to satisfy the requirements set forth in this paragraph by either hiring a Department prequalified consultant firm or utilizing Recipient staff that meet the requirements of this paragraph, or a combination thereof.

e. The Recipient is responsible for the preparation of all design plans for the Project. The Department reserves the right to require the Recipient to hire a Department pre-qualified consultant for the design phase of the Project using the Recipient's normal procurement procedures to perform the design services for the Project. Notwithstanding any provision of law to the contrary, design services and CEI services may not be performed by the same entity. All design work on the Project shall be performed in accordance with the requirements of all applicable laws and governmental rules and regulations and federal and state accepted design standards for the type of construction contemplated by the Project, including, as applicable, but not limited to, the applicable provisions of the Manual of Uniform Traffic Control Devices (MUTCD) and the AASHTO Policy on Geometric Design of Streets and Highways. If any portion of the Project will be located on, under, or over any Department-owned right-of-way, the Department shall review the Project's design plans for compliance with all applicable standards of the Department, as provided in **Exhibit "O", Terms and Conditions of Construction**, which is attached to and incorporated into this Agreement.

f. The Recipient shall adhere to the Department's Conflict of Interest Procedure (FDOT Topic No. 375-030-006).

g. The Recipient will provide copies of the final design plans and specifications and final bid documents to the Department's Construction Project Manager prior to commencing construction of the Project. The Department will specify the number of copies required and the required format.

h. The Recipient shall require the Recipient's contractor to post a payment and performance bond in accordance with applicable law.

i. The Recipient shall be responsible to ensure that the construction work under this Agreement is performed in accordance with the approved construction documents, and that it will meet all applicable Recipient and Department standards.

j. Upon completion of the work authorized by this Agreement, the Recipient shall notify the Department in writing of the completion of construction of the Project; and for all design work that originally required certification by a Professional Engineer, this notification shall contain an Engineers Certification of Compliance, signed and sealed by a Professional Engineer, the form of which is attached hereto and incorporated herein as **Exhibit "C", Engineers Certification of Completion**. The certification shall state that work has been completed in compliance with the Project construction plans and specifications. If any deviations are found from the approved plans, the certification shall include a list of all deviations along with an explanation that justifies the reason to accept each deviation.

k. The Recipient shall provide the Department with as-built plans of any portions of the Project funded through the Agreement prior to final inspection.

11. 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

maintain the improvements located on the Department right-of-way made 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.

12. State Single Audit: 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 state financial assistance or limit the authority of any state agency inspector general, the 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 Section 215.97, Florida Statutes, monitoring procedures to monitor the Recipient's use of state financial assistance 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 state financial assistance awarded 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, the Department of Financial Services (DFS) or the Auditor General.

b. The Recipient, a nonstate entity as defined by Section 215.97(2)(n), Florida Statutes, as a recipient of state financial assistance awarded by the Department through this Agreement is subject to the following requirements:

i. In the event the Recipient meets the audit threshold requirements established by Section 215.97, Florida Statutes, the Recipient must have a State single or project-specific audit conducted for such fiscal year in accordance with Section 215.97, Florida Statutes; applicable rules of the Department of Financial Services; and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. **Exhibit "J", State Financial Assistance (Florida Single Audit Act)** to this Agreement indicates state financial assistance awarded through the Department by this Agreement needed by the Recipient to further comply with the requirements of Section 215.97, Florida Statutes. In determining the state financial assistance expended in a fiscal year, the Recipient shall consider all sources of state financial assistance, including state financial assistance received from the Department by this Agreement, other state agencies and other nonstate entities. State financial assistance does not include Federal direct or pass-through awards and resources received by a nonstate entity for Federal program matching requirements.

ii. In connection with the audit requirements, the Recipient shall ensure that the audit complies with the requirements of Section 215.97(8), Florida Statutes. This includes submission of a financial reporting package as defined by Section 215.97(2)(e), Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.

iii. In the event the Recipient does not meet the audit threshold requirements established by Section 215.97, Florida Statutes, the Recipient is exempt for such fiscal year from the state single audit requirements of Section 215.97, Florida Statutes. 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 does not meet the audit threshold requirements established by Section 215.97, Florida Statutes, in a fiscal year and elects to have an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, the cost of the audit must be paid from the Recipient's resources (i.e., the cost of such an audit must be paid from the Recipient's resources obtained from other than State entities).

iv. In accordance with Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, copies of financial reporting packages required by this Agreement shall be submitted to:

Florida Department of Transportation
Office of Comptroller, MS 24
605 Suwannee Street
Tallahassee, FL 32399-0405
Email: FDOTSingleAudit@dot.state.fl.us

And

State of Florida Auditor General
Local Government Audits/342
111 West Madison Street, Room 401
Tallahassee, FL 32399-1450
Email: flaudgen_localgovt@aud.state.fl.us

v. Any copies of financial reporting packages, reports or other information required to be submitted to the Department shall be submitted timely in accordance with Section 215.97, Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.

vi. The Recipient, when submitting financial reporting packages to the Department for audits done in accordance with Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, should indicate the date the reporting package was delivered to the Recipient in correspondence accompanying the reporting package.

vii. Upon receipt, and within six months, the Department will review the Recipient's financial reporting package, including corrective action plans and management letters, to the extent necessary to determine whether timely and appropriate corrective action on all deficiencies has been taken pertaining to the state financial assistance provided through the Department by this Agreement. If the Recipient fails to have an audit conducted consistent with Section 215.97, Florida Statutes, the Department may take appropriate corrective action to enforce compliance.

viii. As a condition of receiving state financial assistance, the Recipient shall permit the Department, or its designee, DFS or the 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.

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, DFS or the 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, DFS or the 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.

13. Restrictions, Prohibitions, Controls and Labor Provisions:

a. 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.

b. 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.

c. 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.

d. No funds received pursuant to this Agreement may be expended for lobbying the Florida Legislature, judicial branch, or any state agency, in accordance with Section 216.347, Florida Statutes.

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

f. 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 the 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 contractor and subcontractor during the contract term.

g. 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.

14. 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 the 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 provide Workers' Compensation Insurance in accordance with Florida's Workers' Compensation law for all employees. If subletting any of the work, ensure that the subcontractor(s) and subconsultants have Workers' Compensation Insurance for their employees in accordance with Florida's Workers' Compensation law. If using "leased employees" or employees obtained through professional employer organizations ("PEO's"), ensure that such employees are covered by Workers' Compensation insurance through the PEO's or other leasing entities. Ensure that any equipment rental agreements that include operators or other personnel who are employees of independent contractors, sole proprietorships or partners are covered by insurance required under Florida's Workers' Compensation law.

e. If the Recipient elects to self-perform the Project, and such self-performance is approved by the Department in accordance with the terms of this Agreement, the Recipient may self-insure and proof of self-insurance shall be provided to the Department. If the Recipient elects to hire a contractor or consultant to perform the Project, then the Recipient shall, or cause its contractor or consultant to carry Commercial General Liability insurance providing continuous coverage for all work or operations performed under the Agreement. Such insurance shall be no more restrictive than that provided by the latest occurrence form edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01) as filed for use in the State of Florida. Recipient shall, or cause its contractor to cause the Department to be made an Additional Insured as to such insurance. Such coverage shall be on an "occurrence" basis and shall include Products/Completed Operations coverage. The coverage afforded to the Department as an Additional Insured shall be primary as to any other available insurance and shall not be more restrictive than the coverage afforded to the Named Insured. The limits of coverage shall not be less than $1,000,000 for each occurrence and not less than a $5,000,000 annual general aggregate, inclusive of amounts provided by an umbrella or excess policy. The limits of coverage described herein shall apply fully to the work or operations performed under the Agreement, and may not be shared with or diminished by claims unrelated to the Agreement. The policy/ies and coverage described herein may be subject to a deductible and such deductibles shall be paid by the Named Insured. No policy/ies or coverage described herein may contain or be subject to a Retention or a Self-Insured Retention unless the Recipient is a state agency or subdivision of the State of Florida that elects to self-perform the Project. Prior to the execution of the Agreement, and at all renewal periods which occur prior to final acceptance of the work, the Department shall be provided with an ACORD Certificate of Liability Insurance reflecting the coverage described herein. The Department shall be notified in writing within ten days of any cancellation, notice of cancellation, lapse, renewal, or proposed change to any policy or coverage described herein. The Department's approval or failure to disapprove any policy/ies, coverage, or ACORD Certificates shall not relieve or excuse any obligation to procure and maintain the insurance required herein, nor serve as a waiver of any rights or defenses the Department may have.

f. When the Agreement includes the construction of a railroad grade crossing, railroad overpass or underpass structure, or any other work or operations within the limits of the railroad right-of-way, including any encroachments thereon from work or operations in the vicinity of the railroad right-of-way, the Recipient shall, or cause its contractor to, in addition to the insurance coverage required above, procure and maintain Railroad Protective Liability Coverage (ISO Form CG 00 35) where the railroad is the Named Insured and where the limits are not less than $2,000,000 combined single limit for bodily injury and/or property damage per occurrence, and with an annual aggregate limit of not less than $6,000,000. The railroad shall also be added along with the Department as an Additional Insured on the policy/ies procured pursuant to the paragraph above. Prior to the execution of the Agreement, and at all renewal periods which occur prior to final acceptance of the work, both the Department and the railroad shall be provided with an ACORD Certificate of Liability Insurance reflecting the coverage described herein. The insurance described herein

shall be maintained through final acceptance of the work. Both the Department and the railroad shall be notified in writing within ten days of any cancellation, notice of cancellation, renewal, or proposed change to any policy or coverage described herein. The Department's approval or failure to disapprove any policy/ies, coverage, or ACORD Certificates shall not relieve or excuse any obligation to procure and maintain the insurance required herein, nor serve as a waiver of any rights the Department may have.

g. When the Agreement involves work on or in the vicinity of utility-owned property or facilities, the utility shall be added along with the Department as an Additional Insured on the Commercial General Liability policy/ies procured above.

15. Miscellaneous:

a. In no event shall 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.

b. 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.

c. The Recipient and the Department agree that the Recipient, its employees, contractors, subcontractors, consultants, and subconsultants are not agents of the Department as a result of this Agreement.

d. 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.

e. 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.

f. 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.

g. The Department reserves the right to unilaterally terminate this Agreement for failure by the Recipient to comply with the provisions of Chapter 119, Florida Statutes.

h. The Recipient agrees to comply with Section 20.055(5), Florida Statutes, and to incorporate in all subcontracts the obligation to comply with Section 20.055(5), Florida Statutes

i. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. In the event of a conflict between any portion of the contract and Florida law, the laws of Florida shall prevail. The Recipient agrees to waive forum and venue and that the Department shall determine the forum and venue in which any dispute under this Agreement is decided.

j. This Agreement does not involve the purchase of Tangible Personal Property, as defined in Chapter 273, Florida Statutes.

16. Exhibits.

a. **Exhibits A, B, D, F, H,** and **J** are attached to and incorporated into this Agreement.

b. ☒ The Project will involve construction, therefore, **Exhibit "C"**, Engineer's Certification of Compliance is attached and incorporated into this Agreement.

c. ☐ 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.

d. ☒ A portion or all of the Project will utilize the Department's right-of-way and, therefore, **Exhibit O**, **Terms and Conditions of Construction in Department Right-of-Way**, is attached and incorporated into this Agreement.

e. ☐ The following Exhibit(s), in addition to those listed in 16.a. through 16.f., are attached and incorporated into this Agreement: N/A

f. Exhibit and Attachment List

Exhibit A: Project Description and Responsibilities
Exhibit B: Schedule of Financial Assistance
*Exhibit C: Engineer's Certification of Compliance
Exhibit D: Recipient Resolution
Exhibit F: Contract Payment Requirements
Exhibit H: Alternative Advance Payment Financial Provisions
Exhibit J: State Financial Assistance (Florida Single Audit Act)
*Exhibit K: Advance Project Reimbursement
*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.

The remainder of this page intentionally left blank.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the day and year written above.

RECIPIENT CITY OF PORT ORANGE

By: _____

Name: _____

Title: _____

STATE OF FLORIDA,
DEPARTMENT OF TRANSPORTATION

By: _____

Name: James S. Stroz, Jr., P.E.

Title: Director of Transportation Development

Legal Review:

By: _____

Name: _____

EXHIBIT A

PROJECT DESCRIPTION AND RESPONSIBILITIES

FPN: 439865-3-54-01

This exhibit forms an integral part of the Agreement between the State of Florida, Department of Transportation and

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 SJR2C LOOP TRAIL (SPRUCE CREEK RD) project is within the City of Port Orange. This segment, of the State's much larger trail system, the Shared-Use Nonmotorized Trail Program (SUNTrail) is from S OF SELIN CIR TO HERBERT ST. Total length of the project is 3,542 feet (0.671miles) with exceptions listed below.

This segment, of the much larger trail system, begins south of the intersection of Spruce Creek Road and Selin Circle. The 8-foot-wide concrete trail of 450 linear feet will extend northerly along the west side of Spruce Creek Road towards Oak Street utilizing 200 linear feet of the existing 8 feet wide concrete sidewalk and will continue along the east side of Halifax Canal from Oak Street to Dunlawton Avenue utilizing the existing 8-foot-wide trail for 1,280 linear feet. 995 linear feet of 12-foot-wide heavy-duty asphalt trail will then continue along Spruce Creek Road from Dunlawton Avenue to Canal View Boulevard. 695 linear feet of 8-foot boardwalk continues through a vacant city-owned parcel from Canal View Boulevard to 120 feet South of Herbert Street. The last segment will be 120 linear feet of 8-foot-wide concrete sidewalk connecting to the existing trail segment. Total project length is approximately 0.671 miles.

Three midblock crossings at Selin Circle, Oak Street and Herbert Street will be installed with Rectangular Rapid Flashing Beacon (RRFB) signals and lighting will be added at these three locations. The scope of work will include installation of a pedestrian pole with LED countdown at the intersection of Dunlawton Avenue and Spruce Creek Road.

The timber pedestrian boardwalk and associated gravity walls will also be installed with lighting for safety purposes. Drainage improvements include extending pipes, mitered end sections and inlet modifications.

Other construction elements include mobilization, maintenance of traffic, erosion control, clearing and grubbing, regular and subsoil excavation, embankment (to include surcharge), and sod. Handrail/guiderail is specified where pedestrian drop off hazards are present.

The following items are not eligible for reimbursement and will be locally funded:

0522-2A	Concrete Shared Use Path, 7" thick (Heavy Duty) in lieu of 4" thick	SY	47	$4,606.00
-	18" Wapro Stainless Wastop Inline Check Valve	EA	1	$22,740.00

All pedestrian facilities shall adhere to current American 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 Agency coordinated permitting with the St. Johns River Water Management District and USACE (environmental permit). The City shall construct the project within the limits of the existing right of way 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

In accordance with the SFGA terms and conditions the Department reserves the right to perform inspections, reviews, investigations, or audits as deemed necessary by the Department. When construction is substantially complete and no less than 2 weeks prior to the scheduled final completion, the Recipient shall schedule a joint on site review/final walk-thru with FDOT. The Recipient shall contact the FDOT D5-Construction Special Projects Office via email at D5-ConstructionSpecialProjects@dot.state.fl.us to schedule the joint on site review/final walk-thru. The joint on site review/final walk-thru should not be considered an approval of the work by the Department nor a substitution for the Recipient's obligation to ensure that all work and deliverables comply with the SFGA terms and conditions

The initial invoice, progress report and other supporting documentation will be submitted within 180 days of the Department's Notice to Proceed and no more often than monthly and no less than quarterly thereafter. If no billable or reimbursable activity has occurred during the initial and/or subsequent reporting periods, a PMSR shall be submitted reflecting the activity occurred during the reporting period, status of the project, and an explanation of why no reimbursement request is being submitted. Required documents should be submitted via email to D5-SuntrailProgram@dot.state.fl.us.

SUN Trail funding is for the transportation element of a standard paved asphalt multi-use trail / Shared-Use Path (SUP). Note: superstructures (e.g., bridges, underpasses, etc.) may be made of metal, concrete ("diamond" design standard finish), composite, wood, or similar materials. The allocation of SUN Trail funds will not include the development of additional features and amenities associated with trail projects. These additional features and amenities include but are not limited to the following:

- Benches, trail furniture, seating areas, or tables;
- Bicycle racks or lockers, bicycle air stations or repair stations;
- Buildings or enclosed structures, restrooms, bathhouses, comfort stations, wayside structures, shades structures, concession stands, overlooks, fishing platforms, boat ramps or launches, transit or ride share facilities, shelters, gazebos, or picnic pavilions;
- Kiosks, interpretive panels, or placemaking signs (regulatory and safety controls are allowable);
- Landscaping (trail stabilization permitted);
- Litter or recycle receptacles, or doggie bag dispensers;
- Parking areas, trailheads, or camping areas;
- Playgrounds or playing fields, fitness equipment, or fitness structures;
- Promotional, marketing, or educational materials;
- Sculptures, monuments, or art; and
- Water fountains, splash zones, spigots, showers, water features, or irrigation equipment.

If other funding sources are available for additional improvements, construction may occur at the same time as the SUN Trail funded aspects. As appropriate, local agencies should coordinate with their respective districts.

The Recipient shall commence the project's activities subsequent to the execution of this Agreement and shall perform in accordance with the following schedule:

CONSTRUCTION (Phase 54):
a) Construction contract to be let (Bid Opening) by June 18, 2025.
b) Construction Duration of 260 days.
c) Construction to be completed (Final Acceptance) by May 16, 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 state 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 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.

STATE-FUNDED GRANT AGREEMENT

EXHIBIT B
SCHEDULE OF FINANCIAL ASSISTANCE

RECIPIENT NAME & BILLING ADDRESS:	**FINANCIAL PROJECT NUMBER:**
City of Port ORange 1000 City Center Circle Port Orange, FL 32129 F596-000-412-003	439865-3-54-01

PHASE OF WORK by Fiscal Year:		MAXIMUM PARTICIPATION (1) TOTAL PROJECT FUNDS	(2) LOCAL FUNDS	(3) STATE FUNDS	Indicate source of Local funds
Design- Phase 34 FY:	Maximum Department Participation (Insert Program Name)	$	$	$	☐ In-Kind ☐ Cash
FY:	Maximum Department Participation (Insert Program Name)	$	$	$	☐ In-Kind ☐ Cash
	Total Design Cost	$ 0.00 %	$ 0.00 %	$ 0.00 %	
Right-of-Way- Phase 44 FY:	Maximum Department Participation (Insert Program Name)	$	$	$	☐ In-Kind ☐ Cash
FY:	Maximum Department Participation (Insert Program Name)	$	$	$	☐ In-Kind ☐ Cash
	Total Right-of-Way Cost	$ 0.00 %	$ 0.00 %	$ 0.00 %	
Construction- Phase 54 FY: **2025**	Maximum Department Participation (SUNTrail)	$3,067,096.00	$27,346.00	$3,039,750.00	☐ In-Kind ☒ Cash
FY:	Maximum Department Participation (Insert Program Name)	$	$	$	☐ In-Kind ☐ Cash
	Total Construction Cost	$3,067,096.00 %	$27,346.00 %	$3,039,750.00 %	
Construction Engineering and Inspection - Phase 64 FY:	Maximum Department Participation (Insert Program Name)	$	$	$	☐ In-Kind ☐ Cash
FY:	Maximum Department Participation (Insert Program Name)	$	$	$	☐ In-Kind ☐ Cash
	Total Construction Engineering and Inspection Cost	$ 0.00 %	$ 0.00 %	$ 0.00 %	
(Phase :) FY:	Maximum Department Participation (Insert Program Name)	$	$	$	☐ In-Kind ☐ Cash
FY:	Maximum Department Participation (Insert Program Name)	$	$	$	☐ In-Kind ☐ Cash
	Total Cost	$ 0.00 %	$ 0.00 %	$ 0.00 %	
	TOTAL COST OF THE PROJECT	$3,067,096.00	$27,346.00	$3,039,750.00	

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.

Paul Schoelzel
District Grant Manager Name

Signature Date

EXHIBIT C

ENGINEER'S CERTIFICATION OF COMPLIANCE

Engineer's Certification of Compliance. The Recipient shall complete and submit the following Notice of Completion and, if applicable, Engineer's Certification of Compliance to the Department upon completion of the construction phase of the Project.

NOTICE OF COMPLETION

STATE-FUNDED GRANT AGREEMENT
Between
THE STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION
and the City of Port Orange

PROJECT DESCRIPTION:SJR2C (St Johns River to Sea) Loop Trail (Spruce Creek Road) from South of Selin Circle to Herbert Street project

FPID#: 439865-3-54-01

In accordance with the Terms and Conditions of the State-Funded Grant Agreement, the undersigned provides notification that the work authorized by this Agreement is complete as of _____, 20__.

By: _____

Name: _____

Title: _____

ENGINEER'S CERTIFICATION OF COMPLIANCE

In accordance with the Terms and Conditions of the State-Funded Grant Agreement, the undersigned certifies that all work which originally required certification by a Professional Engineer has been completed in compliance with the Project construction plans and specifications. If any deviations have been made from the approved plans, a list of all deviations, along with an explanation that justifies the reason to accept each deviation, will be attached to this Certification. Also, with submittal of this certification the Recipient shall furnish the Department a set of "as-built" plans certified by the Engineer of Record/CEI.

By: _____, _____ P.E.

SEAL:

Name: _____

Date: _____

EXHIBIT D

RECIPIENT RESOLUTION

The Recipient's Resolution authorizing entry into this Agreement is attached and incorporated into this Agreement.

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/Division/AA/Manuals/documents/ReferenceGuideforStateExpenditures.pdf.

EXHIBIT H

ALTERNATIVE ADVANCE PAYMENT FINANCIAL PROVISIONS

Note: When Recipient meets the definition of a rural community or Rural Area of Opportunity, as these terms are defined by **Section 288.0656(2), F.S.,** *or is considered a " governmental entity" authorized by the Department's Comptroller under* ***Section 334.044(29), F.S.,*** *as eligible for Alternative Advance Payment. The agreement for these entities must include the following language or exhibit.*

The process for requesting and obtaining approval for an alternative advance payment for "other governmental entities" is included in the ***Disbursement Handbook for Employees and Managers.*** *The Department's Comptroller or designee must approve any modifications to the provisions. Please see* ***Financial Provisions for All Department Funded Agreements Procedure (FDOT Topic No. 350-020-301) Section 1.1*** *and* ***4*** *for alternative advance pay guidelines.*

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1. The amount of the invoice submitted to the Department for verified and eligible costs incurred by the Recipient or invoiced by the Recipient's contractor(s) and/or consultant(s) does not exceed the total amount of the costs incurred by the Recipient or invoice(s) received from the Recipient's contractor(s) or consultant(s).

2. All invoices received from the Recipient clearly separate any cost(s) incurred by the Recipient or the Recipient's contractor(s) or consultant(s) for eligible costs and performance under the terms and conditions of this Agreement.

3. All invoices submitted to the Department provide complete documentation, including copies of all contractor or consultant invoices when applicable and the date(s) the authorized work was performed and accepted by the Recipient, in sufficient detail to substantiate the eligibility of the cost(s) and performance covered by the Recipient's Invoice.

4. The Recipient has certified, on each invoice, that the costs incurred by the Recipient or invoiced by the Recipient's contractor(s) and/or consultant(s) are valid and have been incurred in performance of eligible work under the terms and conditions of this Agreement.

5. Each invoice subsequent to the first invoice submitted by the Recipient includes the Recipient's certification that all previously invoiced costs have been paid by the Recipient.

STATE-FUNDED GRANT AGREEMENT

EXHIBIT J

STATE FINANCIAL ASSISTANCE (FLORIDA SINGLE AUDIT ACT)

THE STATE RESOURCES AWARDED PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:

Awarding Agency: Florida Department of Transportation

State Project Title and CSFA Number:

☐ County Incentive Grant Program (CIGP), (CSFA 55.008)
☐ Small County Outreach Program (SCOP), (CSFA 55.009)
☐ Small County Road Assistance Program (SCRAP), (CSFA 55.016)
☐ Transportation Regional Incentive Program (TRIP), (CSFA 55.026)
☒ Florida Shared-Use Nonmotorized (SUN) Trail Network Program, CSFA 55.038

***Award Amount:** $3,039,750.00

*The state award amount may change with supplemental agreements

Specific project information for CSFA Number is provided at: https://apps.fldfs.com/fsaa/searchCatalog.aspx

COMPLIANCE REQUIREMENTS APPLICABLE TO STATE RESOURCES AWARDED PURSUANT TO THIS AGREEMENT:

State Project Compliance Requirements for CSFA Number are provided at: https://apps.fldfs.com/fsaa/searchCompliance.aspx

The State Projects Compliance Supplement is provided at: https://apps.fldfs.com/fsaa/compliance.aspx

EXHIBIT O

TERMS AND CONDITIONS OF CONSTRUCTION IN DEPARTMENT RIGHT OF WAY

Section 10.e. 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)

MAINTENANCE MEMORANDUM OF AGREEMENT
FOR OFF SYSTEM MULTI-USE TRAIL PROJECT
Between
STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION
("DEPARTMENT")
and
CITY OF PORT ORANGE
("LOCAL GOVERNMENT")

THIS AGREEMENT, made and entered into on _____, by and between the STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION, an executive agency of the State of Florida, hereinafter called the "DEPARTMENT," and the CITY OF PORT ORANGE, a municipality incorporated under the laws of the State of Florida, hereinafter called the "LOCAL GOVERNMENT."

WITNESSETH

WHEREAS, the State of Florida Legislature has approved and mandated the DEPARTMENT to complete various projects included in the DEPARTMENT'S Work Program; and

WHEREAS, included in the DEPARTMENT'S Work Program is Project Financial Management Number located in 439865-3-54-01, Florida, hereinafter referred to as the "Project", some, or all of which, is not on the State Highway System; and

WHEREAS, the parties hereto agree that it is in the best interest of the DEPARTMENT and of the LOCAL GOVERNMENT for the DEPARTMENT to act on behalf of the LOCAL GOVERNMENT in completing all aspects of any portion of the Project not on the State Highway System, including, but not necessarily limited to (1) design; (2) acquisition of real property through voluntary acquisition to complete this Project as authorized by §336.467, Florida Statutes; and (3) constructing the Project through its completion; and (4) providing Construction Engineering Inspection (CEI) as necessary for the Project; and

WHEREAS, the LOCAL GOVERNMENT, by Resolution, a copy of which is attached hereto as Exhibit "D", and made apart hereof, has authorized its officers to execute this AGREEMENT on its behalf and to formally commit to permanent, perpetual maintenance of the Multi Use Trial Project.

NOW THEREFORE, for and in consideration of the mutual benefits to flow each to the other, the parties covenant and agree as follows:

1. The LOCAL GOVERNMENT acknowledges that the DEPARTMENT will require the LOCAL GOVERNMENT to maintain the entire Multi-Use Trail Project, as depicted in the Construction Plans and Specifications of F.P.I.D. 439865-3-54-01, for the useful life of the Multi-Use Trail Project, according to the DEPARTMENT standards, which include, but are not limited to, the Americans with Disabilities Act, Design Standards, and the Standard Specifications, and as amended from time to time.

2. Maintenance items to be maintained by the LOCAL GOVERNMENT shall include, but not be limited to vegetation management, ornamental landscaping, trail heads, bathroom facilities, parking facilities, repair of slopes/erosion, removal of graffiti, boardwalks, gravity walls, sea walls, traffic barriers, railings, guardrail, signing, pavement markings, pedestrian/bicycle signals, lighting, benches, litter receptacles, aesthetic features, and all other features of the Multi-Use Trail Project. The LOCAL GOVERNMENT shall maintain pavement surfaces free from residue accumulation, algae, vegetation, and other slip or trip hazards. The LOCAL GOVERNMENT shall trim landscaping, mow, sweep, edge and provide weed control along the Multi-Use Trail Project corridor on SJR2C (St Johns River to Sea) Loop Trail (Spruce Creek Road) from South of Selin Circle to Herbert Street as described in Exhibit A**.** The LOCAL GOVERNMENT shall ensure the safety of the Public by repairing slope erosion and maintaining signs, sign poles, striping, pavement symbols, traffic markings, detectable warning surfaces, pavers, crosswalks, bollards, delineators, walls, railings, barriers, guardrail, lighting, pedestrian/bicycle signals and any other safety features within the Multi-Use Trail Project corridor in accordance with DEPARTMENT standards. The LOCAL GOVERNMENT shall maintain paint on railings, sign poles, structures, etc. within the Multi-use Trail Project corridor. Repairs to any Multi-Use Trail Project structural or safety feature shall be in kind and to DEPARTMENT standards. The LOCAL GOVERNMENT shall maintain all landscaping to DEPARTMENT standards or higher and all irrigation systems in good operational condition. The LOCAL GOVERNMENT shall maintain and repair the Multi-Use Trail Project at its sole cost and expense, in a good and workmanlike manner, and with reasonable care.

3. The Parties acknowledge and agree that the design plans for the Multi-Use Trail Project may not yet be finalized and are subject to review by the Department. Upon completion of the Multi-Use Trail Project, the Parties shall amend this Agreement to attach the latest version of the construction plans for the Multi-Use Project to this Agreement in order to show the extent of the Multi-Use Trail Project to be maintained by Recipient. The Recipient approves and delegates to Utility Engineering Design Technician, the authority to enter into an amendment of this Agreement to attach the latest version of the construction plans as described above. No further Board or Council action shall be required to amend this Agreement for the sole purpose of incorporating the latest construction plans.

4. The LOCAL GOVERNMENT shall pay utility bills for lighting, signals, and irrigation associated with the Multi-Use Trail Project.

5. The LOCAL GOVERNMENT shall conduct an annual inspection of the Multi-Use Trail Project to ensure that any and all safety deficiencies are addressed.

6. When the Multi-Use Trail Project is at the end of its useful life, the LOCAL GOVERNMENT shall prioritize the Replacement or Reconstruction of the Multi-Use Trail Project as if it was a new Project.

7. If at any time the LOCAL GOVERNMENT has not performed the maintenance responsibility on the Multi-Use Trail Project in accordance with this Agreement, the DEPARTMENT shall have the option of (a) notifying the LOCAL GOVERNMENT of the deficiency with a requirement that it be corrected within a specified time; or (b) the DEPARTMENT may perform the necessary maintenance at the LOCAL GOVERNMENT'S sole cost and expense, and send an invoice to the LOCAL GOVERNMENT, equal to the cost incurred by the DEPARTMENT for such maintenance. Any action taken by the DEPARTMENT does not relieve any obligation of the LOCAL GOVERNMENT under the terms and conditions of this Agreement. Failure to perform maintenance of the Multi-Use Trail Project in accordance with this Agreement may impact DEPARTMENT funding participation in future LOCAL GOVERNMENT projects.

8. The DEPARTMENT may require the LOCAL GOVERNMENT to remove the Multi-Use Trail Project in whole or in part and restore the property to the condition that existed immediately prior to the effective date of this Agreement if the DEPARTMENT determines: (a) the Multi-Use Trail Project or project feature is not constructed or maintained in accordance with Section 1. of this Agreement, or (b) the LOCAL GOVERNMENT breaches a material provision (as determined by the DEPARTMENT) of this Agreement. Removal and restoration shall be completed by the LOCAL GOVERNMENT within 60 days of the DEPARTMENT'S written notice, or such time as the DEPARTMENT and the LOCAL GOVERNMENT mutually agree in writing. Removal and restoration shall be completed by the LOCAL GOVERNMENT in accordance with DEPARTMENT standards. Should the LOCAL GOVERNMENT fail to complete the removal and restoration work, the DEPARTMENT may complete the removal and restoration at the LOCAL GOVERNMENT'S sole cost and expense and send an invoice to the LOCAL GOVERNMENT, equal to the cost incurred by the DEPARTMENT for such removal and restoration.

9. This Agreement may be terminated under either of the following conditions: (a) by the DEPARTMENT, if the LOCAL GOVERNMENT fails to perform its duties under this Agreement, following ten (10) days written notice; or (b) by the DEPARTMENT, for refusal by the LOCAL GOVERNMENT to allow public access to public records subject to the provisions of Chapter 119, Florida Statutes.

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CITY OF PORT ORANGE
1000 CITY CENTER CIRCLE
PORT ORANGE, FLORIDA 32129
TELEPHONE 386-506-5500
FAX 386-756-5290
www.Port-Orange.org

April 7, 2025

Engineering Firm: KIMLEY-HORN & ASSOCIATES, INC.

Type of Service: CEI
Contract/Task Amount: $411,925 (Not-To-Exceed)
Local Agency Contract Number:
Project Name: SJR2C LOOP TRAIL (Spruce Creek Rd) from S of Selin Circle to Herbert St
FPID: 439865-1-54-01

The Local Agency, the City of Port Orange, has established procedures for the selection of professional services to ensure compliance with Florida Statute 287.055, The Consultant's Competitive Negotiation Act (CCNA).

In accordance with Florida Statutes 287.055, the consultant for the above-named project was procured in compliance with the Consultant Competitive Negotiation Act (CCNA) and is qualified to provide consulting services to the City of Port Orange.

Additionally, the City of Port Orange certifies that the project falls within existing City of Port Orange right-of-way and that no additional right-of-way was acquired for the project.

Sincerely,

Shannon K. Balmer
Senior Assistant City Attorney
City of Port Orange – City Attorney's Office

CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 5/20/2025

SUBJECT: (C7e) Approval of Task Authorization No. 3 to the Continuing Services Contract with Zev Cohen & Associates (#CA8378) for design services of the Down Under Phase I infrastructure improvements

DEPARTMENT: Community Development

GOAL: 1 - Public Safety
2 - Infrastructure
3 - Quality of Life
4 - Economic Development

RECOMMENDED MOTION: Move to approve Task Authorization No. 3 to the Continuing Services Contract with Zev Cohen & Associates (#CA8378) for design services of the Down Under Phase I infrastructure improvements.

SUMMARY: In August 2023, the City approved the proposed Down Under Concept Plan as described in the study prepared by Zev Cohen & Associates. The requested Task Authorization is for Zev Cohen and Associates to prepare construction plans and obtain required permits from outside review agencies for Phase 1 of infrastructure improvements to the Down Under Special Character District identified in the 2023 Down Under Plan. The Down Under Special Character District is the commercial area located under the Dunlawton Avenue Bridge, west of South Peninsula Drive, in the Port Orange Town Center Community Redevelopment Area (CRA).

On September 18, 2024, as part of the FY 25-29 Capital Improvements Program (CIP), the City approved the budget to fund the design of the following improvements to the Down Under (Port Orange Project #CD206). The cost of these services will not exceed $362,500, and the design work and permitting are expected to take 6 months. The design plans will be for the following improvements to the Down Under area:

Drainage & Stormwater: Convert open ditches into a below-ground stormwater detention system to reduce debris, improve treatment, and increase usable space for parking.

Parking Optimization: Reconfiguration and repaving of the parking area to increase parking space capacity from +-/ 135 to +/- 200 spaces, including delineation of grass parking areas and improved mobility for delivery trucks.

Traffic Access Improvements: Relocation of the south access drive at Peninsula Drive further away from the intersection of Peninsula Drive and Dunlawton Avenue,

and constructing a dedicated right-turn lane.

Pedestrian & Multimodal Access: Pedestrian connectivity and safety improvements, including sidewalks, lighting, and facilities for alternative transportation (golf carts, bikes, rideshare).

Aesthetic Enhancements: Decorative street and parking lot lighting, uplighting of the bridge columns, lighting for murals, site furnishings, and native, drought and salt-tolerant, native plant landscape improvements.

Public Spaces: Pedestrian plaza for gatherings and events adjacent to the Halifax River

Wayfinding & Signage: Gateway signage and a coordinated signage program to identify tenants and guide visitors within the Down Under area.



MAP LEGEND

1. PARKING
2. CROSSWALK
3. THEME LIGHTING W/ BANNERS
4. MURAL LOCATION W/ UP LIGHTING
5. WATER TAXI *[PHASE II]*
6. STORMWATER
7. MULTI-TENANT GATEWAY SIGN
8. RIDESHARE/PASSENGER LOADING ZONE
9. PIER *[PHASE II]*
10. PEDESTRIAN PLAZA
11. STABILIZED GRASS PARKING
12. LOADING & FOOD DELIVERY ZONE
13. PARKING LOT SAFETY LIGHTING
14. WIDER DRIVEWAY ACCESS
15. GATEWAY FEATURE
16. DRAINAGE IMPROVEMENTS
17. TURN LANES/ENTRANCE IMPROVEMENT
18. LIVING SHORELINE STABILIZATION *[PHASE II]*

As part of preparing the construction plans, staff and Zev Cohen and Associates will meet with business owners in the Down Under area to discuss the infrastructure improvements further. Over the next year, staff will seek grant funding opportunities for the parking and drainage improvements and other identified improvements, along with preparing Capital Improvement Projects in future budgets to fund construction of the other elements in the plan.

Due to the extended permitting timelines for in-water structures/features and coordination with FDOT, a fishing pier, water taxi dock, and living shoreline stabilization

with educational signage will be designed and permitted in a future Phase 2.

PRESENTER: Tim Burman

ATTACHMENTS:

1.	Zev Cohen Associates Inc. - Task Authorization No. 3 Down Under Phase I Infrastructure Improvements	Zev Cohen Associates Inc. - Task Authorization No. 3 Down Under Phase I Infrastructure Improvements.pdf
2.	Down Under Master Plan - approved by CC_CRA 8-1-23 1	Down Under Master Plan - approved by CC_CRA 8-1-23 1.pdf
3.	Zev Cohen Contract - CA8378	Zev Cohen Contract - CA8378.pdf
4.	Scope Of Services - Down Under	Scope Of Services - Down Under.pdf

Lisa Epstein	Created/Initiated - 4/29/2025
Tim Burman	Approved - 5/1/2025
Mark Simpson	Approved - 5/1/2025
Shannon Balmer	Approved - 5/6/2025
Wayne Clark	Final Approval - 5/8/2025

TASK AUTHORIZATION NO. 3
Master Contract for Professional Engineering Services dated March 19, 2024
Between the City of Port Orange, Florida and Zev Cohen & Associates, Inc.

THIS Task Authorization is entered into by and between the **CITY OF PORT ORANGE, FLORIDA**, a chartered municipal corporation with its principal place of business at 1000 City Center Circle, Port Orange, Florida 32129 (the "City") and **Zev Cohen & Associates, Inc.** ("Engineer"), a Florida corporation, with its principal place of business at 300 Interchange Boulevard, Suite C, Ormond Beach, Florida 32174, and hereinafter collectively referred to as the "Parties," and is to that certain Master Contract relating to Professional Engineering 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 design services for Down Under Phase I Infrastructure Improvements**,** 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 **six (6) months** from 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 **$362,500.00**. All payments shall be governed by the Local Government Prompt Payment Act as Set forth in Sections 218.70 through 218.79, Florida Statutes, as amended.

5. *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:

ZEV COHEN & ASSOCIATES, INC.

_____

Printed Name: _____

By: _____

Robert J. Ball, 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.

_____

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:_____
Scott Stiltner, Mayor

Date:_____

ATTEST:

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

Date:_____

Exhibit “1”

Task Authorization No. 3

Down Under Phase I Infrastructure Improvements

Zev Cohen & Associates, Inc.

Consisting of 3 Page(s)

Scope of Work Based on discussions with Staff, the City desires to further improve the "Down Under" District of the Port Orange Town Center CRA. This area is generally described as the area under and along the sides of the east landing of the Dunlawton Bridge crossing the Halifax River. The City and the Transportation Planning Organization have already completed a feasibility study for Peninsula Drive sidewalk modifications and wayfinding signage for the District. The City has also completed an overall survey of the District and a comprehensive masterplan with public input, alternatives, and cost estimates. The scope of this phase includes a focus on the design and permitting of the infrastructure generally described by the following goals and objectives:

The project includes:

- Parking Lot reconfiguration and complete landscaping
- Revised access onto South Peninsula Drive (no changes proposed to Dunlawton Ave ROW).
- Conduit and lighting design of murals, theme lighting, gateway feature, etc.
- Stormwater design to install an underground system to replace the current dry retention system
- Gateway Sign outside the Dunlawton Ave ROW
- Gateway feature(s)
- Rideshare/Passenger/Load Zone areas
- Pedestrian Plaza with conduit and lighting
- Stabilized grass parking on the south side
- Parking lot lighting (FPL lights)
- South Peninsula Drive sidewalk extension to Demotte Avenue

    - Task 1 – Final Design
        - ZCA shall prepare 90% and 100% design plans and specifications of the civil, landscape, and environmental components based on the current masterplan.
        - A cost estimate will be prepared with both submittals.
        - ZCA shall modify the plans and address comments made by Staff.
        - ZCA shall review the Plans with the business leaders in the Down Under District as well as other stakeholders such as FDOT.
        - We do not anticipate any Public Hearings required for the design and approval.
        - We understand the watermain will be extended based on a previous design that we will incorporate.
        - We do not anticipate any sewer improvements.
        - ZCA biologists will conduct one (1) site visit to delineate the adjacent mangrove fringe. ZCA will produce a limited Environmental Assessment Report documenting the results of the site visits to assist in obtaining required permits.
        - We assume that no direct or secondary wetland impacts will occur and no mitigation coordination or design is included.

- We assume we will use existing stormwater outfalls such that no wetland/surface water impacts are required.

- Task 2 – Permitting and Approvals
  - ZCA shall submit to the City and process the Site Plan through SDRC.
  - ZCA shall pursue approval through FDOT for the Drainage and Utility components.
  - ZCA shall pursue FDEP water permitting as necessary for the watermain extension.
  - ZCA shall pursue FDEP permitting/SJRWMD for the stormwater and waterfront interface.
  - ZCA shall coordinate with the ACOE for a “no permit required” determination.
  - ZCA assumes that no over-water improvements will occur and no coordination with the Division of State Lands will occur.

- Task 3 – Grant Assistance
  - ZCA shall support the City with grant opportunities, including the potential IRL grant application late in 2025.

- Task 4 – Survey Services Allowance
  - ZCA shall include an allowance to cover any additional or miscellaneous survey needs that arise during the design and permitting process.

- Task 5 – Geotechnical Services
  - ZCA shall provide geotechnical services as defined in the attached for the design and permitting of the project which shall include pavement recommendations and stormwater/recovery analysis.

- Task 6 – Gateway Sign Design and Gateway Feature
  - ZCA shall provide design intent for the Gateway Sign and Gateway Feature to include structural and electrical components

- Task 7 – Electrical Design
  - Parking lot lighting (FPL standard lights)
  - Power design for Pedestrian Plaza
  - Conduit and lighting design for miscellaneous hardscape improvements

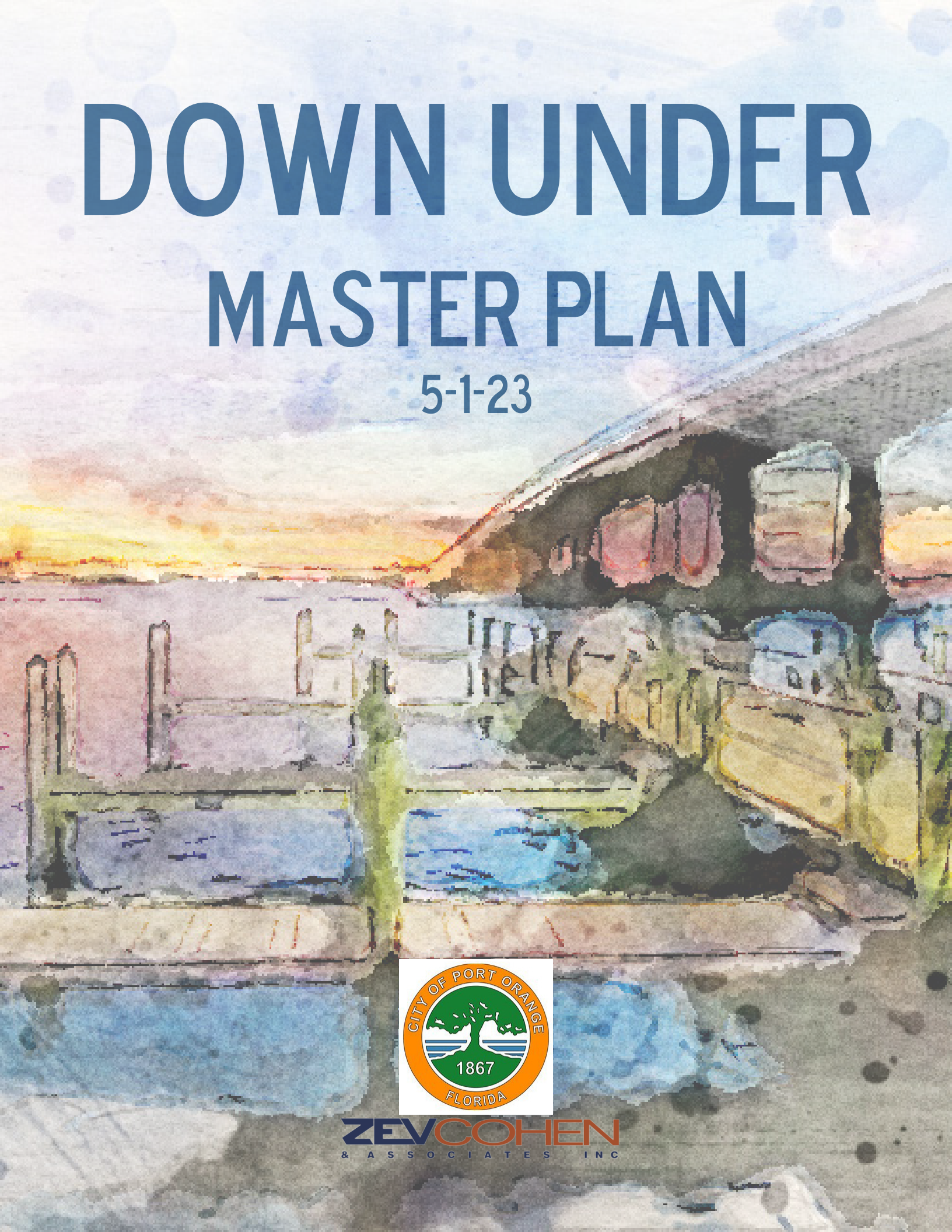
Fee Schedule	ZCA
Task 1 – Final Design	$240,000.00
Task 2 – Permitting and Approvals	$60,000.00
Task 3 – Grant Assistance	$ 7,500.00
Task 4 – Survey Services Allowance	$ 5,000.00
Task 5 – Geotechnical Services	$12,500.00
Task 6 – Gateway Sign and Gateway Feature Design	$17,500.00
Task 7 – Electrical Design	$20,000.00
Total:	**$362,500.00**

BB/ns
20025c03 F24 TA REV 4.29.25

DOWN UNDER

MASTER PLAN

5-1-23



CITY OF PORT ORANGE
1867
FLORIDA

ZEVCOHEN
& ASSOCIATES INC

INTRODUCTION

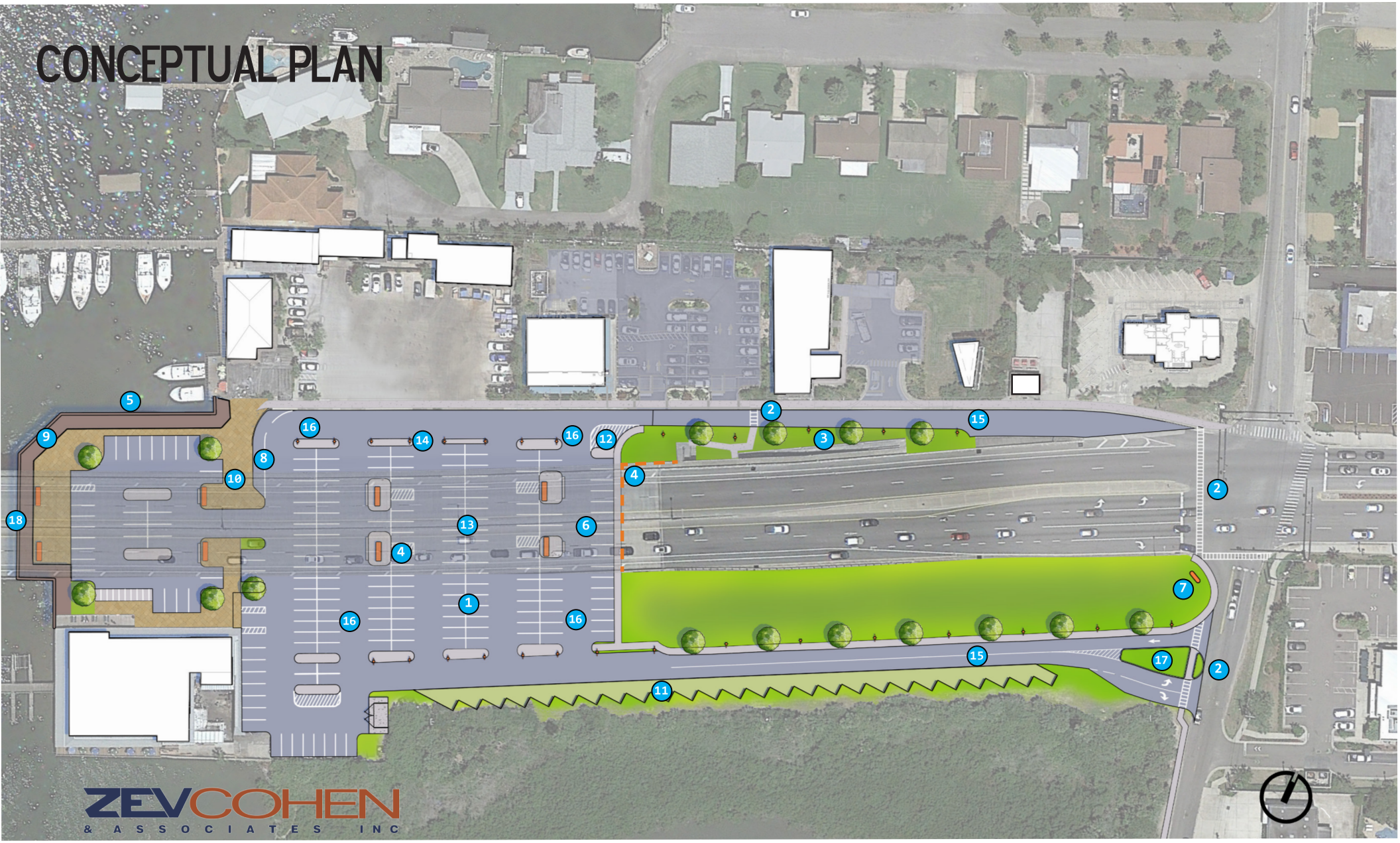
The Port Orange Town Center Community Redevelopment Plan prioritizes mixed-use development as a crucial component in creating a signature destination that showcases the city's status as a premier waterfront community. The project comprises five Special Character Districts, namely Riverwalk, Causeway, Down Under, Dunlawton Village, and Ridgewood Development, each with its own unique features and opportunities for development. These districts share a vision of revitalizing the core of Port Orange, imbuing it with historical significance, cultural richness, and public access to the waterfront. The redevelopment plan emphasizes the need to create a dynamic and lively environment that reflects the community's spirit while fostering sustainable growth. When completed, the Town Center will serve as a vibrant and active center that embodies the essence of Port Orange and its unique character.

The Down Under Revitalization project that is contemplated in the subsequent District Design guide looks to leverage the water front location and, in partnership with the businesses of the district; continue to develop a vibrant working waterfront. This unique location has developed into one of the premier entertainment destinations within the Town Center that provides residents with spectacular dining, social opportunities, and breathtaking waterfront views. The City of Port Orange, Zev Cohen & Associates, Inc., and stakeholders participated in a mini charrette in November, 2022. The ideas that were discussed during the meeting are included within the following concept plan and report.

The stakeholder meeting was preceded by the City and the Transportation Planning Organization completing a feasibility study for Peninsula Drive Sidewalk Modifications and way-finding signage for the District. The City has also completed an overall survey of the Down Under District.

We believe that this design celebrates the unique location and businesses that evolved over time to create a special destination within the city. The stakeholder input and involvement on a project of this nature creates a valuable opportunity for the City of Port Orange to participate along with the local business community in achieving the goal of revitalizing the Down Under District.

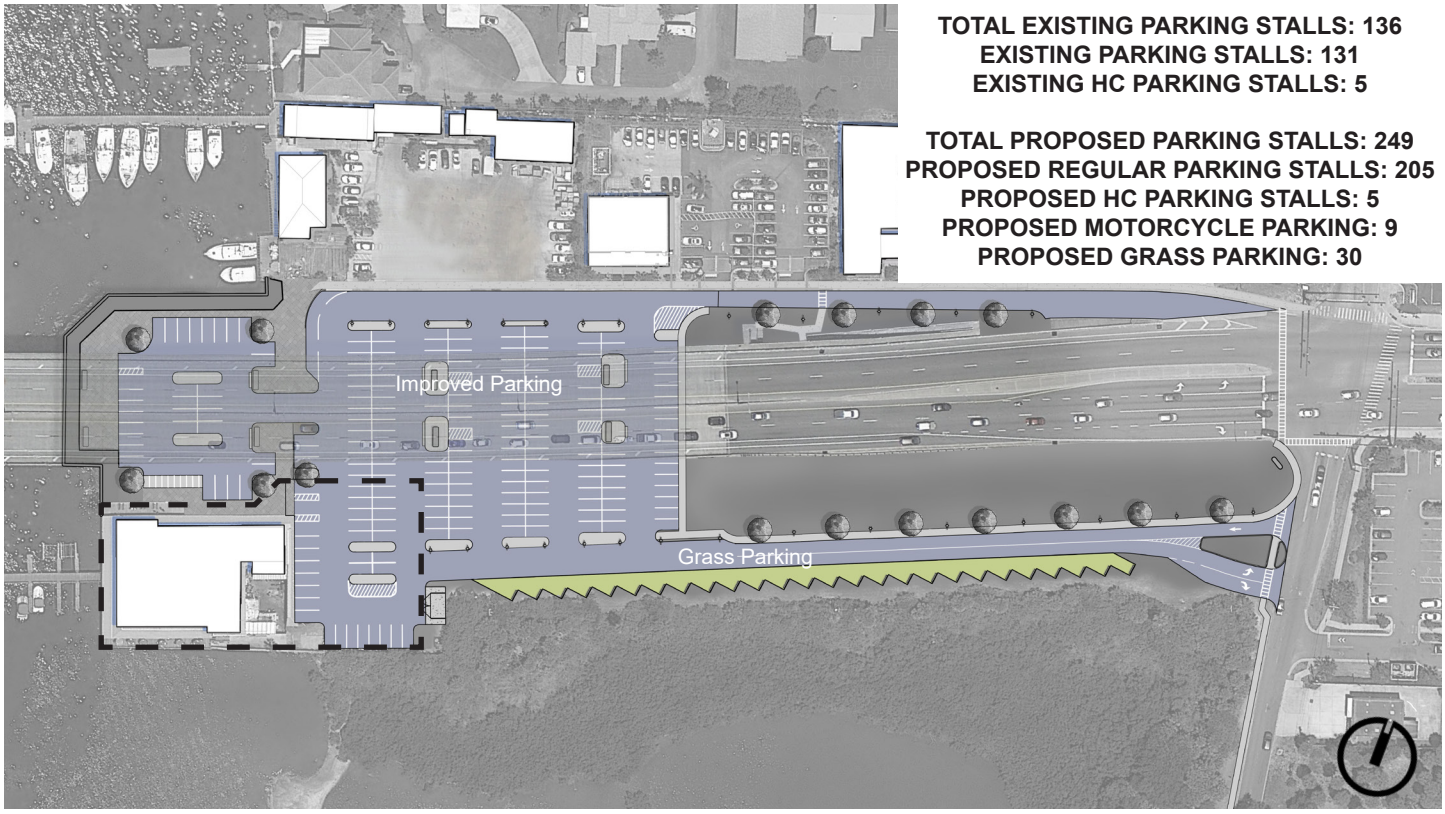
CONCEPTUAL PLAN



ZEVCOHEN & ASSOCIATES INC

MAP LEGEND

1. PARKING
2. CROSSWALK
3. THEME LIGHTING W/ BANNERS
4. MURAL LOCATION W/ UP LIGHTING
5. WATER TAXI STOP
6. STORMWATER
7. MULTI-TENANT GATEWAY SIGN
8. RIDESHARE/PASSENGER LOADING ZONE
9. PIER
10. PEDESTRIAN PLAZA
11. STABILIZED GRASS PARKING
12. LOADING & FOOD DELIVERY ZONE
13. PARKING LOT SAFETY LIGHTING
14. WIDER DRIVEWAY ACCESS
15. GATEWAY FEATURE
16. DRAINAGE IMPROVEMENTS
17. TURN LANES/ENTRANCE IMPROVEMENT
18. LIVING SHORELINE STABILIZATION



TOTAL EXISTING PARKING STALLS: 136
EXISTING PARKING STALLS: 131
EXISTING HC PARKING STALLS: 5

TOTAL PROPOSED PARKING STALLS: 249
PROPOSED REGULAR PARKING STALLS: 205
PROPOSED HC PARKING STALLS: 5
PROPOSED MOTORCYCLE PARKING: 9
PROPOSED GRASS PARKING: 30

PARKING (#1 AND #11)

The proposed redesign of public parking in the Down Under District, which currently exists through a shared parking agreement for all the businesses, aims to standardize parking spaces and drive aisles, thereby improving patron experience and creating a safer pedestrian environment. The design eliminates dead ends and provides a streamlined approach to businesses on the periphery of the lot. Additionally, the proposal seeks to create a unified design language for the grass parking spaces through the application of curb stops and the potential addition of a nautical rope barricade.

Demarcating parking spaces with curb stops creates a visual representation of the standard space, improving the overall aesthetic and organization of the lot. The nautical rope fence option further delineates parking spaces while providing protection for the nearby mangrove habitat. This habitat plays a critical role in mitigating storm impacts on the Down Under District and neighboring communities.

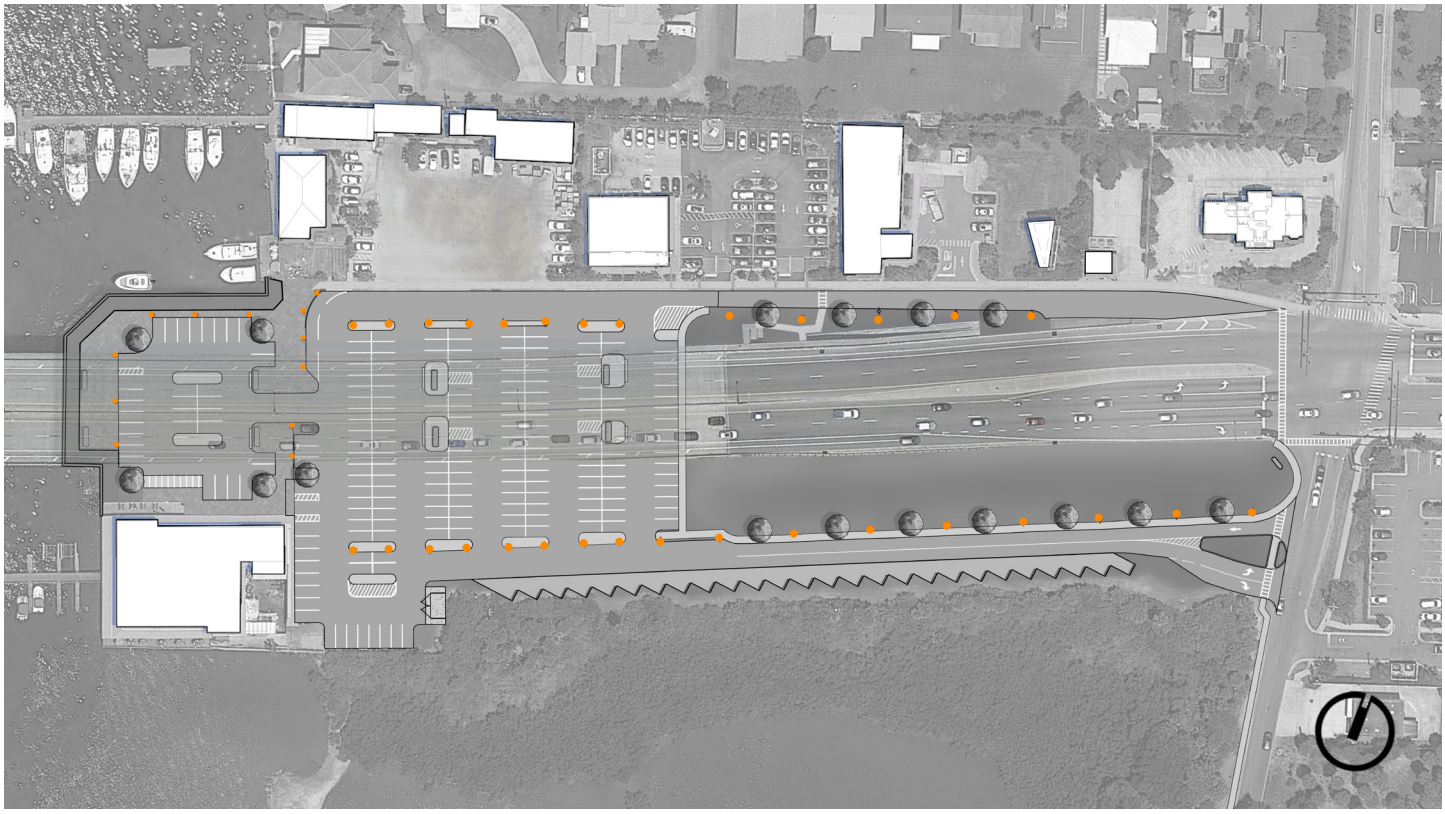
The proposed design addresses key concerns related to the parking lot's functionality, safety, and environmental impact. By standardizing parking spaces and drive aisles, patrons will be able to navigate the lot more easily and with less confusion. The elimination of dead ends will create a more efficient traffic flow and the uniform surface will add flexibility to accommodate special events. The new parking lot will need to be incorporated into the City's maintenance and repaving schedule.



THEMED PARKING BARRIER



EXISTING PARKING



PARKING LOT SAFETY LIGHTING (#3 AND #13)

It is recommended to implement a multilayer lighting approach to enhance pedestrian safety and security in the Down Under District. The approach should include traditional pole lights and pedestrian level lighting, serving as environmental cues to direct pedestrians and designate public spaces.

A banner system can further delineate the boundaries of the district and enhance its identity, with the ability to rotate seasonally to celebrate special events and holidays. Coordinating the lighting and banner program can expand the design language of the district and create a unified approach throughout the area.

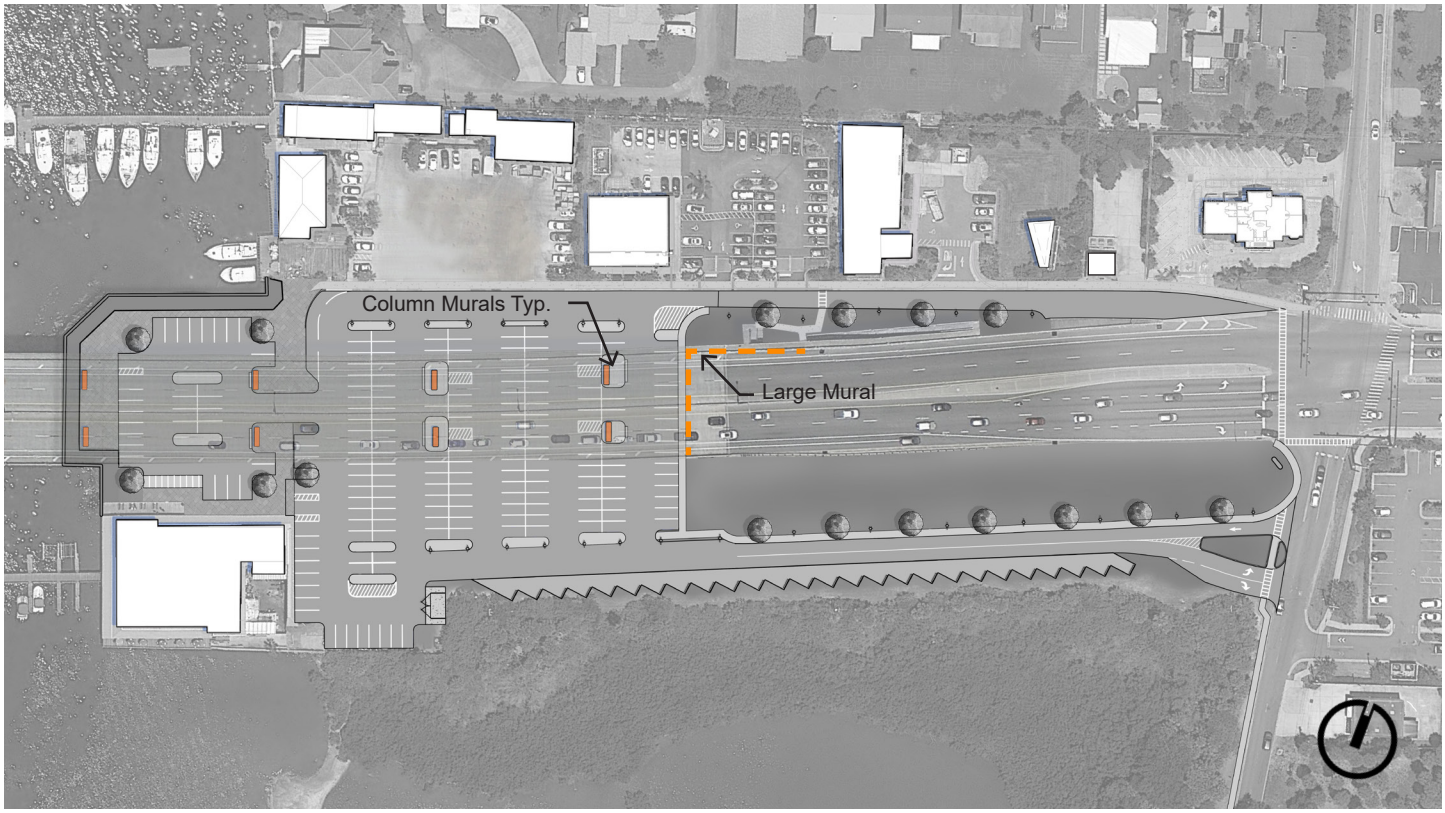
It is important to note that the proposed lighting and banner system should comply with all relevant regulations, including any Volusia County Sea Turtle Lighting regulations. Therefore, further investigation and design modifications may be necessary to ensure compliance.

Overall, a comprehensive approach combining innovative lighting design with a seasonal banner system can improve pedestrian safety, enhance the district's identity, and create a cohesive and welcoming atmosphere for all visitors.











FDOT COMPLIANT MURAL DESIGN



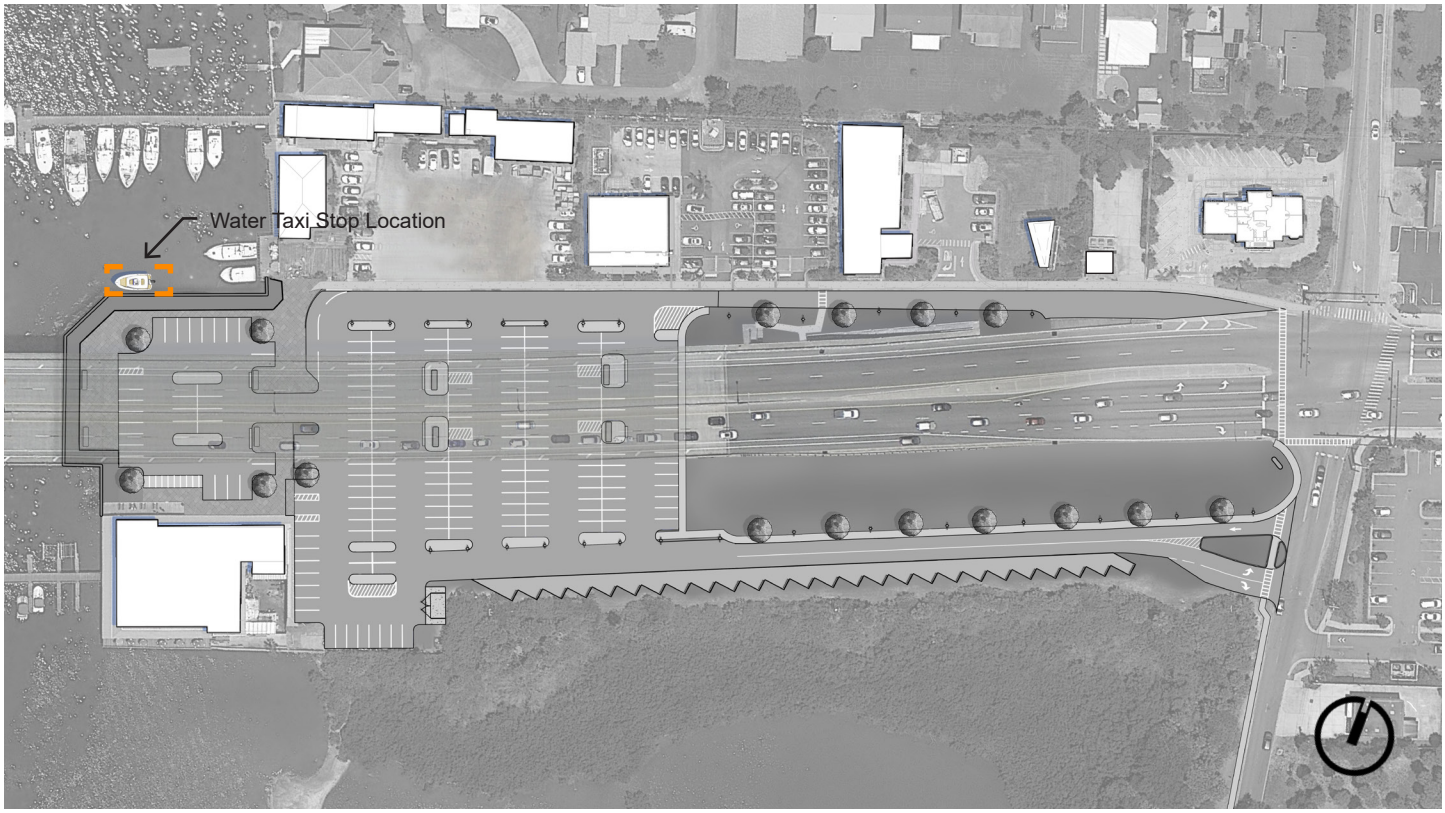
FDOT COMPLIANT MURAL DESIGN

MURAL WITH UP LIGHTING (#4)

In recent years, there has been a growing emphasis on the development of vibrant outdoor spaces. One effective design solution to enhance utilitarian infrastructure and increase foot traffic to previously neglected areas is the use of murals. This approach can significantly improve the pedestrian experience and elevate the user experience.

The proposed murals are required to comply with the 2019 FDOT agreement. FDOT permits murals that feature a historic, coastal, and/or seafood theme, and prohibits the inclusion of lettering. The final design must be reviewed and approved by FDOT prior to installation. The proposed mural designs are conceptual and meet all FDOT design standards.

During the review process, it is recommended that up lighting be considered simultaneously. This will enable designers or artists to develop a cohesive and complementary design that minimizes the cost of creating multiple visuals for both up lighting and murals, as required by FDOT. The unified approach facilitates a singular vision, presentation, and execution.



WATER TAXI STOP (#5)

As urban development continues to attract a growing number of patrons and an increase in density on both sides of the Halifax River, it is worthwhile to consider and incorporate a water taxi stop option in future design plans. The implementation of a water taxi service for the area presents a unique opportunity for numerous residents to experience the City of Port Orange from a new perspective.

To inform this decision, the prior use of a water taxi in New Smyrna Beach was studied. The service previously operated hourly and made three stops, with a pricing scheme of twelve dollars for adults, seven dollars for minors, and thirty dollars for a family. Although the service was well received, it was reliant on external funding.

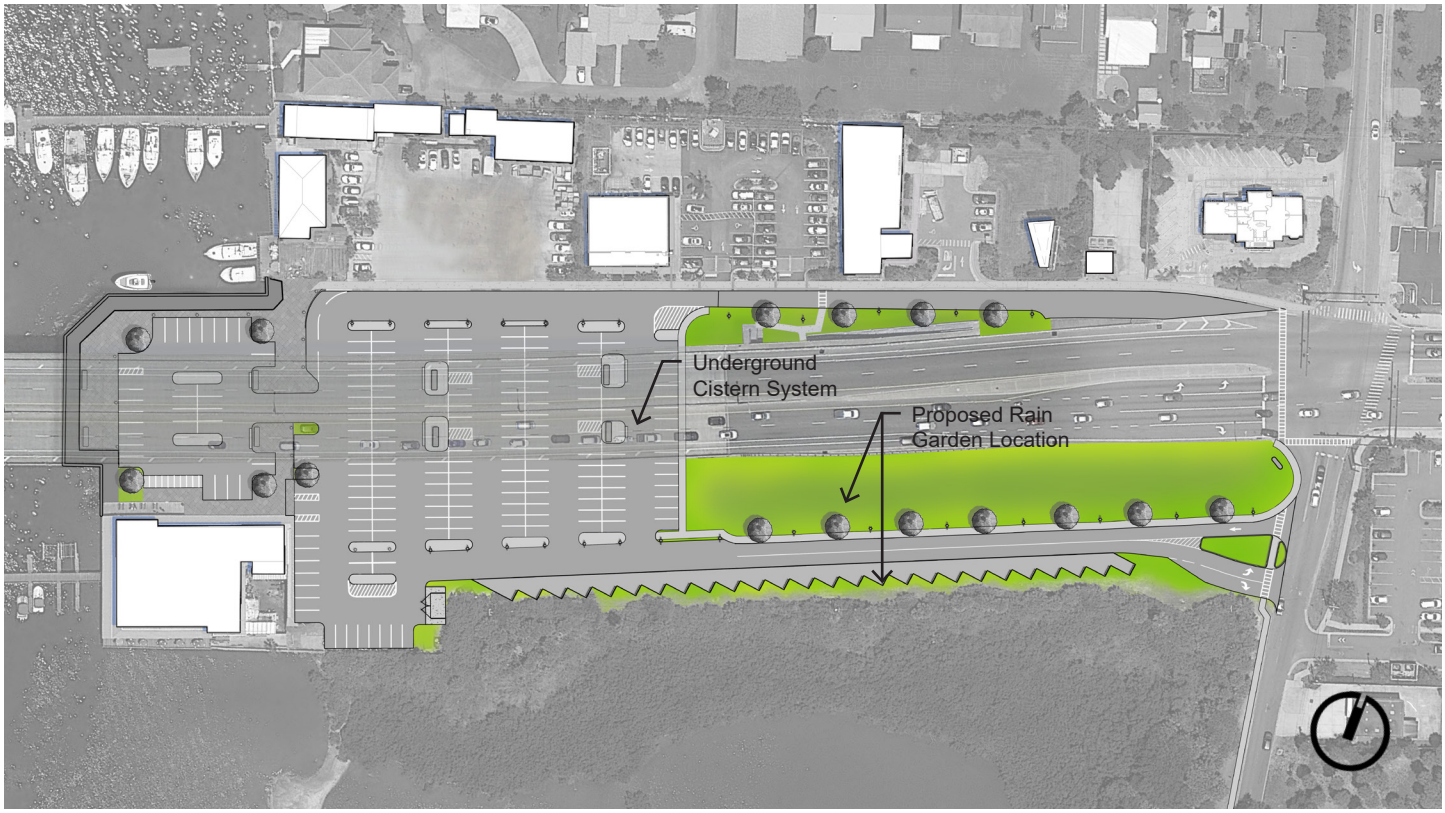
To gain a better understanding of the operational costs associated with running a water taxi service, additional feasibility studies were reviewed. Additional consideration needs to be given to various operational items, such as: hours of operation, third party operational vendor, destinations, and public-private partnership.



WATER TAXI



POTENTIAL WATER TAXI STOPS



STORMWATER (#6 AND #16)

The stormwater design proposed here aims to maximize the paved parking spaces by converting the existing above-ground stormwater detention to a chamber system. To achieve this, the eastern side of the proposed parking will be elevated to accommodate the underground stormwater detention and treatment. This elevation will also improve drainage and stormwater treatment before it flows into the Halifax River.

Moreover, the depressional areas situated south of the bridge embankment can be converted into a natively vegetated rain garden. This move will showcase the expansion of green infrastructure within the City of Port Orange and highlight its significance in preserving the valuable aquatic ecosystem that has supported the Down Under District.

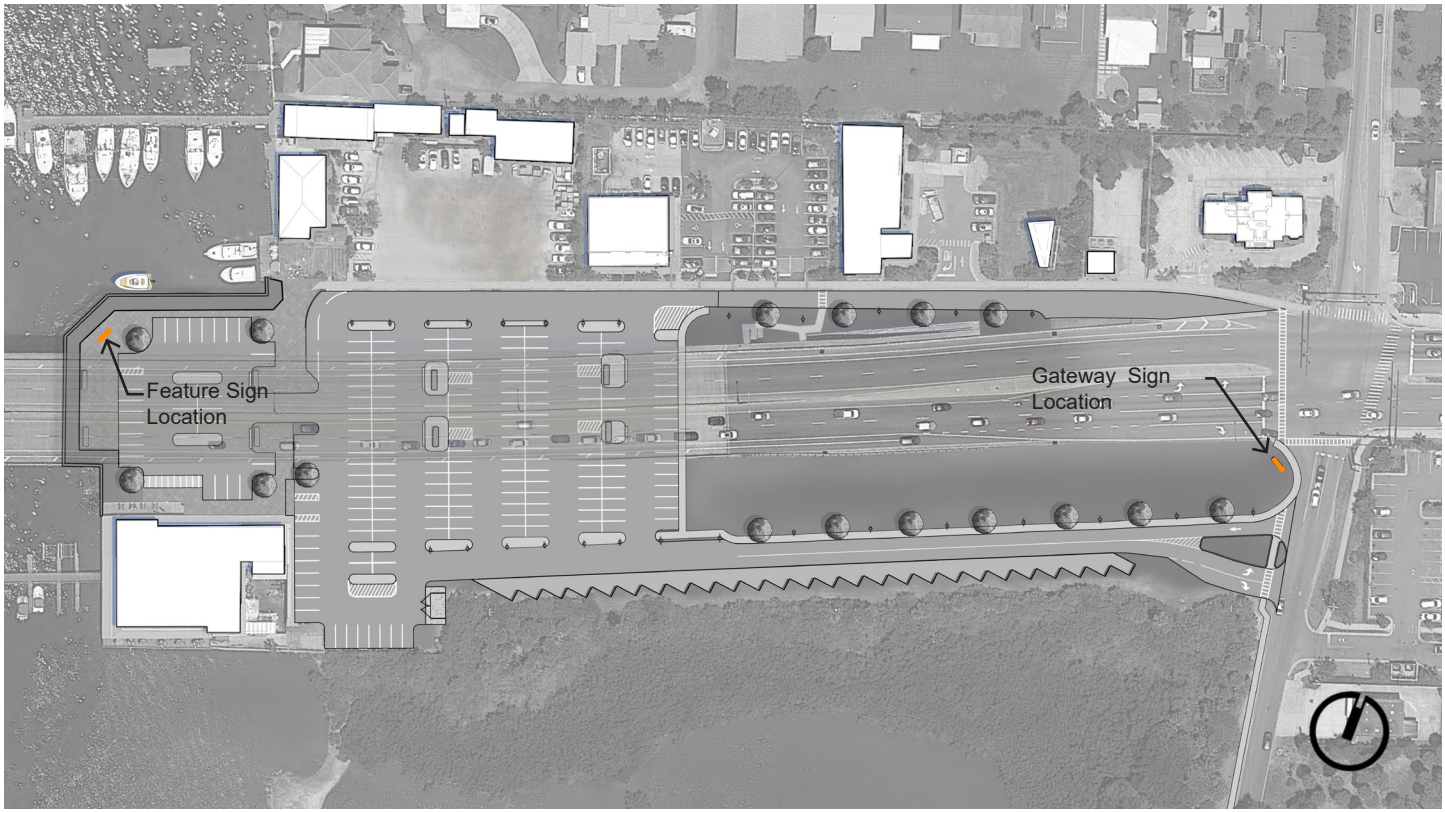
To ensure the effectiveness of the underground stormwater systems, quarterly inspections are required. If the systems fail inspection, a vacuum truck will be needed to remove sediment. As for the rain garden, it will reduce mowing requirements within the depression, but seasonal weed removal and trimming will be necessary.



RAIN GARDEN EXAMPLE



UNDERGROUND STORMWATER CHAMBERS



SIGNAGE (#7 AND #15)

The Down Under Stakeholders have developed a gateway sign that highlights the historic context of the area. The location of the Gateway Sign clearly delineates the boundaries of the district and announces arrival.

The Gateway Sign design was developed during an earlier design discussion with district stakeholders. The design and branding reflects the history and natural relationships of the district. It will be critical to building upon these ties as additional branding is formulated.

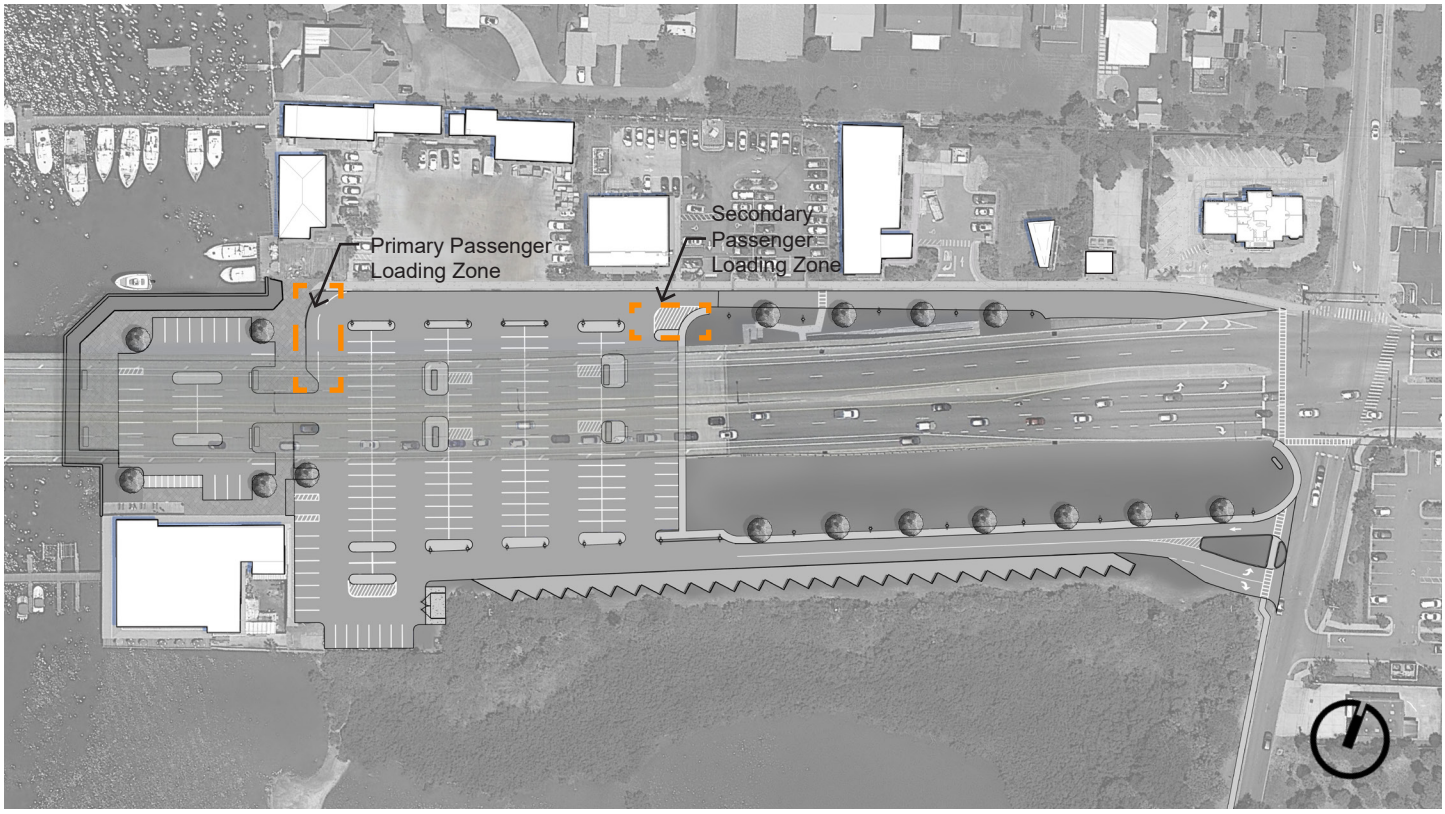
An additional sign can be developed to exist within the future pedestrian plaza that provides patrons a unique location to take a photo memorializing their experience within the district. It should be oriented in a manner that provides optimal opportunities to celebrate the working waterfront during peak evening hours.



BRANDED SIGN AND ART CONCEPT



STAKEHOLDERS PROVIDED GATEWAY SIGN DESIGN





TRADITIONAL GOLF CART TAXI



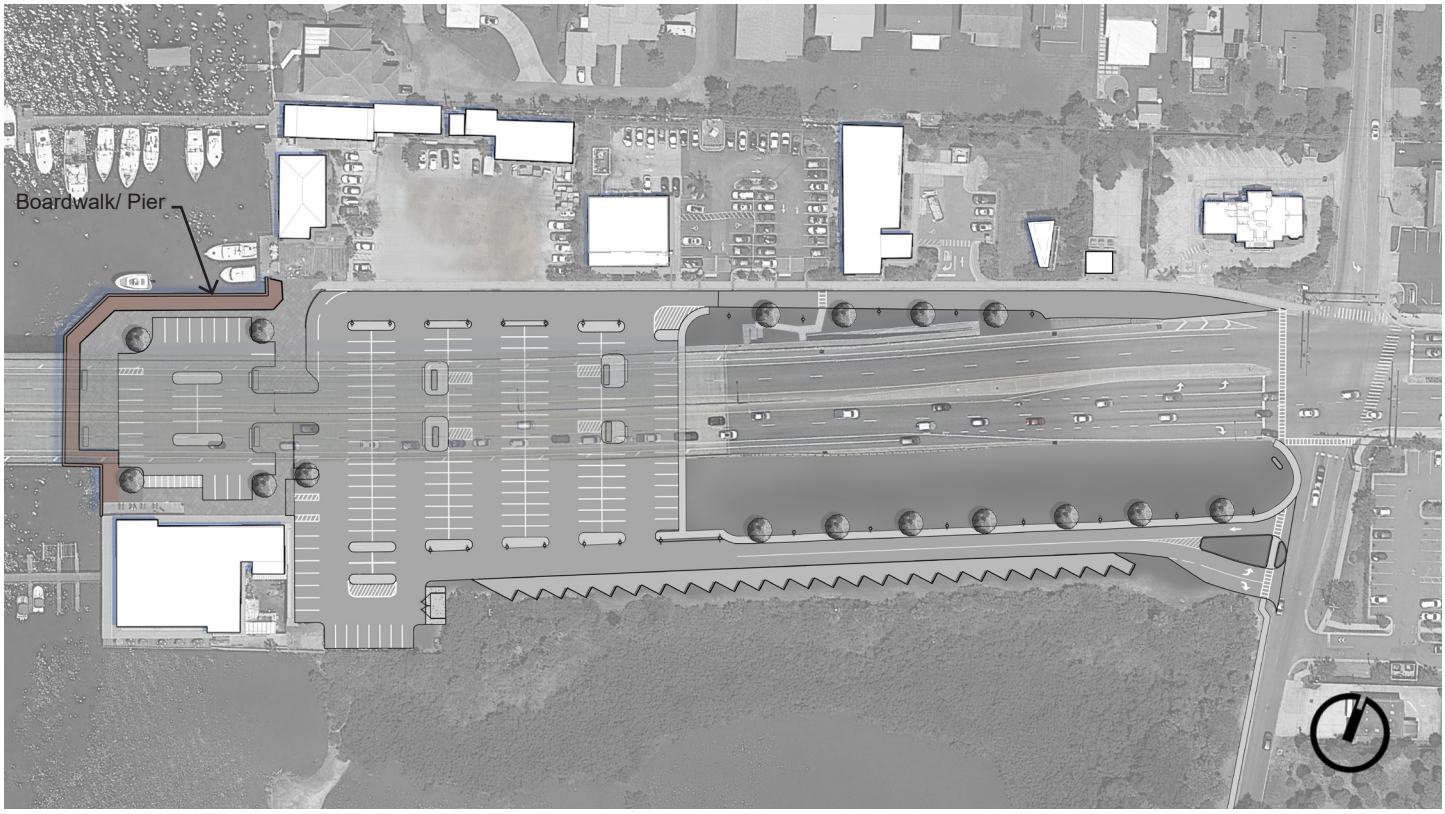
FORT LAUDERDALE MICRO MOVER

PASSENGER LOADING/GOLF CART (#8)

A recommendation by local business owners within the Down Under District was to explore the concept of a district Golf Cart taxi. This alternate mode of transportation would be utilized to gather patrons from local neighborhoods, hotels, condominiums, and public parking. If well utilized this will free additional parking spaces currently used by neighboring residents.

The Fort Lauderdale Micro Mover is currently working through a six-month trial period to gauge its viability and overall mobility impacts within the Downtown area. The Micro Mover utilizes a phone based application that allows users to alert a fleet driver who will then come and pick them up. The Micro Movers are stated by the City of Fort Lauderdale to be " a free, convenient, and sustainable mobility option to help residents and visitors get around downtown..."

If a neighborhood Golf Cart taxi is pursued, it is advised that it be coordinated with Daytona Beach Shores, and utilize the Primary Loading Zone designated above. If the Golf Cart taxi utilizes area within the FDOT lease it will need to be run as a free service for local residents and guest.



PIER (#9 AND #18)

Prior to Hurricane Matthew, the Down Under District had a fishing pier that was utilized by many local residents and guests. The pier was damaged during the hurricane and then removed due to safety concerns.

Currently the existing shore is being utilized for fishing and limits the number of residents who can utilize this location and also increases the difficulty of reaching further into the river.

The scope of the project proposes the construction of a twelve foot pier that extends into the channel and wraps around the existing vegetation that has developed along the district's edge. This protects a valuable ecological system that protects the shore as well as important habitat. Living shoreline stabilization and educational opportunities are also available. Boardwalk and new vegetation to be monitored and maintained by City of Port Orange.

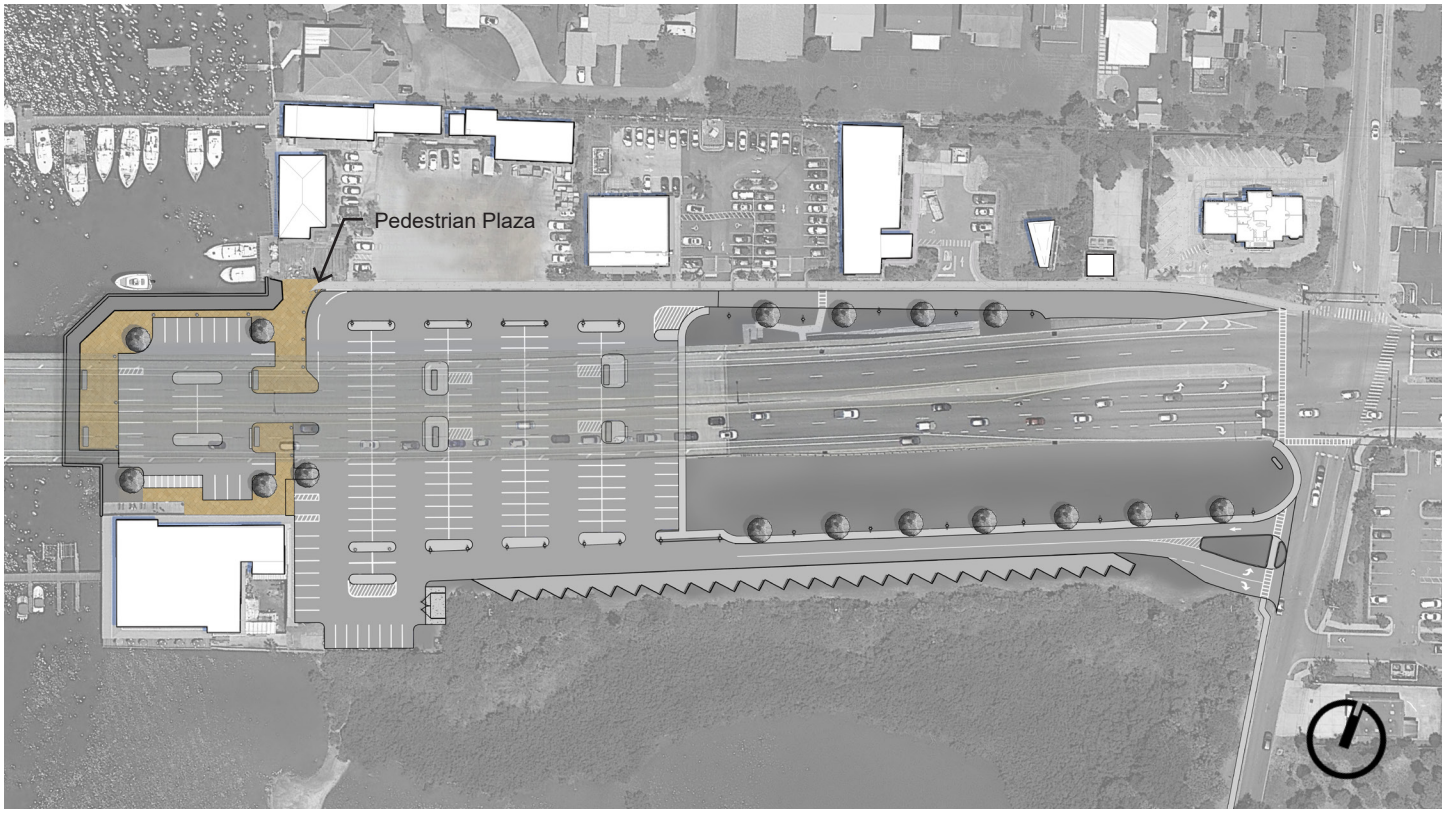
To prevent damage to City property, flow-through decking should be considered as an alternative option. This specialized decking is designed to allow storm surge and flowing water to move through the boardwalk.



12' WIDE FISHING PIER



FLOW THROUGH DECKING





CASE STUDY

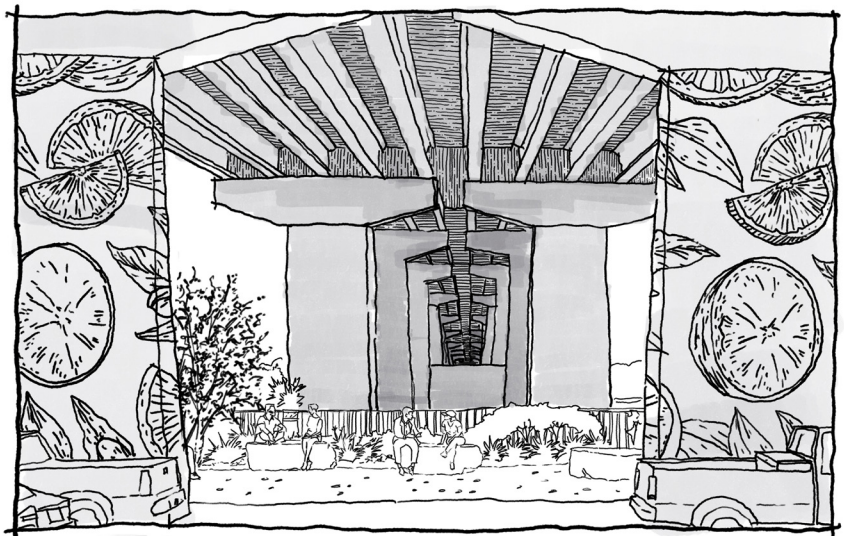


CASE STUDY

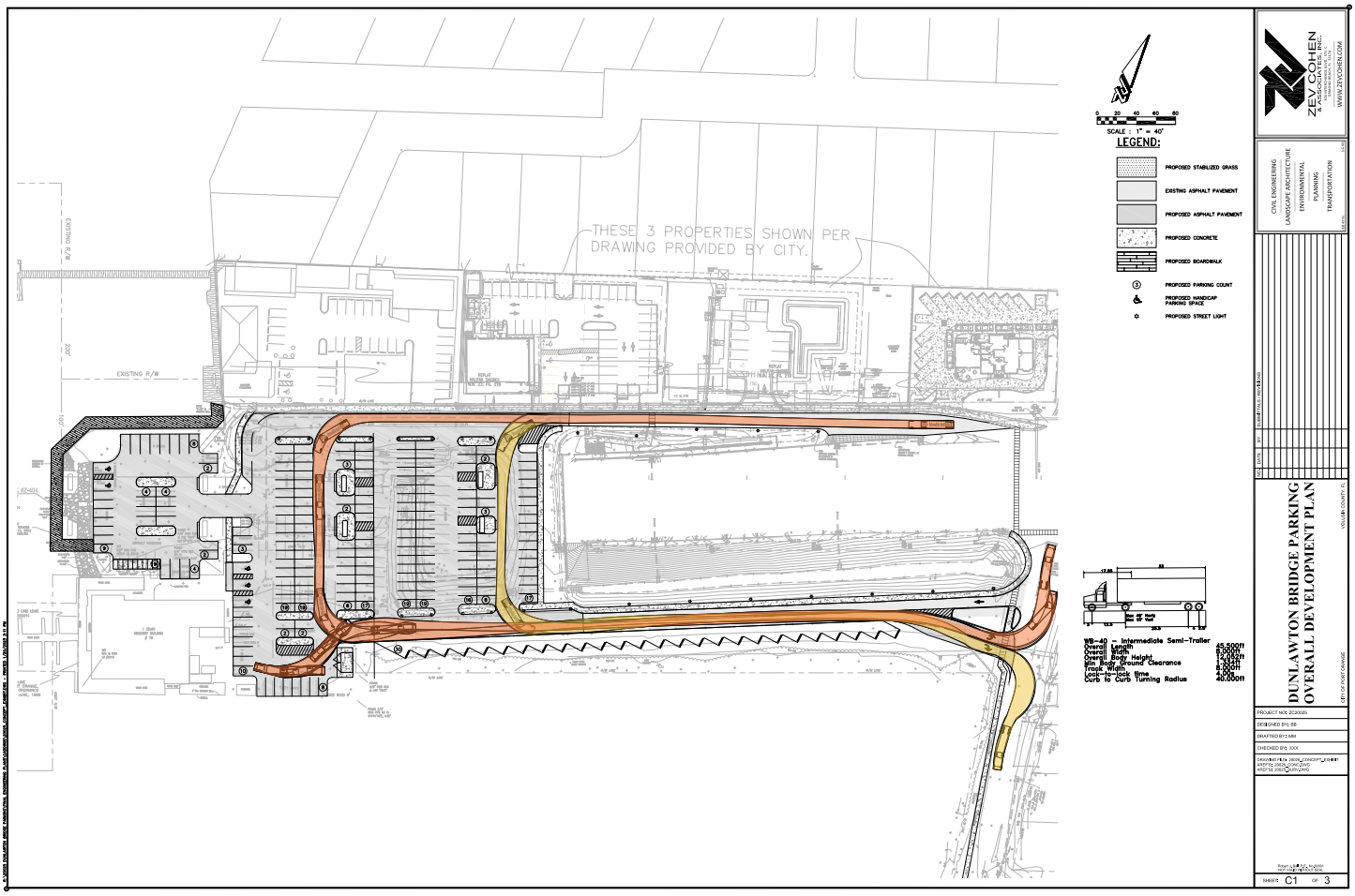
PEDESTRIAN PLAZA (#10)

The Pedestrian Plaza plays the critical role of bringing the public into contact with the historic working waterfront. The pedestrian plaza should be designed around materials that celebrate the local history and work to preserve and educate visitors about the working water front and how it is intertwined and dependent upon the delicate ecological systems of the Halifax River. The balance between natural materials and durable finishes should be utilized to highlight what makes this region unique. These materials could include pavers, coquina, metal benches, concrete, and crushed shell.

The development of this plaza provides an important social space that acts outside of the adjacent commercial spaces and allows for individuals to gather before or after meals, fish, or enjoy the waterfront. The plaza become one of the first places that guests will arrive at the waterfront and provide a flexible space for small events.

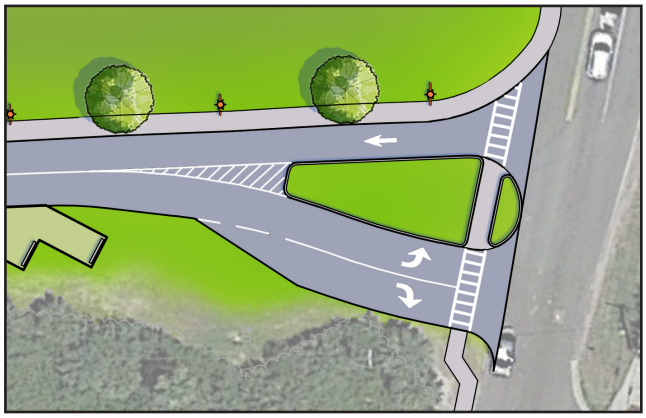


CONCEPTUAL SKETCH



TRUCK ACCESS (#12, #14, AND #17)

While meeting with district business owners, it was clear that improvements needed to be made to allow deliveries to happen without impacting large sections of parking and to improve access for delivery trucks. The streamlining of the design allows for deliveries to occur while minimizing the parking impact as well as the flow of traffic through the site. In addition, modifications are proposed to the existing site to alleviate some of the difficulties that occur when making a left turn out of the site.



ENTRANCE ENLARGEMENT

OPINION OF COST

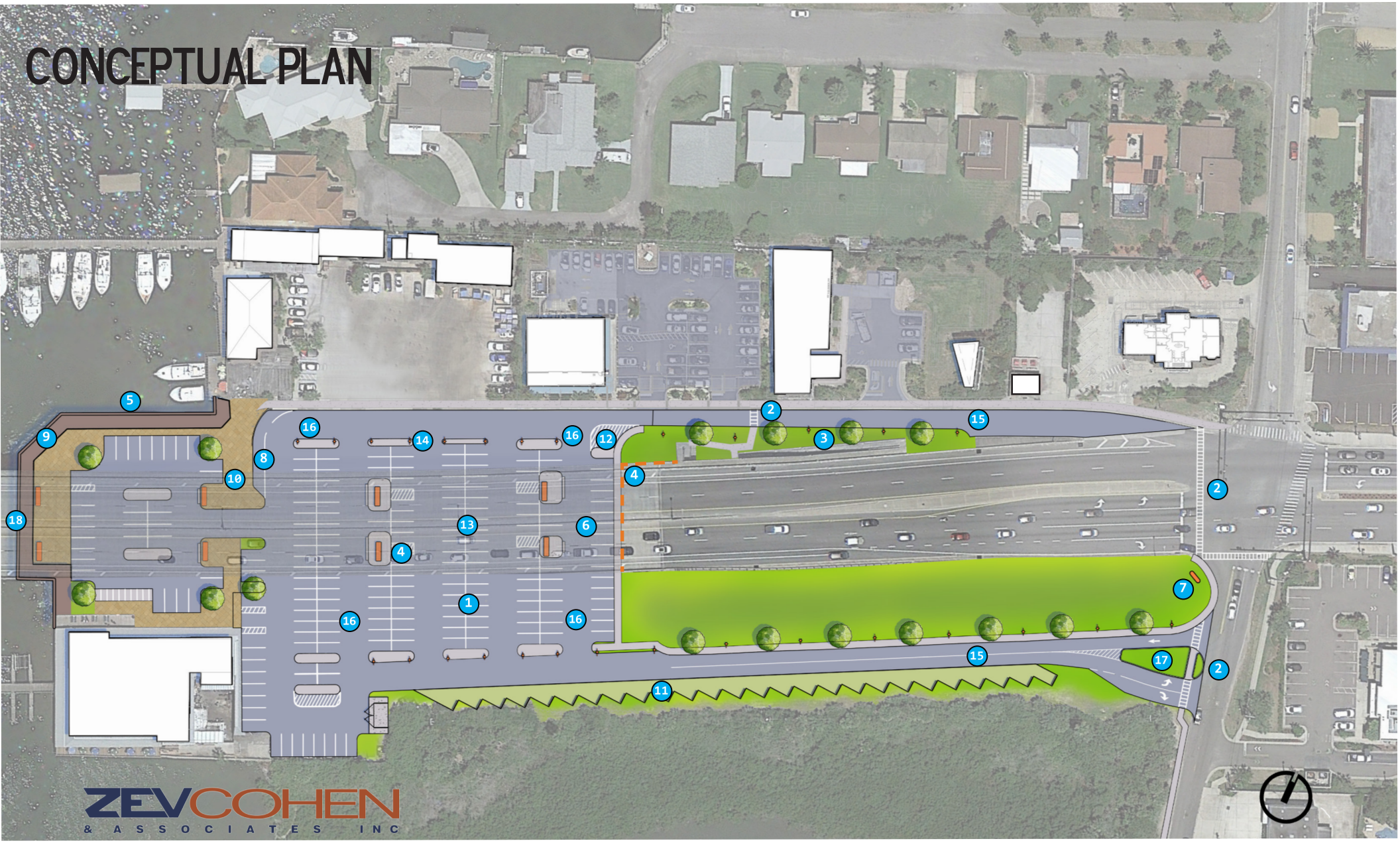
MP Legend	Item	Quantity	Unit	Unit Price	Construction Costs	Soft Costs (Design, Permitting, Survey, Geotechnical, Etc.)
1, 8, 12 13, 14, 16	**Parking Lot / Roadway**				**$ 1,469,725.00**	**$ 150,000.00**
	Fill	2000	CY	$ 25.00	$ 50,000.00	
	12" Stabilized Subgrade	7825	SY	$ 8.00	$ 62,600.00	
	8" Limerock	7825	SY	$ 25.00	$ 195,625.00	
	RCP	900	LF	$ 200.00	$ 180,000.00	
	Inlets	20	EA	$ 6,500.00	$ 130,000.00	
	Milling	1825	SY	$ 8.00	$ 14,600.00	
	1" Asphalt SP-12.5	1825	SY	$ 13.00	$ 23,725.00	
	1.5" Asphalt SP-12.5	7825	SY	$ 19.00	$ 148,675.00	
	Curb	2500	LF	$ 45.00	$ 112,500.00	
	Concrete Islands	650	SY	$ 80.00	$ 52,000.00	
	Sidewalk	2500	SY	$ 60.00	$ 150,000.00	
	Striping/Signage	1	LS	$ 50,000.00	$ 50,000.00	
	General Lighting	1	LS	$ 50,000.00	$ 50,000.00	
	Misc. Cost	1	LS	$ 250,000.00	$ 250,000.00	
2, 17	**Access Modifications/Peninsula Dr.**				**$ 1,004,375.00**	**$ 100,000.00**
	12" Stabilized Subgrade	250	SY	$ 8.00	$ 2,000.00	
	8" Limerock	250	SY	$ 55.00	$ 13,750.00	
	1.5" Asphalt SP-12.5	250	SY	$ 13.50	$ 3,375.00	
	Curb	350	LF	$ 45.00	$ 15,750.00	
	Slope Paving	1200	SY	$ 80.00	$ 96,000.00	
	Stiping / Signage	1	LS	$ 2,500.00	$ 2,500.00	
	Peninsula Drive Sidewalk Project	1	LS	$ 821,000.00	$ 821,000.00	
	Misc. Cost	1	LS	$ 50,000.00	$ 50,000.00	
3	**Theme Lighting with Banners**				**$ 90,000.00**	**$ 20,000.00**
	Flood Type Up-Lighting for Bridge Piling Murals	16	EA	$ 4,000.00	$ 64,000.00	
	Connections/Source/Misc. Cost	1	LS	$ 26,000.00	$ 26,000.00	
4	**Murals with Uplighting**				**$ 205,420.00**	**$ 25,000.00**
	FDOT Approved Mural Design on Bridge Pilings	7771	SF	$ 20.00	$ 155,420.00	
	Uplighting			$ 30,000.00	$ 30,000.00	
	Misc. Cost	1	LS	$ 20,000.00	$ 20,000.00	
5	**Water Taxi**				**$ 825,000.00**	**$ 100,000.00**
	Water Taxi Capital Costs	1	LS	$ 750,000.00	$ 750,000.00	
	Misc. Cost	1	LS	$ 75,000.00	$ 75,000.00	
6	**Stormwater**				**$ 611,000.00**	**$ 125,000.00**
	Exfiltration System	37400	CF	$ 15.00	$ 561,000.00	
	Misc. Cost	1	LS	$ 50,000.00	$ 50,000.00	
7	**Multi-Tenant Gateway Sign**				**$ 50,000.00**	**$ 10,000.00**
	Average sign cost (Height, Multi View Points)	1	EA	$ 35,000.00	$ 35,000.00	
	Misc. Demo, Power, etc.	1	EA	$ 15,000.00	$ 15,000.00	
9, 18	**Pier**				**$ 535,000.00**	**$ 100,000.00**
	400'x12' (Add $300K for Flow-Thru Decking)	4800	SF	$ 75.00	$ 360,000.00	
	Living Shoreline			$ 75,000.00	$ 75,000.00	
	Misc. Cost	1	LS	$ 100,000.00	$ 100,000.00	
10	**Pedestrian Plaza**				**$ 85,000.00**	**$ 25,000.00**
	Hardscapes, Benches, etc.					
11	**Stabilized Grass Parking**				**$ 22,500.00**	**$ 5,000.00**
	Leveling, Fill and Finish Grade, IF NECESSARY	1	LS	$ 7,500.00	$ 7,500.00	
	Rope Fencing with Posts	1000	LF	$ 10.00	$ 10,000.00	
	Railroad timber	1000	LF	$ 5.00	$ 5,000.00	
15	**Gateway Feature**				**$ 50,000.00**	**$ 15,000.00**
	Banner Pylons with Lighting	8	EA	$ 5,000.00	$ 40,000.00	
	Misc. Cost	*1*	*LS*	*$ 10,000.00*	$ 10,000.00	
	Total Construction/Soft Costs				**$ 4,948,020.00**	**$ 675,000.00**
	PROJECT GRAND TOTAL					**$ 5,623,020.00**

*Notes:

There are "Misc. Cost" additions added to a few of Items, but this estimate does not include a total project contigency for escalated cost at Time of Bid. Costs are current year dollars. Recommend 5% per year escalation costs.

ZEVCOHEN & ASSOCIATES INC

CONCEPTUAL PLAN



ZEVCOHEN & ASSOCIATES INC

MAP LEGEND

1. PARKING
2. CROSSWALK
3. THEME LIGHTING W/ BANNERS
4. MURAL LOCATION W/ UP LIGHTING
5. WATER TAXI STOP
6. STORMWATER
7. MULTI-TENANT GATEWAY SIGN
8. RIDESHARE/PASSENGER LOADING ZONE
9. PIER
10. PEDESTRIAN PLAZA
11. STABILIZED GRASS PARKING
12. LOADING & FOOD DELIVERY ZONE
13. PARKING LOT SAFETY LIGHTING
14. WIDER DRIVEWAY ACCESS
15. GATEWAY FEATURE
16. DRAINAGE IMPROVEMENTS
17. TURN LANES/ENTRANCE IMPROVEMENT
18. LIVING SHORELINE STABILIZATION

CITY OF PORT ORANGE MASTER CONTRACT FOR PROFESSIONAL ENGINEERING SERVICES

This Master Contract for Professional Engineering Services ("Contract") is entered into this 19 day of March, 2024, by and between the **CITY OF PORT ORANGE**, a Florida municipal corporation, whose principal address is 1000 City Center Circle, Port Orange, Florida 32129 (the "City"), and **ZEV COHEN & ASSOCIATES, INC.** ("Engineer"), a Florida corporation, with its principal place of business at 300 Interchange Boulevard, Suite C, Ormond Beach, Florida 32174. 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) Engineer hereby agrees to provide continuous professional engineering services, pursuant to and in compliance with the Competitive Consultants Negotiation Act, Florida Statutes 287, Section 287.055. Services may include but not necessarily be limited to: Planning and Feasibility studies; Surveying, Environmental, Geotechnical, and related support services; Design, Permitting, Construction Engineering and Inspection, and/or Plan Review; Permitting Services; Grant Support Services; Coordination Services; Additional services as needed for Capital Projects, Infrastructure Management, and Property Transactions; and as more specifically described in Request for Statement of Qualifications No. 23-18 ("RFSQ 23-18"), and Engineer's Proposal dated December 6, 2023, Addendum No. 1, and RFSQ 23-18 Section 3 – Scope of Services and Requirements, attached hereto as Exhibit "1." In the event of any inconsistencies or conflicts between this Contract, RFSQ 23-18, Engineer's Proposal, and Addendum No. 1, precedence shall be given to the documents in the following order: 1) the terms and conditions of this Contract; 2) Addendum No. 1; 3) RFSQ 23-18, and 4) Engineer's Proposal. Complete copies of RFSQ No. 23-18 and Engineer's Submittal is available in the Office of the City Clerk, City Hall, 1000 City Center Circle, Port Orange, Florida 32129.

(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: This Contract may be renewed for up to two (2), two-year periods, upon mutual written agreement of the Parties, City Manager approval, and budget appropriation.

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.

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 said Task Authorization have been approved and accepted by the City's Contract Administrator. The obligations entered herein by both Parties under this Contract and said Task Authorization 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 in to 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 compensation at the hourly rates and related allowable costs, as set forth in Exhibit "1." 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 markups for Outside Reimbursables and Subcontractors, if any, as provided in Exhibit "1." This Contract does not include retainer fees, nor is there a minimum fee guaranteed during the Contract period. 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.

4. *Contract Administration* The Community Development Director, Tim Burman ("Contract Administrator"), shall perform contract administration of this Contract. Department Heads requesting services under this Contract shall be responsible for their respective Purchase Orders in accordance with their appropriated budgets. For notice provisions, see the paragraph 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;

(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 hereof;

(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 of governments 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 developments 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 specification 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 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 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 the 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-builts 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 the City or others for any other project. Reuse for another project without written verification or adaptation by Engineer for the specific purpose intended will be at City's risk. Any such verification or adaptation will entitle Engineer to further compensation at rates to be agreed upon by the 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 proceeding regarding a 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 or 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 charged. Except as provided in this Contract, the Engineer shall not be entitled to payment for any extra work or materials.

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 or anyone for whom Consultant is legally responsible 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; and

(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*. 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, as provided in the records management section at: 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. 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, or the requisite time set forth in Section 14 above, whichever is longer, 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 and Professional Liability and Errors and Omissions coverage, the Engineer's insurance certificate shall include the insurer's waiver of subrogation in lieu of endorsing the City as an additional insured. 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 subcontractor 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 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 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 & Errors and Omissions	Limits: Coverage - $1,000,000	
☐	Installation Floater (IT)	Limits: Coverage - $ To be determined.	
☐	Engineer Pollution Liability	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 $200,000.00.**		
☐	**Unless otherwise required by law, City Manager waives Insurance for FOB goods.**		

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. *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 Engineer's cost of, or time required for the performance of the work hereunder, Engineer shall receive an equitable adjustment in accordance with subparagraph (d), which shall include all compensation to the Engineer, or the City, of any kind in connection with such change, including all costs and damages related to or incidental to such change.

(c) Engineer 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.

20. *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.

21. *Liability for Loss or Damage.*

Engineer shall indemnify and hold harmless the City, and its officers and employees from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Engineer, his/its agents, servants and employees and other persons employed or utilized by the Engineer in the performance of the Contract. 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.

17. *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.

18. *E-Verify.* Engineer shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Engineer during the term of this Contract and shall expressly require any 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.

19. *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 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.

20. *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.

21. *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.**

22. *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.

23. *Compliance with Other Federal Standards.*

(a) Termination for Default. Administrative, contractual, or legal remedies in instances where the Engineer violates or breaches Contract terms are set forth in Paragraph 8, hereinabove.

(b) Termination for Convenience and Non-Appropriation of Funds. Termination for convenience by the City, including how it will be carried out and the basis for settlement is set forth in Paragraph 6, hereinabove. Termination for non-appropriation of funds is set forth in Paragraph 11, hereinabove.

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

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

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

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

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

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

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

(vi) The Engineer will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the

Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

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

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

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

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

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

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

compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

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

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

> 29 C.F.R. § 5.5 Contract provisions and related matters.
> (a) The Agency head shall cause or require the contracting officer to insert in full in any contract in excess of $2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1, the following clauses (or any modifications thereof to meet the particular needs of the agency, *Provided*, That such modifications are first approved by the Department of Labor):
> (1) Minimum wages.
> (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Engineer and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis–Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill,

except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein:

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

(ii)

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

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

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

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

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

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

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

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

(iv) If the Engineer does not make payments to a trustee or other third person, the Engineer may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*,

That the Secretary of Labor has found, upon the written request of the Engineer, that the applicable standards of the Davis–Bacon Act have been met. The Secretary of Labor may require the Engineer to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding.

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

(3) Payrolls and basic records.

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

(ii)

(A) The Engineer shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the Engineer will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency). The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only

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

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

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

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

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

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

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

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

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

(4) Apprentices and trainees.

(i) Apprentices.

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

(ii) Trainees.

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

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

(iii) Equal employment opportunity.

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

(5) Compliance with Copeland Act requirements.

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

(6) Subcontracts.

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

(7) Contract termination: debarment.

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

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

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

(9) Disputes concerning labor standards.

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

(10) Certification of eligibility.

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

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

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

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

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

(f) Contract Work Hours and Safety Standards Act:

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

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

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

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

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

(4) *Subcontracts.* The Engineer or subcontractor shall insert in any subcontracts the clauses set

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

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

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

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

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

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

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

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

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

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

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

Clean Air Act

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

Federal Water Pollution Control Act

(1) The Engineer agrees to comply with all applicable standards, orders, or regulations issued pursuant to the federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq.
(2) The Engineer agrees to report each violation to the City and understands and agrees that the City, in turn, report each violation as required to assure notification to the Florida Division of Emergency Management ("FDEM"), Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office.
(3) The Engineer agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with federal assistance provided by FEMA.

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

(1) This Contract is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 3000. As such, the Engineer is required to verify that none of the Engineer's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
(2) The Engineer must comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
(3) **This certification, included in the solicitation referenced hereinabove and made a part hereof by this reference**, is a material representation of fact relied upon by City. If it is later determined that the Engineer did not comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, in addition to remedies available to City, the federal government may pursue available remedies, including but not limited to suspension and/or debarment.
(4) The Engineer 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 Engineer further agrees to include a provision requiring such compliance in its lower-tier covered transactions.

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

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

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

(1) In the performance of this contract, the Engineer shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired.
   (i) Competitively within a timeframe providing for compliance with the contract performance schedule;
   (ii) Meeting contract performance requirements; or
   (iii) At a reasonable price.

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

(3) The Engineer also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

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

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

(2) *Prohibitions.*

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

(ii) Unless an exception in paragraph (iii) of this clause applies, the Engineer and its

subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:

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

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

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

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

(3) *Exceptions.*

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

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

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

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

a. Covered telecommunications equipment or services that:

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

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

(4) *Reporting requirement.*

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

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

a. Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if

known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

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

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

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

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

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

(n) Access to Records and Reports:

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

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

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

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

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

Contract addresses any potential requests for modifications or changes to the Contract terms as contained hereinabove.

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

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

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

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

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

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

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

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

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

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

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

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

24. *Notice* For purposes of this agreement, notices shall be sent as follows:

City:
City of Port Orange
Attention: City Manager
1000 City Center Circle
Port Orange, Florida
32129
(386) 506-5501

Copy to:
City of Port Orange
Attention: Tim Burman, Community Development Director
1000 City Center Circle
Port Orange, Florida 32129
(386) 506-5674

Engineer:
Zev Cohen & Associates, Inc.
Attention: Robert J. Ball, President
300 Interchange Boulevard
Suite C
Ormond Beach, Florida 32174
Telephone: (386) 677-2482
Facsimile: (386)677-2505
E-Mail: bball@zevcohen.com

Any notice or other communication given under the Contract will be in writing and delivered by hand, sent by facsimile (provided acknowledgement of receipt thereof is delivered to the sender), sent by certified, registered mail, or sent by any nationally recognized overnight courier service to the addresses provided herein. The parties may, from time to time and at any time, change their respective addresses and each will have the right to specify as its address any other address by at least 10 days written notice to the other party.

25. *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.

26. *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.

27. *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.

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

[Remainder of this page intentionally left blank]

Witnesses:

Printed Name: Jill Eckstein

Printed Name: Viviana Vargas

ZEV COHEN & ASSOCIATES, INC.

By: _____

Robert J. Ball, 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: 3.15.24

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: _____
Donald O. Burnette, Mayor

Date: 3/19/2024

ATTEST:

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

Date: 3/19/2024

EXHIBIT "1"

Engineer's Pricing and
RFSQ 23-18 Section 3 - Scope of Services and Requirements

Consisting of 4 Pages

ZEVCOHEN & ASSOCIATES INC

300 Interchange Blvd., Suite C
Ormond Beach, FL 32174
386-677-2482 • Fax: 386-677-2505
www.ZevCohen.com

2024 Hourly Rate Schedule

Principal	$230.00
Department Director	$215.00
Senior Professional Engineer	$190.00
Senior Registered Landscape Architect	$180.00
Project Manager	$180.00
Senior Planner	$160.00
Senior Biologist/Env. Scientist/GIS Analyst	$170.00
Professional Engineer	$155.00
Registered Landscape Architect	$150.00
Environmental Scientist II/GIS Specialist II	$115.00
Engineer II	$115.00
Landscape Architect II	$115.00
Planner II	$115.00
Senior Designer	$110.00
Environmental Scientist I/GIS Specialist I	$105.00
Engineer I	$105.00
Landscape Architect I	$105.00
Planner I	$105.00
Designer	$ 95.00
CADD Manager	$120.00
Senior CADD Technician	$110.00
CADD Technician	$100.00
Construction Administration Manager	$145.00
Construction Administrator	$120.00
Construction Administration Technician	$100.00
IT Manager	$105.00
Certified Soil Scientist	$170.00
Certified Arborist	$110.00
Landscape Designer	$ 95.00
Engineering Technician	$ 85.00
Biological Technician	$ 70.00
Technical Assistant	$ 70.00
Senior Clerical	$ 65.00
Clerical	$ 55.00

(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

DESCRIPTION OF WORK

The City of Port Orange is soliciting qualification statements from qualified firms for professional continuous engineering consulting services.

The City of Port Orange, pursuant to and in compliance with the Competitive Consultants Negotiation Act, Florida Statutes 287, Section 287.055 is seeking Letters of Interest, Statements of Qualifications and technical proposals from qualified professional individuals and/or firms interested in providing Civil Engineering, Traffic Engineering and Transportation Planning, Landscape Architectural, Environmental and Planning Services, Geotechnical Engineering Services, Hydrologic and hydraulic analysis and design, Feasibility and due-diligence studies, Drainage studies, Master planning and Grant procurement and Grant administration services and related services for the City of Port Orange for preparation of a variety of projects being administered by various City departments. Plans will be drawn in AutoCAD format unless otherwise directed. Work will normally be under the direction of the Community Development Director or assigned designee.

The City will select a minimum of three, and up to seven 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 Geotechnical 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.

The scope may also include, but are not necessarily limited to any of the following:

- **Planning and Feasibility Studies:**

o Hydrologic and hydraulic analysis and design
o Feasibility and due-diligence studies
o Traffic studies and traffic counts
o Transportation planning
o Grant-specific studies such as transportation funding
o Highway and Roadway safety analysis and recommendations
o Financial planning
o Civil infrastructure forensic analysis
o Drainage studies and hydrologic and hydraulic analysis
o Vulnerability assessments
o Master planning
o Grant procurement and grant administration services including Local Agency Program (LAP) compliance
o Alignment Studies
o Typical Road section analysis

o Trail Route study
o Constructability reviews
o Stakeholder coordination
o ROW Study
o Pond Siting

• **Survey, Environmental, Geotechnical, and other support services:**
o Topographic survey
o ROW survey
o Deed and Title work research
o Environmental analysis
o Contamination Screening
o Cultural Resource Assessment
o NEPA compliance
o Public Meeting support
o Preparation of Project Graphics
o Geotechnical investigations and recommendations
o Forensic analysis

• **Design, Permitting, Construction Engineering and Inspection, and/or Plan Review of the following:**
o Stormwater management systems
o Site and subdivision developments and improvements
o Road and highway widening
o Road and roadside safety improvements
o Pedestrian safety improvements
o Roadway capacity improvements
o Parks and recreational facilities
o Minor/routine utility improvements
o Sidewalk, multi-use path, and other pedestrian or bicycle facilities
o Grading and drainage improvements
o Structures such as boardwalks, boat docks, pedestrian or vehicle bridges, retaining walls
o Traffic signal improvements
o Municipal/county infrastructure developments and improvements
o Other paved/pavement improvements
o Structural design services
o Structural peer review of structural designs
o Forensic analysis of structural or other failures

• **Permitting services such including but not to:**
o Environmental Resource Permitting
o Applicable planning and zoning or site development approvals
o SJRWMD, SHPO, USACOE, USFWS, FFWC, FDEP, FAA, FDOT, FHWA, or any other permitting agency
o Building permits
o NEPA clearance
o Other federal, state, local, or private agency permitting

• **Grant Support Services including but not to:**
o Preparation of figures and graphics in support of grant applications
o Completing grant application forms
o HUD/CDBG – Community Development Block Grant
o Coordination with interested stakeholders and gathering support documentation
o Preparation of grant-specific studies
o Analysis of roadway crash data, traffic volumes, capacity, and safety
o Research of infrastructure grant opportunities

Application and supporting documentation from the following funding sources and/or grant administration of the following:

- River to Sea Transportation Planning Organization (TPO) – Traffic Operations, Safety and Local Initiatives Projects
- TPO – Bicycle and Pedestrian Projects
- TPO – Transportation Planning Studies
- FDOT – Safety Funds
- FDOT – Safe Routes to Schools
- FDOT – Sun Trail
- FHWA/USDOT – TIGER grant
- FHWA/USDOT – MAP-21 grant
- SJRWMD – Cost Share funding
- FDEP – State Revolving Fund
- FEMA – HMGP and FMA funding
- Other infrastructure related grant opportunities

• **Coordination with:**
o Regulatory agencies
o Funding sources
o The general public
o Cities and other municipal agencies
o Economic Development opportunities
o Other interested stakeholders

Additional services as needed for capital projects, infrastructure management, property transactions.

SECTION 4 – STANDARD PURCHASING DEFINITIONS

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

1. **Addendum** is a formal written document, released prior to the public opening that modifies any aspect of a Solicitation. Plural: Addenda
2. **Alternate Bid** means multiple Bids with substantive variations from the same Bidder in response to a Solicitation.
3. **Amendment** is a formal written agreement, signed by both parties, that modifies an existing contractual agreement.
4. **Appropriate, Appropriated, or Appropriation** means the adoption by the City Council of the City of a budget for a fiscal year that includes payments to be made under the Contract during the respective fiscal year.
5. **Best Value** means the highest overall value to the City based on factors that include, but are not limited to, price, quality, design, and workmanship.
6. **Bid** is a complete, properly signed response to an Invitation to Bid, which if accepted, would bind the Bidder to perform the resultant Contract.
7. **Bid Guaranty (Bid Bond)** guarantees that the Bidder (a) will not withdraw the Bid within the period specified for acceptance, and (b) will execute a Contract and furnish required bonds and any necessary insurance within the time specified in the Solicitation, unless a longer time is allowed by the City. The guarantee will be returned to the Bidder upon execution of a Contract.
8. **Bidder/Proposer/Respondent** is a person, firm, or entity that that submits a Response to a Solicitation. Any Bidder/Proposer/Respondent may be represented by an agent after submitting evidence demonstrating the agent's authority. The agent cannot certify as to his own agency status.
9. **City** means the City of Port Orange.
10. **Competitive Negotiation** means a method for acquiring goods, services, and construction for public use in which discussions or negotiations may be conducted with responsible offerors who submit Responses through a Request for Statements of Qualifications.

EXHIBIT "2"

Sample Task Authorization

Consisting of 4 Pages

TASK AUTHORIZATION NO. ___
Master Contract for Professional Engineering Services dated _____
Between the City of Port Orange, Florida and Zev Cohen & Associates, Inc.

THIS Task Authorization is entered into by and between the **CITY OF PORT ORANGE, FLORIDA**, a chartered municipal corporation with its principal place of business at 1000 City Center Circle, Port Orange, Florida 32129 (the "City") and **Zev Cohen & Associates, Inc.** ("Engineer"), a Florida corporation, with its principal place of business at 300 Interchange Boulevard, Suite C, Ormond Beach, Florida 32174, and hereinafter collectively referred to as the "Parties," and is to that certain Master Contract relating to Professional Engineering 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 _____ from 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 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:

ZEV COHEN & ASSOCIATES, INC.

_____

Printed Name: _____

By: _____

Robert J. Ball, 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.

_____

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:_____
Donald O. Burnette, Mayor

Date:_____

ATTEST:

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

Date:_____

Exhibit “A”

Zev Cohen & Associates, Inc.

Dated January 28, 2025
Revised April 29, 2025

Consisting of 3 Page(s)

Scope of Work Based on discussions with Staff, the City desires to further improve the "Down Under" District of the Port Orange Town Center CRA. This area is generally described as the area under and along the sides of the east landing of the Dunlawton Bridge crossing the Halifax River. The City and the Transportation Planning Organization have already completed a feasibility study for Peninsula Drive sidewalk modifications and wayfinding signage for the District. The City has also completed an overall survey of the District and a comprehensive masterplan with public input, alternatives, and cost estimates. The scope of this phase includes a focus on the design and permitting of the infrastructure generally described by the following goals and objectives:

The project includes:

- Parking Lot reconfiguration and complete landscaping
- Revised access onto South Peninsula Drive (no changes proposed to Dunlawton Ave ROW).
- Conduit and lighting design of murals, theme lighting, gateway feature, etc.
- Stormwater design to install an underground system to replace the current dry retention system
- Gateway Sign outside the Dunlawton Ave ROW
- Gateway feature(s)
- Rideshare/Passenger/Load Zone areas
- Pedestrian Plaza with conduit and lighting
- Stabilized grass parking on the south side
- Parking lot lighting (FPL lights)
- South Peninsula Drive sidewalk extension to Demotte Avenue

    - Task 1 – Final Design
        - ZCA shall prepare 90% and 100% design plans and specifications of the civil, landscape, and environmental components based on the current masterplan.
        - A cost estimate will be prepared with both submittals.
        - ZCA shall modify the plans and address comments made by Staff.
        - ZCA shall review the Plans with the business leaders in the Down Under District as well as other stakeholders such as FDOT.
        - We do not anticipate any Public Hearings required for the design and approval.
        - We understand the watermain will be extended based on a previous design that we will incorporate.
        - We do not anticipate any sewer improvements.
        - ZCA biologists will conduct one (1) site visit to delineate the adjacent mangrove fringe. ZCA will produce a limited Environmental Assessment Report documenting the results of the site visits to assist in obtaining required permits.
        - We assume that no direct or secondary wetland impacts will occur and no mitigation coordination or design is included.

- We assume we will use existing stormwater outfalls such that no wetland/surface water impacts are required.

- Task 2 – Permitting and Approvals
  - ZCA shall submit to the City and process the Site Plan through SDRC.
  - ZCA shall pursue approval through FDOT for the Drainage and Utility components.
  - ZCA shall pursue FDEP water permitting as necessary for the watermain extension.
  - ZCA shall pursue FDEP permitting/SJRWMD for the stormwater and waterfront interface.
  - ZCA shall coordinate with the ACOE for a “no permit required” determination.
  - ZCA assumes that no over-water improvements will occur and no coordination with the Division of State Lands will occur.

- Task 3 – Grant Assistance
  - ZCA shall support the City with grant opportunities, including the potential IRL grant application late in 2025.

- Task 4 – Survey Services Allowance
  - ZCA shall include an allowance to cover any additional or miscellaneous survey needs that arise during the design and permitting process.

- Task 5 – Geotechnical Services
  - ZCA shall provide geotechnical services as defined in the attached for the design and permitting of the project which shall include pavement recommendations and stormwater/recovery analysis.

- Task 6 – Gateway Sign Design and Gateway Feature
  - ZCA shall provide design intent for the Gateway Sign and Gateway Feature to include structural and electrical components

- Task 7 – Electrical Design
  - Parking lot lighting (FPL standard lights)
  - Power design for Pedestrian Plaza
  - Conduit and lighting design for miscellaneous hardscape improvements

Fee Schedule	ZCA
Task 1 – Final Design	$240,000.00
Task 2 – Permitting and Approvals	$60,000.00
Task 3 – Grant Assistance	$ 7,500.00
Task 4 – Survey Services Allowance	$ 5,000.00
Task 5 – Geotechnical Services	$12,500.00
Task 6 – Gateway Sign and Gateway Feature Design	$17,500.00
Task 7 – Electrical Design	$20,000.00
Total:	**$362,500.00**

BB/ns
20025c03 F24 TA REV 4.29.25

CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 5/20/2025

SUBJECT: (C7f) Approval of the Second Amendment to the Second Addendum to the Third Amendment and Restatement of Lease Agreement with Palmer College Foundation, Inc. for the Allen Green Center

DEPARTMENT: City Manager

GOAL: 3 - Quality of Life

RECOMMENDED MOTION: Move to approve the Second Amendment to the Second Addendum to the Third Amendment and Restatement of the Lease Agreement with Palmer College Foundation, Inc. and authorize the Mayor and City Clerk to sign this amendment and all necessary documents to complete the closing on the Allen Green Center.

SUMMARY: The City of Port Orange has leased the Allen Green Center to Palmer College for their clinic since 2002. Palmer has been a model tenant and a great partner since their arrival.

On October 3, 2017, Council approved the Second Addendum to the Third Amendment and Restatement of Lease Agreement ("Second Addendum") with Palmer College. The Second Addendum provided, in part, for an extension of the lease period until March 31, 2025, and established a purchase option at the end of the lease period, based on Fair Market Value (FMV). Pursuant to the terms of the purchase option included in the Second Addendum, and in furtherance of exercising the purchase option for the Allen Green Center, Palmer remitted $90,000 to the City in March 2024. Under the option to purchase, the closing for the Allen Green Center is to take place on or before March 31, 2025. Prior to the expiration of the Lease Agreement, both the City and Palmer requested, and Council approved additional time to establish the purchase price through appraisals.

The agreement states that the FMV of the property shall be the purchase price between the City and Palmer, and shall be established by two appraisers. However, if the two appraisals vary by more than ten percent (10%), a third appraiser shall be employed, and the average of the two closest appraisals shall be the FMV.

The appraisals obtained by the City and Palmer varied by more than 10%; therefore, a third appraisal is required. While staff anticipates obtaining the third appraisal prior to the expiration of the Agreement, we do not believe the closing documents and schedules will allow for a closing prior to the expiration date. Thus, City staff and Palmer are requesting an additional two-month extension through July 31, 2025.

PRESENTER: Robin Fenwick

ATTACHMENTS:

1.	Second Amendment to 2nd Addendum to Third Amendment and Restatement of Palmer Lease	Second Amendment to 2nd Addendum to Third Palmer Lease.pdf

Robin Fenwick	Created/Initiated - 4/30/2025
Mark Simpson	Approved - 4/30/2025
Shannon Balmer	Approved - 5/8/2025
Wayne Clark	Final Approval - 5/8/2025

This Document Prepared by:
Shannon K. Balmer, Senior Assistant City Attorney
City of Port Orange
1000 City Center Circle
Port Orange, FL 32129

SECOND AMENDMENT TO THE SECOND ADDENDUM TO THIRD AMENDMENT AND RESTATEMENT OF LEASE AGREEMENT

THIS SECOND AMENDMENT TO THE SECOND ADDENDUM TO THIRD AMENDMENT AND RESTATEMENT OF LEASE AGREEMENT is made and entered the day and year set forth hereinafter by and between the **CITY OF PORT ORANGE, FLORIDA**, a chartered municipal corporation, with its principal business offices located at 1000 City Center Circle, Port Orange, Volusia County, Florida 32129 ("City" or "Landlord"), and **PALMER COLLEGE FOUNDATION, INC.,** f/k/a Palmer Chiropractic University Foundation, Inc., a not-for-profit corporation duly organized under the laws of the State of Iowa, in good standing and authorized to do business in the State of Florida and d/b/a Palmer College of Chiropractic, Florida, having its principal business office located at: 4777 City Center Parkway, Port Orange, Florida 32129 ("Palmer" or "Tenant"), and hereinafter collectively referred to as the "Parties."

WHEREAS, the Parties entered into a Lease Agreement for the Allen Green Civic Center dated May 9, 2002 ("Lease Agreement"); and

WHEREAS, the Parties entered into a First Amendment and Restatement of Lease Agreement for the Allen Green Civic Center dated February 10, 2003; and

WHEREAS, the Parties entered into a Second Amendment and Restatement of Lease Agreement for the Allen Green Civic Center dated March 20, 2007, having a term from April 1, 2007 to March 31, 2009; and

WHEREAS, the Parties entered into an Addendum to Second Amendment and Restatement of Lease Agreement for the Allen Green Civic Center dated October 16, 2007 relating to insurance and inventory of city property; and

WHEREAS, the Parties entered into a Right of Entry Protocol pursuant to the terms of the Second Amendment and Restatement of Lease Agreement for the Allen Green Civic Center dated March 25, 2008; and

WHEREAS, the Parties entered into a Second Addendum to Second Amendment and Restatement of Lease Agreement for the Allen Green Civic Center dated January 6, 2009, extending the term for one year to terminate at midnight on March 31, 2010; and

WHEREAS, the Parties entered into a Third Amendment and Restatement of Lease Agreement for the Allen Green Civic Center dated January 5, 2010, having a term of ten (10) years, from April 1, 2010 to March 31, 2020; and

WHEREAS, the Parties entered into an Addendum to Third Amendment and Restatement of Lease Agreement for the Allen Green Civic Center dated June 4, 2013, relating

to the repair, replacement or restoration of the building components, which includes replacement of the HVAC system; and

WHEREAS, the Parties entered into the Second Addendum to Third Amendment and Restatement of Lease Agreement ("Second Addendum") for the Allen Green Civic Center dated October 3, 2017, extending the Lease Agreement, as amended, for an additional term of five (5) years, commencing on April 1, 2020, and terminating on March 31, 2025, and adding a purchase option and right of first refusal; and

WHEREAS, Palmer has completed the initial steps in exercising its option to purchase as required by the Second Addendum; and

WHEREAS, the Parties entered into the First Amendment to the Second Addendum to Third Amendment and Restatement of Lease Agreement ("First Amendment") for the Allen Green Civic Center dated March 18, 2025, extending the term of the Lease Agreement, as amended, and extending the time to close on the option to purchase the Demised Premises as set forth in the Second Addendum to May 30, 2025; and

WHEREAS, the Parties wish to further modify the terms of the Lease Agreement, as amended, with regard to extending the term of the Lease Agreement, as amended, and further extending the time to close on the option to purchase the Demised Premises as set forth in the Second Addendum; and

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

1. The term of the Lease Agreement, as previously amended, shall be extended for an additional two months, and terminating at midnight on July 31, 2025, or upon the closing of the purchase option pursuant to Paragraph 32 of the Lease Agreement, as amended, whichever is earlier.

2. Paragraph 32 of the Lease Agreement, as amended, shall be modified to read, in its entirety, as follows:

> 32. **Purchase Option**. City grants to Palmer an option to purchase the Demised Premises subject to the terms and conditions as follows:
>
> a. **Term of Option**. This option to purchase the Demised Premises shall commence on the 1st day of April, 2024, and shall expire at midnight on the 31st day of July, 2025.
>
> b. **Exclusivity**. This option to purchase is exclusive to Palmer and non-assignable. Any attempted assignment, delegation, transfer or conveyance of this option to purchase without the City Manager's express written permission is void.
>
> c. **Exercise of Option**. Palmer may only exercise this option to purchase by delivering written notice of intent to purchase to the City Manager. Such notice shall indicate the closing date for the purchase which shall be set prior to July 31, 2025. If Palmer fails to close the purchase prior to July 31, 2025, without unreasonable delay caused by the City, the option shall become void and of no further force or effect.

d. **Option Consideration**. Palmer shall remit option consideration in the amount of **Ninety Thousand and no/100 Dollars ($90,000.00)** on or before March 31, 2024, which amount is non-refundable. In the event that Palmer timely exercises this option, is not in default under the terms of the Lease Agreement, as amended, and the option to purchase has not previously been terminated for default under the terms of the Lease Agreement, as amended, the option consideration shall be credited to the purchase price at closing. If Palmer fails to exercise this option, defaults on the Lease Agreement, as amended, or fails to close the purchase within the timeframe established herein, the option consideration shall not be refunded and shall be forfeited to the City.

e. **Purchase Price**. The total purchase price for the Demised Premises, subject to the stated credit in subparagraph d. above, shall be the Fair Market Value ("FMV") of the Demised Premises, which shall include the land and improvements located thereon, as determined in the final year of the Lease Agreement, as amended. The FMV shall be established by two (2) MAI appraisers – one shall be selected and paid by the City, and the other by Palmer. The FMV shall be the average of the two appraisals. If the two appraisals vary by more than ten percent (10%), then a third appraiser shall be employed selected by agreement of the two initial appraisers and the average of the two closest appraisals shall be the FMV.

f. **Effect of Default on Purchase Option**. In the event of any default by Palmer of the terms of the purchase option or the Lease Agreement, as amended, City shall have the option to terminate the purchase option by giving written notice of termination to Palmer, in addition to any other remedies available to City at law or in equity. Palmer shall not be entitled to any refund of the option consideration whatsoever. All terms and conditions of the Lease Agreement, as amended, must be complied with in order for this option to be enforceable.

g. **AS-IS Disclosure**. Inasmuch as Palmer has occupied and utilized the Demised Premises continuously for more than fifteen (15) years, and shall have otherwise notified the City of any defect in the Demised Premises, the condition of the Demised Premises shall not be a condition or contingency to this purchase option. City makes no warranty of any type, either express or implied, as to the physical condition of the Demised Premises (including, those improvements located thereon). City has no knowledge as to any uncorrected building or safety code violation. By exercising the purchase option, Palmer agrees to take the Demised Premises "AS-IS". Palmer expressly waives any claims against City for any unknown defects or other damages which may exist or be discovered by Palmer.

h. **Financing Disclaimer**. The parties acknowledge that speculation of availability of financing or assumption of existing loans towards the purchase of the Demised Premises is impossible to predict.

Therefore, the parties agree that these items shall not be a condition of performance of this purchase option, and the parties agree they have not relied upon any representation or warranties by either party.

i. **Closing.** In the event that the purchase option is validly exercised, the Standards for Real Estate Transactions set forth on the form contract approved by The Florida Bar and The Florida Association of Realtors, Inc., attached hereto as **Exhibit "A"** shall control. In the event of a conflict between the terms of this Agreement and the terms contained in **Exhibit "A,"** the terms contained in this Agreement shall control.

(1) **Location**. Closing shall take place in Volusia County, Florida, at a location mutually agreed upon by the parties.

(2) **Costs**. Palmer shall pay all closing costs including, document preparation costs and Florida documentary tax stamps.

(3) **Fees**. Palmer has not utilized the services of a Florida Real Estate Broker for this purchase option. Both parties acknowledge that Palmer shall be responsible for the payment of any brokerage fee incurred for the transfer of the Demised Premises. Palmer shall be responsible for any appraisal reports it order, and fees incurred for independent review of this Agreement.

(4) **Taxes and Assessments**. Palmer agrees to pay before delinquency all taxes and assessments, if any, which may be due currently or may hereafter become due on the Demised Premises until and including the day of closing.

(5) **Title Insurance**. City shall provide to Palmer owner's title insurance.

3. This Second Amendment to the Second Addendum to Third Amendment and Restatement of Lease Agreement shall become effective as of the date signed by all Parties.

4. All other terms and conditions of the Lease Agreement, as previously amended, shall remain in full force and effect.

5. This Second Amendment to the Second Addendum to Third Amendment and Restatement of Lease 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 of an executed copy of this Second Addendum to Third Amendment of Lease Agreement shall be deemed valid as if an original signature was delivered.

[REMAINDER OF PAGE LEFT BLANK]

IN WITNESS WHEREOF, the Parties hereto have signed, sealed, and delivered this Second Amendment to the Second Addendum to Third Amendment and Restatement of Lease Agreement on the day and year stated hereinafter.

LANDLORD:
CITY OF PORT ORANGE, FLORIDA

_____
W*itness*

By:_____
Scott Stiltner, Mayor

_____
Witness

_____
W*itness*

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

_____
Witness

Date Signed: _____, 2025

Corporate Seal

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of [XX] physical presence or [___] online notarization this _____ day of _____, 2025 by Scott Stiltner, the Mayor, and Robin L. Fenwick, the City Clerk, both duly authorized to execute the foregoing Second Amendment to the Second Addendum to Third Amendment and Restatement of Lease Agreement, on behalf of the **CITY OF PORT ORANGE, FLORIDA**, a chartered municipal corporation, and who [___] is personally known to me, or [___] has produced _____ as identification.

(Seal)

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

TENANT:
PALMER COLLEGE FOUNDATION, INC., AN IOWA NOT-FOR-PROFIT CORPORATION, D/B/A PALMER COLLEGE OF CHIROPRACTIC, FLORIDA

_____
Witness

By:_____
Print Name: _____
Title: _____

_____
Witness

Date Signed: _____, 2025

Corporate Seal

STATE OF IOWA
COUNTY OF SCOTT

The foregoing instrument was acknowledged before me by means of [XX] physical presence or [___] online notarization this _____ day of _____, 2025, by _____, as _____ of PALMER COLLEGE FOUNDATION, INC., AN IOWA NOT-FOR-PROFIT CORPORATION, D/B/A PALMER COLLEGE OF CHIROPRACTIC, FLORIDA and being duly authorized to execute the foregoing Second Amendment to the Second Addendum to Third Amendment and Restatement of Lease Agreement on behalf of Palmer College Foundation, Inc., an Iowa not-for-profit corporation, d/b/a Palmer College of Chiropractic, Florida, and who [___] is personally known to me, or [___] has produced _____ as identification.

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

(Seal)

CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 5/20/2025

SUBJECT: (C7g) Approval of a New Standard Contract with G&G Outdoors, LLC. for Services for Public Utilities Landscaping Maintenance

DEPARTMENT: Public Utilities

GOAL: 3 - Quality of Life 6 - Organizational Excellence

RECOMMENDED MOTION: Move to approve a contract with G&G Outdoors, LLC for Public Utilities Landscape Maintenance, for an amount not to exceed $62,644.20, and authorize the Mayor and City Clerk to sign all necessary documents.

SUMMARY: The Public Utilities Department has 86 sites (Water Treatment Facility, Water Reclamation Facility, and Lift Stations) that require regular landscaping and maintenance. The current landscaping contract with Verdego LLC expires in May 2025. A Request for Quote (RFQ) was sent out in February. Staff received four responses to the request for quote. G&G Outdoors, LLC was deemed the lowest responsive bidder at $62,644.20, which is less than the current contract price of $63,754.53 annually. The quote is for one year of landscaping maintenance with no renewal options. G&G Outdoors, LLC is currently performing landscaping services on the Police Range and staff are recommending the award of a one-year contract for Public Utilities Landscaping Maintenance with G&G Outdoors, LLC.

PRESENTER: Steve Parnell

ATTACHMENTS:

1.	G&G Outdoors, LLC RFQ PW25-02 Standard Contract for Services - Public Utilities Landscape Maintenance	G&G Outdoors, LLC RFQ PW25-02 Standard Contract for Services - Public Utilities Landscape Maintenance.pdf
2.	Justification Memo - G&G Outdoors Public Utilities Mowing 2025	Justification Memo - G&G Outdoors Public Utilities Mowing 2025.docx
3.	Public Utilities Landscape Maintenance Scope of Services- 2025 Bid	Public Utilities Landscape Maintenance Scope of Services- 2025 Bid.pdf
4.	Sikorski Bid Sheet	Sikorski Bid Sheet.pdf
5.	Verdego LLC Bid Sheet	Verdego LLC Bid Sheet.docx
6.	Yellowstone Bid Sheet	Yellowstone Bid Sheet.pdf
7.	G&G Landscaping Bid Sheet	G&G LANDSCAPING for PUBLIC UTILITIES FACILITIES and LIFT

		STATIONS PRICING SHEET .xlsx
8.	G&G Outdoors - COI to 6.23.25 and 9.21.25 WC - Landscaping	G&G Outdoors - COI to 6.23.25 and 9.21.25 WC.pdf

Kelly Klausky	Created/Initiated - 4/2/2025
Christopher Wall	Approved - 4/2/2025
Steve Parnell	Approved - 4/3/2025
Jill Poolman	Approved - 4/8/2025
Matthew Jones	Approved - 4/29/2025
Mark Simpson	Approved - 4/29/2025
Matthew Jones	Approved - 5/8/2025
Wayne Clark	Approved - 5/8/2025
Amanda Bonin	Final Approval - 5/9/2025

CITY OF PORT ORANGE
STANDARD CONTRACT FOR SERVICES

This Standard Contract for Services ("Contract") is entered into this ____ day of _____, **2025**, 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 **G&G OUTDOORS, LLC** ("Contractor"), a Florida corporation whose principal address is 4059 Quail Nest Lane, New Smyrna Beach, Florida 32168. The City and Contractor are collectively referred to herein as the "Parties."

1. *Provision of Services*

(a) The Contractor hereby agrees to provide Public Utilities Landscape Maintenance Services in accordance with Request for Quote ("RFQ"). This Contract, together with Contractor's Quote and RFQ Scope of Services attached as Exhibit "1," 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. A complete copy of all RFQ documents is available in the Office of the City Clerk, City Hall, 1000 City Center Circle, Port Orange, Florida. 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 date last signed by the Parties, and shall continue for a period of twelve (12) months ("Term").

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

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

Authorization for Services: This Contract standing alone does not authorize the purchase of any goods or services or require the City to place any orders for goods or service. Authorization for the purchase of goods or services from Contractor under this Contract shall be upon issuance of a Notice to Proceed and a written Purchase Order issued by the City and executed by the City Manager. The City reserves the right to contract with other parties for the goods and services contemplated by this Contract, as determined in the City's sole and absolute discretion.

2. *City Obligations*. In return for the services identified above, the City agrees to compensate the Contractor at the pricing set forth in Exhibit "1," in an amount not to exceed Sixty-two Thousand Six Hundred forty-four and 20/100 Dollars ($62,644.20). All payments shall be governed by the Local Government Prompt Payment Act as set forth in Sections 218.70 through 218.79, Florida Statutes, as amended.

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

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

5. *Termination for Convenience of the City*

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

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

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

(i) cease any further deliveries or work due under this Contract, on the date, and to the extent, which may be specified in the Notice;

(ii) place no further orders with any subcontractors except as may be necessary to perform that portion of this Contract not subject to the Notice;

(iii) terminate all subcontracts except those made with respect to contract performance not subject to the Notice;

(iv) settle all outstanding liabilities and claims which may arise out of such termination, with the ratification of the Finance Director of Port Orange; and

(v) use best efforts to mitigate any damages which may be sustained by the Contractor as a consequence of termination under this clause.

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

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

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

(i) With respect to all Contract performance prior to the effective date of Notice of Termination, the total of:

(1) the cost of work performed or supplies delivered;

(2) the cost of settling and paying any reasonable claims as provided in paragraph (c) (iv), above;

(3) a sum as profit on (a) determined by the Finance Director to be fair and reasonable.

(ii) The total sum to be paid under (i) above shall not exceed the contract price, as further reduced by the contract price of work or supplies not terminated.

(g) In the event that the Contractor is not satisfied with any payments which the Finance Director shall determine to be due under this clause, the Contractor may appeal any claim to the City Council in accordance with Paragraph 23 of this contract concerning disputes.

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

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

8. *Examination of Records*

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

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

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

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

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

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

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

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

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

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

10. *Termination for Non-Appropriation of Funds*

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

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

11. *Insurance*. Contractor shall maintain insurance, as required herein, during the life of this Contract. Contractor shall provide to the City, a certificate of insurance endorsing the City of Port Orange as an additional named insured. All insurance coverages of the Contractor shall be primary and non-contributory. All insurance coverages of the Contractor shall not seek contribution from any other insurance or self-insurance available to the City. For workers' compensation coverage, the Contractor's insurance certificate shall include the insurer's waiver of subrogation in lieu of endorsing the City as an additional insured for workers' compensation. The City shall not accept Workers' Compensation Exemptions Contractor may use leased employees if the Contractor ensures that all workers who access the jobsite are employees covered by the employee leasing company, and no non-employees are permitted to access the jobsite. Any Contractor using a leased employee shall complete the City's Leased Employee Affidavit Form Exhibit. Policies for Workers' Compensation may be issued by companies authorized as a group self-insurer by F.S. 440.572.

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

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

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

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

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

Standard Insurance Requirements			
	Insurance	**Standards**	**Additional Requirements**
☒	Workers' Compensation The Contractor shall maintain coverage for its employees with statutory workers' compensation limits, and no less than the limits indicated in the Schedule of Limits for Employers' Liability. Said coverage shall include a waiver of subrogation in favor of the City. **The City will not accept elective exemptions**. Any contractor using an employee leasing company shall complete the Leased Employee Affidavit Form Exhibit.	Contract Amount — Limits Up to $10 million — Statutory/$500,000 $10 - $20 million — Statutory/$1,000,000 Contracts over $20 million To Be Determined by the City.	☐If Contract requires work on or about navigable waters, Longshoreman's and Harbor Workers' Coverage required. ☐If vessels involved, Jones Act coverage with limits of $500,000 required.
☒	Comprehensive General Liability (including Completed Operations and Contractual Liability	Limits: Combined Single Limit Bodily Injury and Property damage $1,000,000 occurrence $1,000,000 aggregate	☐When work is on or under Railroad rights of way or properties, the Contractor shall take out and maintain during the life of the Contract, Railroad protective liability and property damage insurance in amounts as requested by the Railroad.
☒	Comprehensive Business, Automobile Liability to include all owned, hired and non-owned automobiles.	Limits: Auto Liability Body Injury and Property Damage: $1,000,000 each occurrence $1,000,000 aggregate	
Additional Insurance Requirements			
☐	Property Insurance Builders Risk. Additional Coverage:	Limits: Buildings - Completed value of Contract. "All Risk" coverage on latest ISO for or its equivalent. Permission granted to occupy. Owner named as insured AIMA	If Agreement requires handling or installation of Owner's equipment, coverage should be furnished on "All Risk" form, including transit and Owner shall be named.

☐	Professional Liability	Limits: Coverage - $1,000,000	
☐	Installation Floater (IT)	Limits: Coverage - $ To be determined.	
☐	Contractor Pollution Liability	Limits: Coverage - $1,000,000	
☐	Errors and Omissions	Limits: Coverage - $1,000,000	
☐	Umbrella Policy	Limits: Coverage – $ To be determined.	
☐	Payment and Performance Bond Required	Limits: Coverage - Equal to amount of Contract.	
☒	**City Manager waives Payment and Performance Bond for work under $200,000.00.**		
☐	**Unless otherwise required by law, City Manager waives Insurance for FOB goods.**		

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

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

14. *Modifications or Changes to this Contract*

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

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

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

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

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

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

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

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

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

18. *Inspection*

(a) All supplies (which term throughout this clause includes without limitation raw materials, components, intermediate assemblies, and their products) shall be subject to inspection and test by the City, to the extent practicable at all times and places including the place of manufacturer, and in any event prior to acceptance.

(b) In the event any supplies or lots of supplies are defective in material or workmanship, or otherwise not in conformity with the requirements of this Contract, the City shall have the right either to reject them (with or without instructions as to their disposition) or to require their correction. Supplies or lots of supplies which have been rejected or required to be corrected shall be removed or, if permitted or required by the Finance Director, corrected in place by and at the expense of Contractor promptly after notice, and shall not thereafter be tendered for acceptance unless the former rejection or requirement of correction is disclosed. If Contractor fails promptly to remove such supplies or lots of supplies which are required to be removed or promptly to replace or correct such supplies or lots of supplies, the City may either (i) by contract or otherwise replace or correct such supplies and charge Contractor the cost for such replacement or correction; or (ii) may terminate this Contract for default as provided in the clause of this Contract entitled "Termination for Default." Unless Contractor corrects or replaces such supplies within the delivery schedule, the Finance Director may require the delivery of such supplies at a reduction in price, which is equitable under the circumstances. Acceptance or rejection of the supplies shall be made as promptly as practicable after delivery, except as otherwise provided in this Contract. Failure to inspect and accept or reject supplies shall neither relieve Contractor from responsibility for such supplies as are not in accordance with the Contract requirements nor impose liability on the City therefor.

(c) The inspection and test by the City of any supplies or lots thereof does not relieve Contractor from any responsibility regarding defects or other failures to meet the Contract requirements, which may be discovered prior to acceptance. Except as otherwise provided in this Contract, acceptance shall be conclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud.

19. *Liability for Loss or Damage*.

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

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

to indemnify. The duty to defend agreed to by Contractor hereby expressly include all costs of litigation, attorney's fees, settlement costs and reasonable expenses in connection with the litigation, whether or not the claims made for loss, injury, damage or property damage are valid or groundless and regardless of whether the defense of City is maintained by the City or assumed by Contractor as long as the claims made could be causally connected to Contractor as reasonable determined by City.

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. *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.

22. *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.

23. *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.

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: Steve Parnell, Public Utilities Director
1000 City Center Circle
Port Orange, Florida 32129
(386) 506-5592

Contractor: G&G Outdoors, LLC
Attention: Ander M. Goiriena, Managing Member
4059 Quail Nest Lane
New Smyrna Beach, Florida 32168
(386) 631-4008 – Telephone
ggoutdoorsllc@gmail.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.

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.

[Remainder of this page intentionally left blank]

Witnesses:

G&G OUTDOORS, LLC

_____

Printed Name: _____

By: _____

Ander M. Goiriena, Managing Member

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

_____

Printed Name: _____

Date: _____

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 Quote and Scope of Services

Consisting of 16 Pages

"ATTACHMENT 1" SCHEDULE OF UNIT PRICING
BID FORM
CITY OF PORT ORANGE

LANDSCAPING SERVICES for PUBLIC UTILITIES FACILITIES & LIFT STATIONS
Completed Attachment 1 Bid Proposal form MUST be included with Bid Submission
Instruction to save Attachment from DemandStar website:

Bidders are required to complete all fields shaded in green. All other fields will be automatically calculated.

NAME OF BUSINESS:	**G&G Outdoors**
CONTACT PERSON:	**Ander Goiriena**
EMAIL ADDRESS:	ggoutdoorsllc@gmail.com
AUTHORIZED NAME:	**Ander Goiriena**
AUTHORIZED SIGNATURE:	Ander Goiriena

	Name	ACRES	COST PER VISIT	MAINTENANCE VISITS PER YEAR	TOTAL ANNUAL COST
	Class "C" Maintenance (Pumping Stations)				
1	Cypress Head (Cypress Head Pump Station)	0.50-2.0	$ 140.50	33	$ 4,636.50
2	Major Street (Peninsula Pump Station)	0.50-2.0	$ 140.50	33	$ 4,636.50
3	Ridge Road (Oceans Pump Station)	0.50-2.0	$ 140.50	33	$ 4,636.50
4	Williamson Reclaimed Tank	0.50-2.0	$ 140.50	33	$ 4,636.50
5	Garnsey Water Plant	0.50-2.0	$ 140.50	33	$ 4,636.50
6	Reclaimed Water Plant & Lab	0.50-2.0	$ 140.50	33	$ 4,636.50
7	Richel Street Stormwater Station (Augmentation Station)	0.25	$ 85.00	33	$ 2,805.00
			Class "C" Maintenance Subtotal:		$ 30,624.00
	Class "D" Maintenance (Lift Stations)				
1	Brandy Hills	0.02 (30'x30')	$ 19.45	24	$ 466.80
2	City Hall	0.02 (30'x30')	$ 19.45	24	$ 466.80
3	Ravenwood	0.02 (30'x30')	$ 19.45	24	$ 466.80
4	Atlantic High School	0.02 (30'x30')	$ 19.45	24	$ 466.80
5	Herbert & Nova	0.02 (30'x30')	$ 19.45	24	$ 466.80
6	Samm Ave	0.02 (30'x30')	$ 19.45	24	$ 466.80
7	Los Olas	0.02 (30'x30')	$ 19.45	24	$ 466.80
8	Laurelwood	0.02 (30'x30')	$ 19.45	24	$ 466.80
9	Golden Pond	0.02 (30'x30')	$ 19.45	24	$ 466.80
10	Beacon Woods	0.02 (30'x30')	$ 19.45	24	$ 466.80
11	Glenwood Village	0.02 (30'x30')	$ 19.45	24	$ 466.80
12	Carwash	0.02 (30'x30')	$ 19.45	24	$ 466.80
13	Cambridge Estates	0.02 (30'x30')	$ 19.45	24	$ 466.80
14	Lowes	0.02 (30'x30')	$ 19.45	24	$ 466.80
15	Halifax Estates	0.02 (30'x30')	$ 19.45	24	$ 466.80
16	Riverwood	0.02 (30'x30')	$ 19.45	24	$ 466.80
17	Falconcrest	0.02 (30'x30')	$ 19.45	24	$ 466.80
18	Hawks Ridge	0.02 (30'x30')	$ 19.45	24	$ 466.80
19	Sky Lake	0.02 (30'x30')	$ 19.45	24	$ 466.80
20	Water's Edge	0.02 (30'x30')	$ 19.45	24	$ 466.80
21	Baywood	0.02 (30'x30')	$ 19.45	24	$ 466.80
22	Seagull Landing	0.02 (30'x30')	$ 19.45	24	$ 466.80
23	Deep Forest	0.02 (30'x30')	$ 19.45	24	$ 466.80
24	Foxboro	0.02 (30'x30')	$ 19.45	24	$ 466.80
25	Riverside Drive	0.02 (30'x30')	$ 19.45	24	$ 466.80
26	Summertree	0.02 (30'x30')	$ 19.45	24	$ 466.80
27	Cypress Head	0.02 (30'x30')	$ 19.45	24	$ 466.80
28	Sable Creek	0.02 (30'x30')	$ 19.45	24	$ 466.80
29	Surfside Terrace	0.02 (30'x30')	$ 19.45	24	$ 466.80
30	Cardinal Blvd	0.02 (30'x30')	$ 19.45	24	$ 466.80
31	Venetian Way	0.02 (30'x30')	$ 19.45	24	$ 466.80
32	Ponce Inlet Master	0.02 (30'x30')	$ 19.45	24	$ 466.80
33	Oceans Ave	0.02 (30'x30')	$ 19.45	24	$ 466.80
34	Intracoastal Villas	0.02 (30'x30')	$ 19.45	24	$ 466.80
35	Charles Street	0.02 (30'x30')	$ 19.45	24	$ 466.80
36	Nixon	0.02 (30'x30')	$ 19.45	24	$ 466.80
37	Sugar Forest	0.02 (30'x30')	$ 19.45	24	$ 466.80
38	Southwind	0.02 (30'x30')	$ 19.45	24	$ 466.80
39	Commonwealth	0.02 (30'x30')	$ 19.45	24	$ 466.80
40	Lamplighter	0.02 (30'x30')	$ 19.45	24	$ 466.80
41	Townhomes West	0.02 (30'x30')	$ 19.45	24	$ 466.80
42	Willow Run #1	0.02 (30'x30')	$ 19.45	24	$ 466.80
43	Willow Run #2	0.02 (30'x30')	$ 19.45	24	$ 466.80
44	Oakland Park	0.02 (30'x30')	$ 19.45	24	$ 466.80
45	The Woods	0.02 (30'x30')	$ 19.45	24	$ 466.80
46	Cambridge	0.02 (30'x30')	$ 19.45	24	$ 466.80
47	Bayshore #1	0.02 (30'x30')	$ 19.45	24	$ 466.80
48	Bayshore #2	0.02 (30'x30')	$ 19.45	24	$ 466.80
49	Lancewood	0.02 (30'x30')	$ 19.45	24	$ 466.80
50	Christiancy	0.02 (30'x30')	$ 19.45	24	$ 466.80
51	Anglers	0.02 (30'x30')	$ 19.45	24	$ 466.80
52	Spruce Creek High School	0.02 (30'x30')	$ 19.45	24	$ 466.80
53	Countryside	0.02 (30'x30')	$ 19.45	24	$ 466.80
54	Vineyards	0.02 (30'x30')	$ 19.45	24	$ 466.80
55	Cypress Head	0.02 (30'x30')	$ 19.45	24	$ 466.80
56	Pavillion	0.02 (30'x30')	$ 19.45	24	$ 466.80
57	Plantation 1	0.02 (30'x30')	$ 19.45	24	$ 466.80
58	Plantation 2	0.02 (30'x30')	$ 19.45	24	$ 466.80
59	Bourbon	0.02 (30'x30')	$ 19.45	24	$ 466.80
60	Sunset Cove	0.02 (30'x30')	$ 19.45	24	$ 466.80
61	Buttermilk	0.02 (30'x30')	$ 19.45	24	$ 466.80
62	WaterEdge	0.02 (30'x30')	$ 19.45	24	$ 466.80
63	Brown Landing	0.02 (30'x30')	$ 19.45	24	$ 466.80
64	Herbert & Nova	0.02 (30'x30')	$ 19.45	24	$ 466.80
			Class "D" Maintenance Subtotal:		$ 29,875.20
	Class "E" Maintenance				
1	North Brighton Ave Property	0.10-.75	$ 35.75	12	$ 429.00
2	Buschman Park Lift Station	0.10-.75	$ 35.75	12	$ 429.00
3	Enviro Control Site	0.10-.75	$ 35.75	12	$ 429.00
4	Old Water Tower Site	0.10-.75	$ 35.75	12	$ 429.00
5	empty Lot	0.10-.75	$ 35.75	12	$ 429.00
			Class "E" Maintenance Subtotal:		$ 2,145.00
			TOTAL PRICE (Class C, D, & E):		$ 62,644.20

AWARD: THIS BID WILL BE AWARDED TO THE LOWEST, RESPONSIVE, RESPONSIBLE BIDDER

Public Utilities Landscape Maintenance Services

SCOPE OF WORK AND SPECIFICATIONS

STATEMENT OF RESPONSIBILITIES: The Contractor shall be responsible for providing machinery, equipment, tools, materials, labor, supervision, transportation, supplies, insurance, proper safety measures and all incidentals necessary to provide and perform grounds maintenance services to Public Utilities treatment facilities, lift stations and other City owned easements.

MAINTENANCE CLASSES: Because each location requires different levels of service, three classifications of service have been developed. Each classification and number of service visits is listed in Exhibit A.

Each class provides a general representation of the frequency of turf grass mowings / cuts and other landscape related maintenance tasks. Debris cleanup, edging, blowing, string trimming, weeding, and other tasks must be performed with each scheduled visit.

Please note, while the City has provided the approximate acre measurements on each area covered under this contract, these measurements are APPROXIMATE only. Contractor awarded bid shall be responsible for all maintenance required in each respective area. The non-mandatory pre-bid meeting will include site visits to EACH area. It is highly recommended that each bidder attends the non-mandatory meeting. **Pictures of the larger locations of each area to be serviced are included in Exhibit B.**

Class "C" Maintenance - *Number of Site Visits*: A total of thirty-three (33) maintenance visits shall be provided each calendar year. During the peak grow season (April 1 through October 31) each class "C" location shall be serviced twenty-three (23) times. The remaining months each location will be serviced twice per month (10 visits).

Class "D" Maintenance – *Number of Site Visits:* A total of twenty-four (24) maintenance visits shall be provided each calendar year. Each class "D" location shall be serviced twice per month.

Class "E" Maintenance - *Number of Site Visits:* A total of twelve (12) maintenance visits shall be provided each calendar year. Each class "E" location shall be serviced once per month.

Because the grow season can be unpredictable, the City reserves the right to require addition site services upon request. The City understands that this additional service would be at the

City's expense. The price for additional service will be consistent with bid prices listed for each location on the bid tab form.

Minimum Level of Service Required for Each Site:

TRASH / DEBRIS CLEANUP: The Contractor shall be responsible for removing all litter and debris prior to mowing from all turf grass areas, parking areas, sidewalks, mulch landscape areas, and shorelines, shall be removed. This includes, but is not limited to; paper, bottles, cans, palm fronds tree limbs. The Contractor is responsible for disposal of trash and debris in accordance with all federal, state, and local laws, rules and regulations. In the event of a hurricane the Contractor is not responsible for removing debris that is beyond the scope listed above. Fallen trees, fences, and large debris will be the responsibility of the City.

MOWING OF TURF GRASS AREAS: All turf grass areas within specified facilities. Mowing of trash and debris to shred into smaller pieces is not allowed.

All turf grass areas shall be mowed as specified in this document. The grass shall not be cut so low as to damage or stress the grass and shall not be allowed to reach a height of six (6) inches or more unless otherwise requested by the City. Contractor shall use a sharp blade to prevent burning the grasses. However, heights shall be as follows:

Heights may vary per location.

- St. Augustine –3-3.5 inches
- Argentine Bahia – 3 inches
- Bermuda and Zoysia – 1-2 inches

Areas where large mowers are impractical shall be serviced using small push mowers or string trimmers. Mowing of wet turf grass shall be avoided unless permission is authorized by the City. The Contractor shall leave surrounding areas in a clean condition free of accumulated debris, including but not limited to grass clippings, after each mowing. Large clumps of clippings will be distributed by mechanical blowing or collected and removed. Blowing debris into storm drains, streets, or ponds is prohibited. Materials removed from grounds shall be disposed of off-site by the Contractor in a lawful manner.

MAINTENANCE OF CONCRETE AREAS: Concrete areas include but are not limited to: sidewalks, curbs, driveways, aprons, drainage outfalls, gutters, concrete medians, concrete tips, and the joint where concrete meets asphalt. These areas shall be kept free of ALL debris including **crack grass** from right of way to right of way.

EDGING OF TURF GRASS: Contractor shall edge all appropriate surfaces with suitable mechanical equipment, i.e. a mechanical edger. In the event the service area is unable to be serviced with an edger, a string trimmer shall be used. These areas are including, but not limited to roadways, driveways, curbs, parking areas, walkways, fences, plant beds and tree wells, so that no grass,

ground cover or weeds are left extending beyond or over the surface being edged. This includes edging between adjoining beds of dissimilar ground cover types. Edging should not be more than 3 inches from the mulch of plant beds and tree wells. **Chemical edging of plant beds and tree wells is not permitted.** Contractor shall leave surrounding areas in a clean condition free of accumulated debris, including but not limited to grass, after edging.

STRING TRIMMING OF TURF GRASS: Final string trimming around permanent objects such as metal posts and concrete curbing shall be accomplished with suitable mechanical equipment and at the same cutting heights as the rest of the turf areas. String trimming around tree trunks with mechanical devices is prohibited. Non-mechanical means must be utilized where string trimming may damage wooden posts, decorative light poles or City property. Ponds, lakes, and ditches(swales) **MUST** be string trimmed to the water line.
*Areas where crack grass is present, **MUST** be string trimmed (burned down) and then chemically sprayed to deter new weed growth.
*Areas where growth in swales that are unable to be mowed at time of service, a string trimmer **MUST** be used to trim to water height.

BLOWING OF DEBRIS AND TURF GRASS CUTTINGS: Contractor shall blow all appropriate surfaces with suitable mechanical equipment including, but not limited to roadways, driveways, curbs, parking areas, walkways, turf grass areas, plant beds and tree wells as required to leave the area clean and free of debris. Grass clippings and other organic debris **shall not** be blown into the roadway, ponds, lakes, or storm drains.
*Clumping of turf grass is NOT permitted. If clumping occurs, the contractor **MUST** blow to disperse, mulch the clumping, or rake and remove the debris.

REMOVING DEAD PLANT MATERIAL: Contractor shall remove and dispose of all dead ornamental trees, shrubs, and ground cover during each scheduled visit. The contractor is responsible to notify the City to determine if a replacement is necessary. The City will determine type/size of replacement. Contractor is only responsible to remove dead ornamental plants as directed by the City.

IRRIGATION SYSTEMS: Contractor will use caution around sprinkler heads to minimize damage. The contractor shall be required to repair/replace any irrigation parts that are damaged during contractor activities. The City will be responsible for the costs to replace any irrigation parts that are stolen, damaged by acts of vandalism, vehicular damage or other unforeseen or unpreventable causes. All non-functional irrigation heads/systems shall be reported to the City after each mow.

EROSION: If there is noticeable erosion at any site the Contractor shall immediately notify the City of its location. The Contractor shall be responsible for any erosion damage caused by contractor's equipment or performance of duties.

EQUIPMENT: The Contractor shall have on hand, equipment to permit the Contractor to adequately and efficiently perform its contractual duties. All equipment shall always be

kept in good repair, appearance, and in a sanitary and clean condition. All equipment shall be cleaned of any debris after each site use and prior to moving to another site to prevent transfer of unwanted weeds, grasses, and/or fungus.

All vehicles shall have the name of the Contractor, business telephone number and the vehicle identification number not less than three (3) inches high on each side of the vehicle. The contractor may also place its corporate logo on the vehicles. No offensive or political stickers shall be affixed to any equipment utilized on City property. The Contractor shall supply the City with a listing of the vehicle numbers normally assigned to performance of duties and shall keep the list current.

All equipment shall be kept in good safe operating condition with sharp blades and no leaking of oil and gasoline.

EQUIPMENT STORAGE: The Contractor shall be responsible for storing all equipment and supplies off site. The City will not provide any storage space for the Contractor.

EQUIPMENT FUELING AND LUBRICATING: Mowers and power equipment shall be fueled and lubricated using proper tools and equipment. Any fuel or oil spills are the sole responsibility of the Contractor to clean up and / or remove at the Contractor's expense. Any damage to median plant material by such fuel or oil spills shall be replaced within three (3) days by Contractor at the Contractor's expense.

TRAFFIC REGULATION: The Contractor shall conform to Florida Department of Transportation Manual on Traffic Controls and Safe Practices for street and highway construction, maintenance, and utility operations. The Contractor shall provide and maintain adequate barricades, construction signs, flashers, guards, and flaggers as required on pedestrian and vehicular traffic areas. Lane closure to traffic is not permitted. Upon completion of work, contractor shall remove all debris, excess materials and barricades leaving medians and roadways clear of all obstructions.

SAFETY CONSIDERATIONS AND MAINTENANCE OF TRAFFIC (MOT): During mowing/maintenance operations, "MOWING" or "CAUTION MOWING OPERATIONS" signs must be placed on or near affected walkways and other traffic areas. All highway equipment used on right-of-way must be properly signed and equipped with working safety lights. The Contractor is responsible for compliance of all FDOT and OSHA rules and regulations. Within DOT rights-of-way, Maintenance of Traffic Plan (MOT) shall be prepared and implemented by the Contractor when required. All work shall be performed according to FDOT safety and signage recommendations as outlined in their Utility Accommodation Guide, Document Number 710-020-001-b.

- **All Personnel performing duties under this scope must Always wear safety vests.**

EXTRAORDINARY OCCURRENCES: It is agreed that in no event shall the City or Contractor be

liable or responsible to each other or any other person to perform work herein provided, where such stoppages or delays result from inclement weather, drought or excessive rain, acts of God, fire, or any other cause not within the control of the City and/or the Contractor.

CONTRACT PERFORMANCE: It is the intent of the City to ensure that the Contractor provides a quality level of landscape and ground maintenance services. All complaints will be reported to, and promptly resolved by the Contractor. The Contractor shall have twenty-four (24) hours to resolve any such complaints. The City may levy administrative charges for infractions by the Contractor at $100.00 per day per incident. Such infractions shall include, but not be limited to:

(a) Failure to resolve complaints within twenty-four (24) hour period.
(b) Failure to provide safe equipment.
(c) Failure to provide required documentation in a timely and accurate manner.
(d) Failure to report damage to irrigation system(s).
(e) Failure to report property damage or personal injury.
(f) Failure to remove all trash from site(s).
(g) Failure to perform scheduled service.
(h) Landscape employees not adhering to uniform/protective clothing requirements.

For the purpose of this section, the City may deduct any charges from payments due the Contractor. The City shall notify the Contractor in writing of any action to be taken. In the event the Contractor wishes to contest such assessment, the contractor shall submit a written protest within five (5) days after receiving such notice for an opportunity to be heard by the City and present a defense to such assessment. The City will notify the Contractor in writing of any action taken with respect to Contractor's claims. The decision of the City shall be final.

Based on limited funds, the City may eliminate certain contracted areas or groups in order to stay within the budget. The City may, at its discretion, add or delete similar sized areas as a result of construction or unanticipated impacts. Therefore, the City reserves the right to reject any and all the bids, eliminate areas from the contract and/or reduce maintenance to any given area when it is in the City's best interest.

INVOICING: Payment shall be determined monthly based on sites inspected and verified. A template will be provided to the contractor, from the City, by Excel format. The template will detail and itemize the contractor’s service areas for the month.

***DEDUCTIONS will occur if areas are not completed upon inspection and invoice has been submitted**.

Contract Time: This contract is for 12 months with no renewal options.

SUPERVISION: The Contractor shall be responsible for all personnel and supervision required in performing work in accordance with these specifications. Supervision will be required for all working hours of the contract.

The Contractor shall comply with all City regulations.

Contractor shall notify the City (via fax, e-mail or in person) daily when the specified scheduled services are fully completed. This is to allow the City to inspect for contract compliance and authorization for scheduled payments. City approved representatives of the Contractor shall be available to meet with the City as required to accomplish the City's objectives. All meetings with the City will be at no charge.

CONTACT PERSON: The Contractor shall provide the name and telephone number of a contact person in case of an emergency. The Contractor shall provide the name and telephone number of a representative to meet periodically with the City. The City reserves the right to accept or reject any employee of the Contractor.

All personnel must be visible as Contractor's employee(s) by uniform while on City property. The Contractor's work force shall be neat and clean in appearance and shall wear identification. Identification shall include the employee's name and company name.

Exhibit A

City Properties to be serviced:

CLASS C Maintenance
Pumping Stations – Area to be serviced varies with location. (0.5-2.0 acres)

NAME	ADDRESS
Cypress Head (Cypress Head Pump Station)	6262 S. Williamson Blvd
Major Street (Peninsula Pump Station)	4270 S. Atlantic Ave
Ridge Road (Oceans Pump Station)	2842 Ridge Rd.
Williamson Reclaimed Tank	5955 S. Williamson Blvd
Garnsey Water Plant	4400 Wellfield Drive.
Reclaimed Water Plant & Lab	817 Oak Street

CLASS C Maintenance
Augmentation Stations – Area to be serviced (0.25 acre)

NAME	ADDRESS
Richel Street Stormwater Station	1098 Richel Dr.

CLASS D Maintenance
Lift Stations – Average lot size is 30'x30'

NAME	ADDRESS
Brandy Hills	1380 THOMPKINS DR, LS-44
City Hall	2015 CITY CENTER CIR, LS-58
Ravenwood	2 WOODSIDE DR, LS-30
Atlantic High	1250 REED CANAL RD, LS-12
Herbert & Nova	3655 S NOVA RD, LS-39
Samm Ave	980 CANALVIEW BLVD, LS-59
Los Olas	37 MAR AZUL NORTH, LS-162
Laurelwood	717 LAREDO DR, LS-33
Golden Pond	6200 SPRUCE CREEK RD, LS-34
Beacon Woods	3634 DONNA ST, LS-19
Glenwood Village	4692 HIDDEN LAKE DR, LS-55
Carwash	1784 DUNLAWTON AVE, LS-61
Cambridge Estates	220 N BRIGHTON, LS-18
Lowes	5401 YORKTOWNE BLVD, LS-82
Halifax Estates	1206 SPARTON AVE, LS-9
Riverwood	6148 DEL MAR DR, LS-48
Falconcrest	6043 SPRUCE CREEK RD, LS-65
Hawks Ridge	782 OSPREY DR, LS-47
Sky Lake	5932 BOGGS FORD RD, LS-74
Water's Edge	1698 CREEKWATER BLVD, LS-38
Baywood	401 BAYWOOD CIR, LS-76

Seagull Landing	**4431 PENINSULA DR, LS-157**
Deep Forest	**919 TREE GARDEN RD, LS-27**
Foxboro	**5561 MILES DR, LS-71**
Riverside Drive	**5801 RIVERSIDE DR, LS-79**
Summertree	**5950 S WILLIAMSON BLVD, LS-24**
Cypress Head	**6410 CYPRESS SPRING PARK, LS-8**
Sable Creek	**6103 SABAL CREEK BLVD, LS-15**
Surfside Terrace	**3601 SURFSIDE TERR, LS-153**
Cardinal Blvd	**3812 CARDINAL BLVD, LS-154**
Venetian Way	**230 S VENETIAN WAY, LS-155**
Ponce Inlet Master	**4668 S PENINSULA DR, LS-159**
Oceans Ave	**86 OCEAN WAY, LS-164**
Intracoastal Villas	**3333 RIDGEWOOD AVE, LS-70**
Charles Street	**1000 CHARLES ST, LS-5**
Nixon	**850 NIXON LN, LS-10**
Sugar Forest	**800 SUGAR HOUSE DR, LS-40**
Southwind	**1481 MADELINE AVE, LS-49**
Commonwealth	**114 COMMONWEALTH BLVD, LS-81**
Lamplighter	**3202 S NOVA RD, LS-41**
Townhomes West	**3532 CREEKSIDE RD, LS-64**
Willow Run #1	**1105 WILLOW RUN BLVD, LS-36**
Willow Run #2	**1271 ROBIN DR, LS-50**
Oakland Park	**432 BRAHMA LN, LS-69**
The Woods	**469 APPLE COURT, LS-35**
Cambridge	**445 WILTSHIRE, LS-23**
Bayshore #1	**5479 WEST BAYSHORE DR, LS-66**
Bayshore #2	**5539 WEST BAYSHORE DR, LS-67**
Lancewood	**5658 LANCEWOOD DR, LS-63**
Christiancy	**5403 CHRISTIANCLY AVE, LS-11**
Anglers	**4863 ORANGE BLVD, LS-62**
Spruce Creek High School	**791 TAYLOR RD, LS-21**
Countryside	**633 TAYLOR RD, LS-46**
Vineyards	**1480 TAYLOR RD, LS-17**
Cypress Head	**6251 S. Williamson Blvd LS-3**
Pavillion	**5433 S. Williamson Blvd LS-83**
Plantation 1	**1508 McGinnis Ave LS-85**
Plantation 2	**1771 Town West Blvd LS-88**
Bourbon	**3660 Bourbon Street LS-93**
Sunset Cove	**3885 Sunset Cove Dr. LS-90**
Buttermilk	**1151 Buttermilk Ln. LS-92**
WaterEdge	**6872 Forkmead Ln LS-91**
Brown Landing	**1823 Deens Creek Ln LS-96**

Herbert & Nova	**3665 S. Nova Rd**

CLASS E Maintenance
Additional locations Area to be serviced varies with location. (0.1-0.75 acres)

NAME	ADDRESS
North Brighton Ave Property	**220 N. Brighton Ave**
Buschman Park Lift Station	**4560 Spruce Creek Rd**
Enviro Control Site	**5100 Spruce Creek Rd**
Old Water Tower Site	**5730 Spruce Creek Rd**
Empty Lot	**5797 Devon Street**

Exhibit B

Location Maps

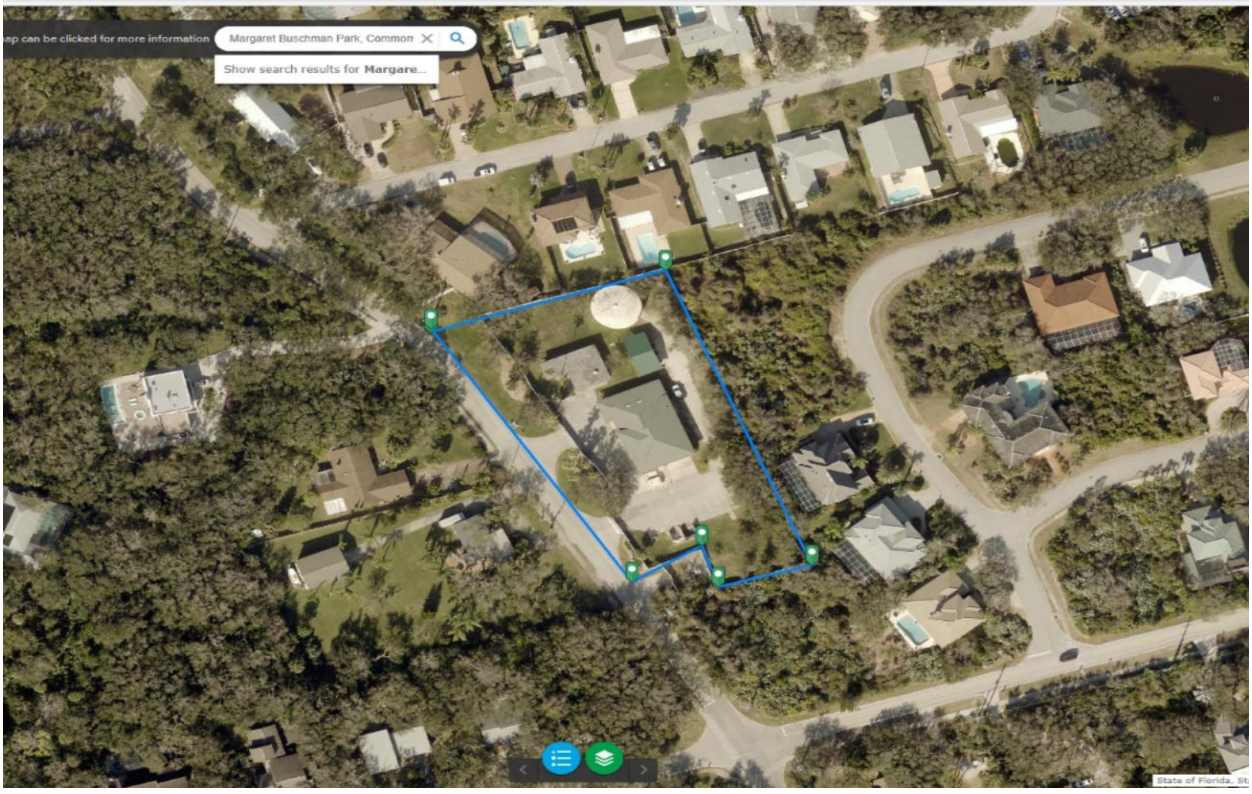
Cypress Head Pump Station



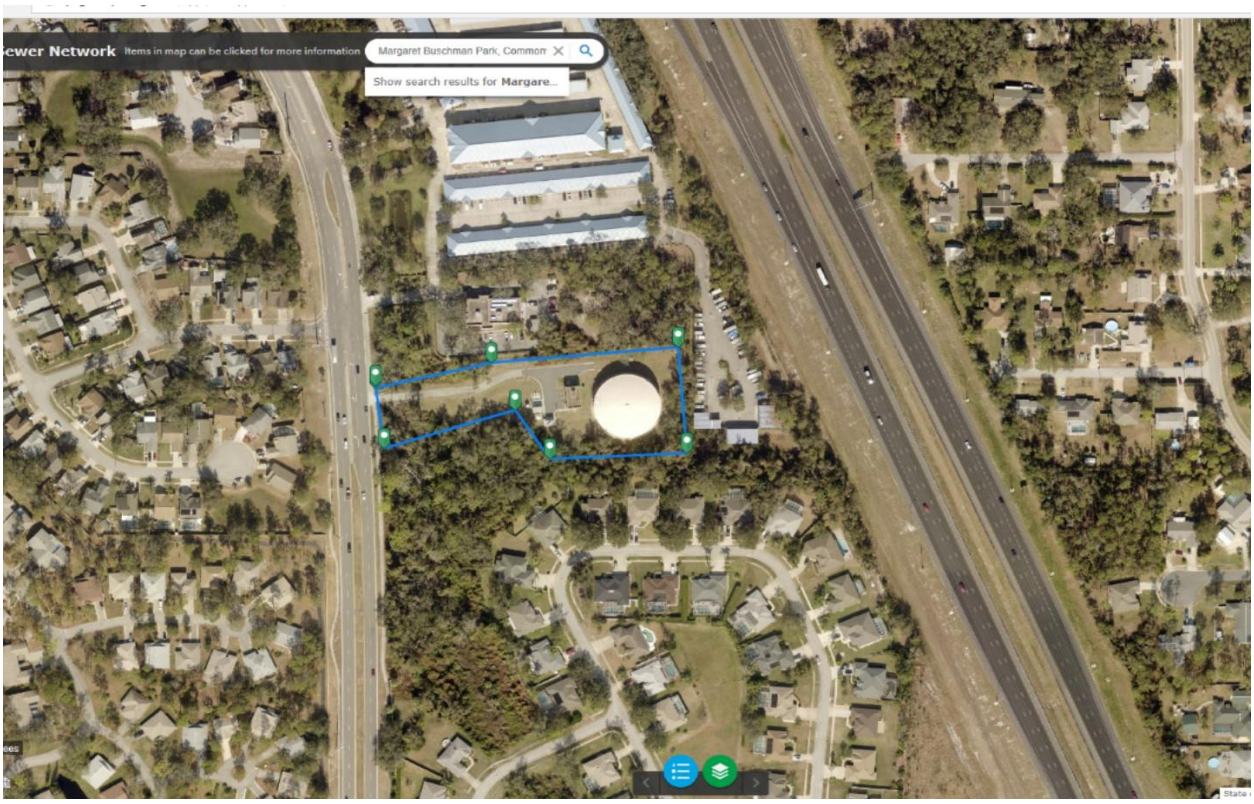
Major Pump Station (Peninsula Pump Station)



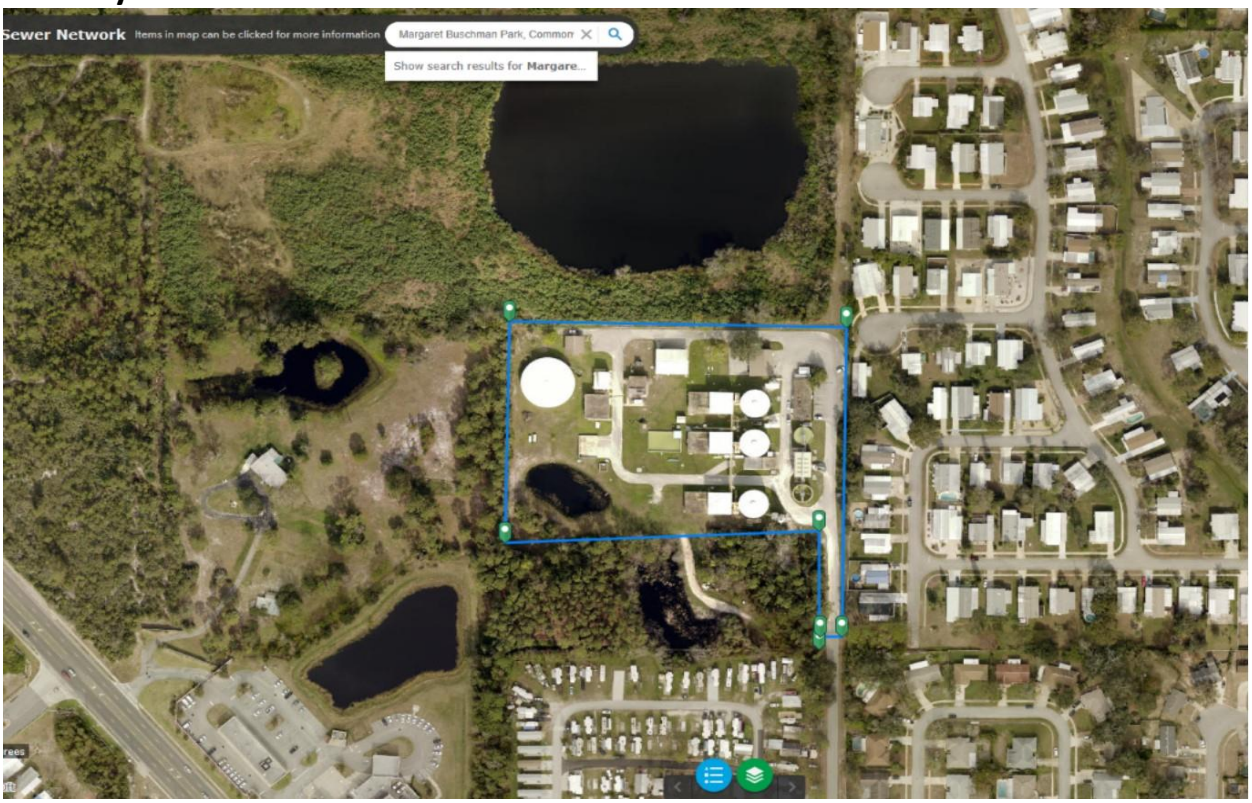
Ridge Rd Pump Station (Oceans Pump Station)



Williamson Pump Station



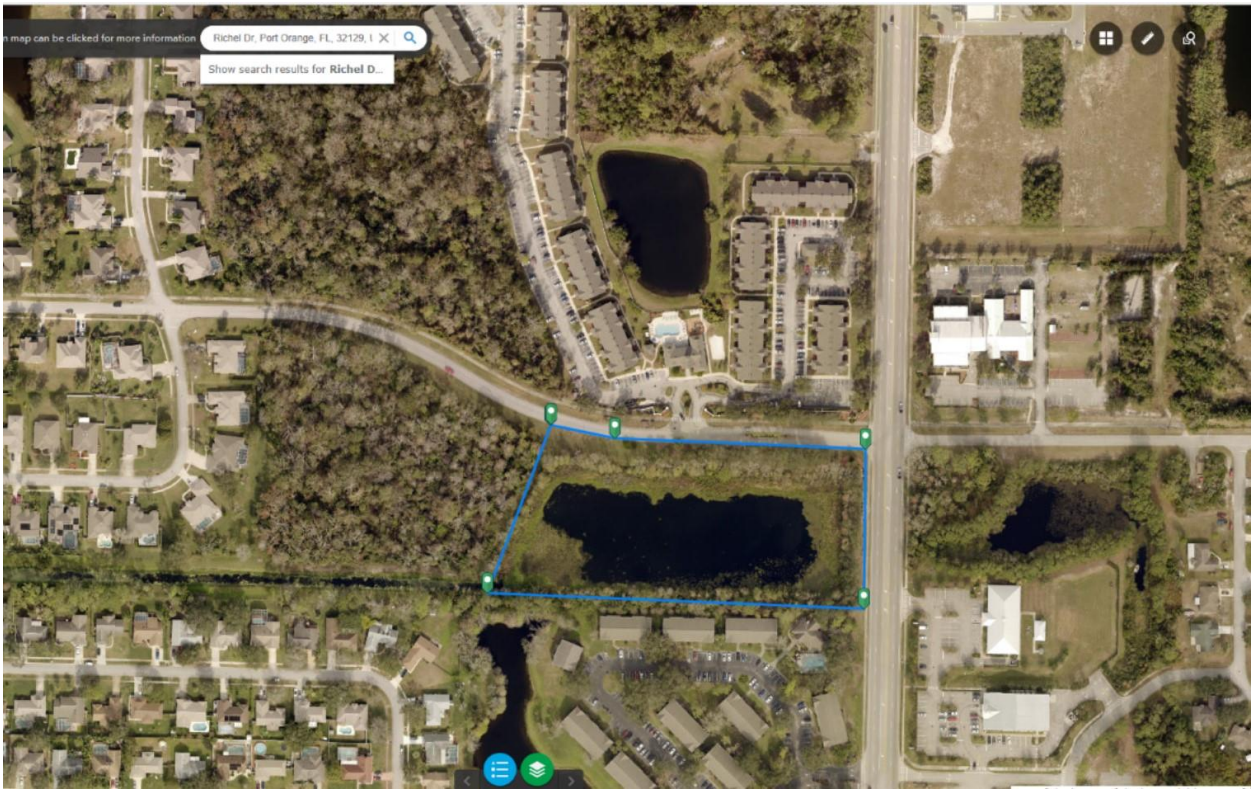
Garnsey Water Plant



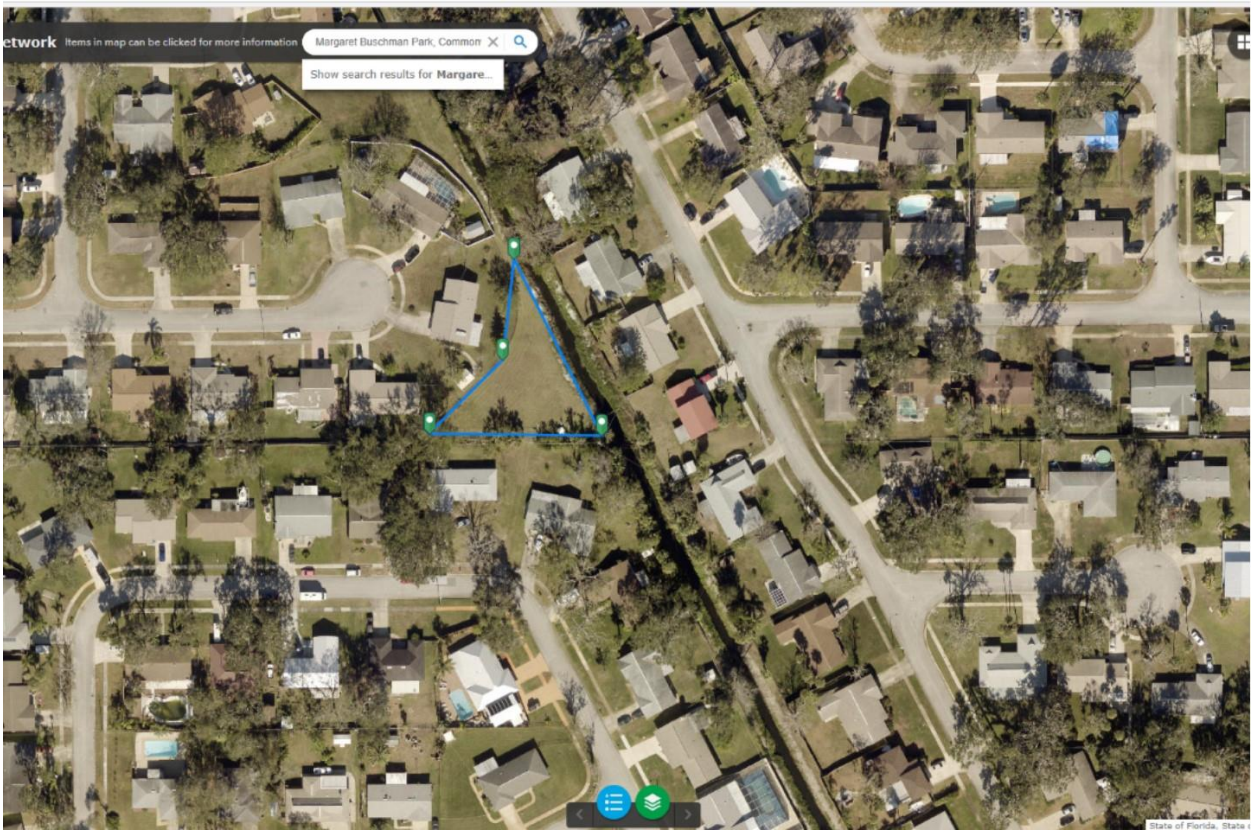
Water Reclamation Facility



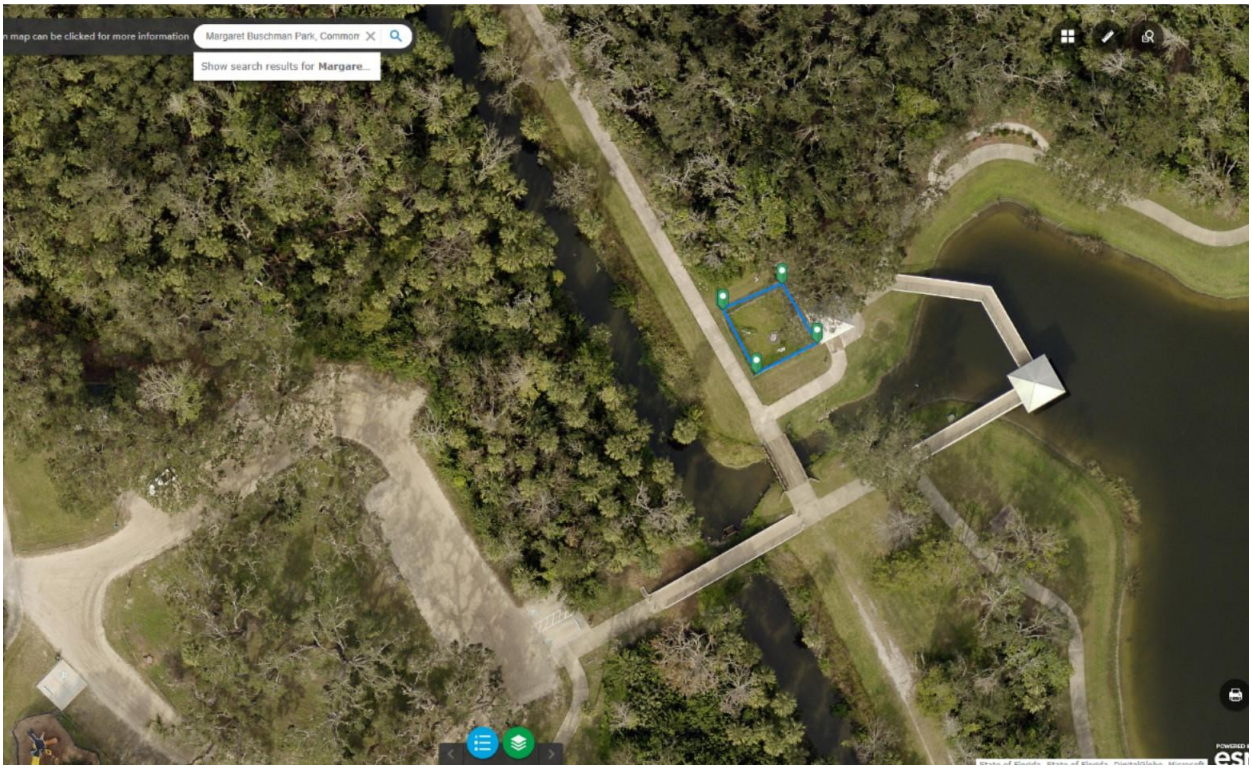
Richel Drive



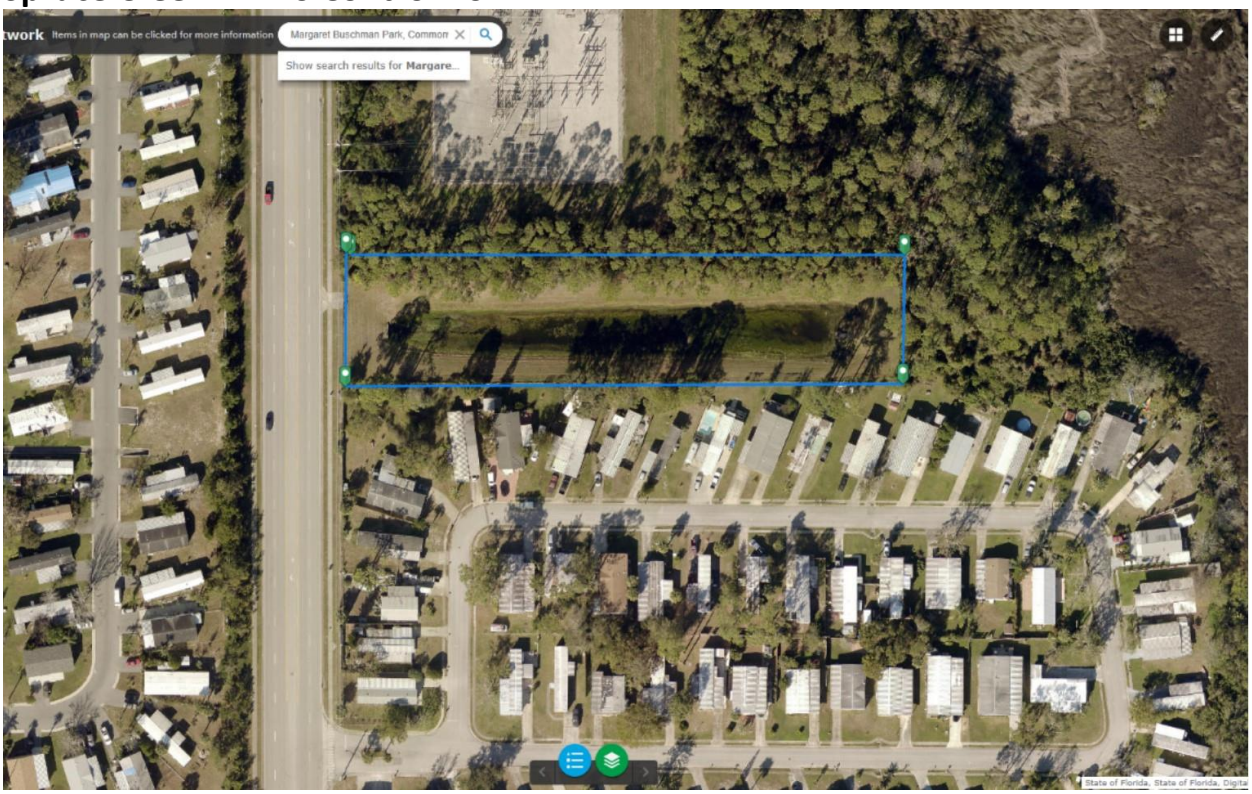
North Brighton Ave



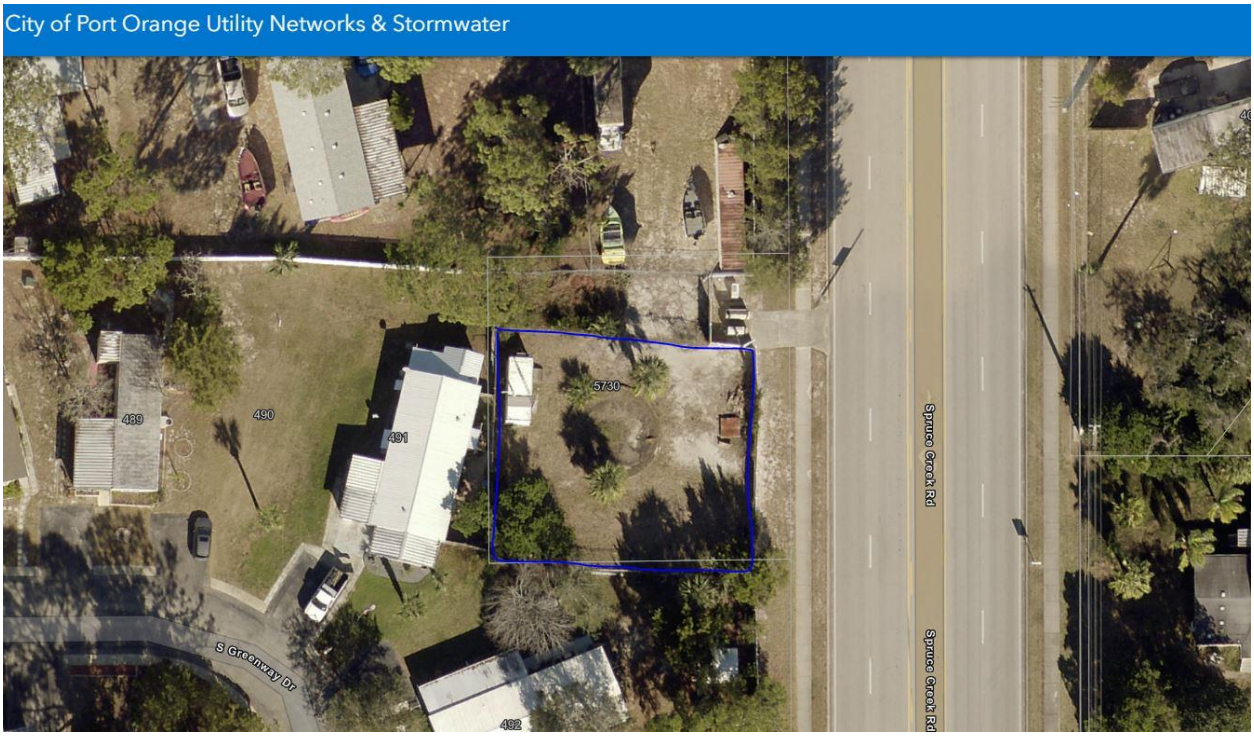
Buschman Park



Spruce Creek Enviro Control Box



Old Water Tower Site



City of Port Orange
Public Works Department

TO: Wayne Clark, City Manager

FROM: Steve Parnell, Public Utilities Director
Chris Wall, Deputy Director of Public Utilities

DATE: April 2, 2025

SUBJECT: Public Utilities Landscaping Maintenance Contract with G&G Outdoors

REQUEST:
The Public Utilities Department requests approval of a contract with G&G Outdoors, 4059 Quail Nest Lane, New Smyrna Beach, Fl 32168 in the amount of $62,644.20 for Public Utilities Landscape Maintenance.

PURPOSE:
The purpose of this request is to perform landscaping maintenance at Public Utilities treatment facilities and lift stations.

CONSIDERATION:
Staff provided a scope of services to several local landscaping contractors for the Public Utilities Landscaping Maintenance of city treatment facilities and lift stations. Staff received four responses to the request for quote. G&G Outdoors was deemed the lowest responsive bidder at $62,644.20. The quote is for one year of landscaping maintenance with no renewal options. G&G Outdoors currently performing landscaping services at the Police Range and staff is recommending award of a one-year contract for Public Utilities Landscaping Maintenance with G&G Outdoors.

FUNDING:
GL Account: 401-8006-536-53406

RECOMMENDATION:
The Public Utilities Department recommends approval of a contract with G&G Outdoors, 4059 Quail Nest Lane, New Smyrna Beach, Fl 32168 in the amount of $62,644.20 for Public Utilities Landscape Maintenance.

ANTICIPATED SCHEDULE:
a.) Item uploaded to Contract Management

ATTACHMENTS:

a.) Scope of Services
b.) Quotations
c.) COI

Public Utilities Landscape Maintenance Services

SCOPE OF WORK AND SPECIFICATIONS

STATEMENT OF RESPONSIBILITIES: The Contractor shall be responsible for providing machinery, equipment, tools, materials, labor, supervision, transportation, supplies, insurance, proper safety measures and all incidentals necessary to provide and perform grounds maintenance services to Public Utilities treatment facilities, lift stations and other City owned easements.

MAINTENANCE CLASSES: Because each location requires different levels of service, three classifications of service have been developed. Each classification and number of service visits is listed in Exhibit A.

Each class provides a general representation of the frequency of turf grass mowings / cuts and other landscape related maintenance tasks. Debris cleanup, edging, blowing, string trimming, weeding, and other tasks must be performed with each scheduled visit.

Please note, while the City has provided the approximate acre measurements on each area covered under this contract, these measurements are APPROXIMATE only. Contractor awarded bid shall be responsible for all maintenance required in each respective area. The non-mandatory pre-bid meeting will include site visits to EACH area. It is highly recommended that each bidder attends the non-mandatory meeting. **Pictures of the larger locations of each area to be serviced are included in Exhibit B.**

Class "C" Maintenance - *Number of Site Visits*: A total of thirty-three (33) maintenance visits shall be provided each calendar year. During the peak grow season (April 1 through October 31) each class "C" location shall be serviced twenty-three (23) times. The remaining months each location will be serviced twice per month (10 visits).

Class "D" Maintenance – *Number of Site Visits:* A total of twenty-four (24) maintenance visits shall be provided each calendar year. Each class "D" location shall be serviced twice per month.

Class "E" Maintenance - *Number of Site Visits:* A total of twelve (12) maintenance visits shall be provided each calendar year. Each class "E" location shall be serviced once per month.

Because the grow season can be unpredictable, the City reserves the right to require addition site services upon request. The City understands that this additional service would be at the

City's expense. The price for additional service will be consistent with bid prices listed for each location on the bid tab form.

Minimum Level of Service Required for Each Site:

TRASH / DEBRIS CLEANUP: The Contractor shall be responsible for removing all litter and debris prior to mowing from all turf grass areas, parking areas, sidewalks, mulch landscape areas, and shorelines, shall be removed. This includes, but is not limited to; paper, bottles, cans, palm fronds tree limbs. The Contractor is responsible for disposal of trash and debris in accordance with all federal, state, and local laws, rules and regulations. In the event of a hurricane the Contractor is not responsible for removing debris that is beyond the scope listed above. Fallen trees, fences, and large debris will be the responsibility of the City.

MOWING OF TURF GRASS AREAS: All turf grass areas within specified facilities. Mowing of trash and debris to shred into smaller pieces is not allowed.

All turf grass areas shall be mowed as specified in this document. The grass shall not be cut so low as to damage or stress the grass and shall not be allowed to reach a height of six (6) inches or more unless otherwise requested by the City. Contractor shall use a sharp blade to prevent burning the grasses. However, heights shall be as follows:

Heights may vary per location.

- St. Augustine –3-3.5 inches
- Argentine Bahia – 3 inches
- Bermuda and Zoysia – 1-2 inches

Areas where large mowers are impractical shall be serviced using small push mowers or string trimmers. Mowing of wet turf grass shall be avoided unless permission is authorized by the City. The Contractor shall leave surrounding areas in a clean condition free of accumulated debris, including but not limited to grass clippings, after each mowing. Large clumps of clippings will be distributed by mechanical blowing or collected and removed. Blowing debris into storm drains, streets, or ponds is prohibited. Materials removed from grounds shall be disposed of off-site by the Contractor in a lawful manner.

MAINTENANCE OF CONCRETE AREAS: Concrete areas include but are not limited to: sidewalks, curbs, driveways, aprons, drainage outfalls, gutters, concrete medians, concrete tips, and the joint where concrete meets asphalt. These areas shall be kept free of ALL debris including **crack grass** from right of way to right of way.

EDGING OF TURF GRASS: Contractor shall edge all appropriate surfaces with suitable mechanical equipment, i.e. a mechanical edger. In the event the service area is unable to be serviced with an edger, a string trimmer shall be used. These areas are including, but not limited to roadways, driveways, curbs, parking areas, walkways, fences, plant beds and tree wells, so that no grass,

ground cover or weeds are left extending beyond or over the surface being edged. This includes edging between adjoining beds of dissimilar ground cover types. Edging should not be more than 3 inches from the mulch of plant beds and tree wells. **Chemical edging of plant beds and tree wells is not permitted.** Contractor shall leave surrounding areas in a clean condition free of accumulated debris, including but not limited to grass, after edging.

STRING TRIMMING OF TURF GRASS: Final string trimming around permanent objects such as metal posts and concrete curbing shall be accomplished with suitable mechanical equipment and at the same cutting heights as the rest of the turf areas. String trimming around tree trunks with mechanical devices is prohibited. Non-mechanical means must be utilized where string trimming may damage wooden posts, decorative light poles or City property. Ponds, lakes, and ditches(swales) **MUST** be string trimmed to the water line.
*Areas where crack grass is present, **MUST** be string trimmed (burned down) and then chemically sprayed to deter new weed growth.
*Areas where growth in swales that are unable to be mowed at time of service, a string trimmer **MUST** be used to trim to water height.

BLOWING OF DEBRIS AND TURF GRASS CUTTINGS: Contractor shall blow all appropriate surfaces with suitable mechanical equipment including, but not limited to roadways, driveways, curbs, parking areas, walkways, turf grass areas, plant beds and tree wells as required to leave the area clean and free of debris. Grass clippings and other organic debris **shall not** be blown into the roadway, ponds, lakes, or storm drains.
*Clumping of turf grass is NOT permitted. If clumping occurs, the contractor **MUST** blow to disperse, mulch the clumping, or rake and remove the debris.

REMOVING DEAD PLANT MATERIAL: Contractor shall remove and dispose of all dead ornamental trees, shrubs, and ground cover during each scheduled visit. The contractor is responsible to notify the City to determine if a replacement is necessary. The City will determine type/size of replacement. Contractor is only responsible to remove dead ornamental plants as directed by the City.

IRRIGATION SYSTEMS: Contractor will use caution around sprinkler heads to minimize damage. The contractor shall be required to repair/replace any irrigation parts that are damaged during contractor activities. The City will be responsible for the costs to replace any irrigation parts that are stolen, damaged by acts of vandalism, vehicular damage or other unforeseen or unpreventable causes. All non-functional irrigation heads/systems shall be reported to the City after each mow.

EROSION: If there is noticeable erosion at any site the Contractor shall immediately notify the City of its location. The Contractor shall be responsible for any erosion damage caused by contractor's equipment or performance of duties.

EQUIPMENT: The Contractor shall have on hand, equipment to permit the Contractor to adequately and efficiently perform its contractual duties. All equipment shall always be

kept in good repair, appearance, and in a sanitary and clean condition. All equipment shall be cleaned of any debris after each site use and prior to moving to another site to prevent transfer of unwanted weeds, grasses, and/or fungus.

All vehicles shall have the name of the Contractor, business telephone number and the vehicle identification number not less than three (3) inches high on each side of the vehicle. The contractor may also place its corporate logo on the vehicles. No offensive or political stickers shall be affixed to any equipment utilized on City property. The Contractor shall supply the City with a listing of the vehicle numbers normally assigned to performance of duties and shall keep the list current.

All equipment shall be kept in good safe operating condition with sharp blades and no leaking of oil and gasoline.

EQUIPMENT STORAGE: The Contractor shall be responsible for storing all equipment and supplies off site. The City will not provide any storage space for the Contractor.

EQUIPMENT FUELING AND LUBRICATING: Mowers and power equipment shall be fueled and lubricated using proper tools and equipment. Any fuel or oil spills are the sole responsibility of the Contractor to clean up and / or remove at the Contractor's expense. Any damage to median plant material by such fuel or oil spills shall be replaced within three (3) days by Contractor at the Contractor's expense.

TRAFFIC REGULATION: The Contractor shall conform to Florida Department of Transportation Manual on Traffic Controls and Safe Practices for street and highway construction, maintenance, and utility operations. The Contractor shall provide and maintain adequate barricades, construction signs, flashers, guards, and flaggers as required on pedestrian and vehicular traffic areas. Lane closure to traffic is not permitted. Upon completion of work, contractor shall remove all debris, excess materials and barricades leaving medians and roadways clear of all obstructions.

SAFETY CONSIDERATIONS AND MAINTENANCE OF TRAFFIC (MOT): During mowing/maintenance operations, "MOWING" or "CAUTION MOWING OPERATIONS" signs must be placed on or near affected walkways and other traffic areas. All highway equipment used on right-of-way must be properly signed and equipped with working safety lights. The Contractor is responsible for compliance of all FDOT and OSHA rules and regulations. Within DOT rights-of-way, Maintenance of Traffic Plan (MOT) shall be prepared and implemented by the Contractor when required. All work shall be performed according to FDOT safety and signage recommendations as outlined in their Utility Accommodation Guide, Document Number 710-020-001-b.

- **All Personnel performing duties under this scope must Always wear safety vests.**

EXTRAORDINARY OCCURRENCES: It is agreed that in no event shall the City or Contractor be

liable or responsible to each other or any other person to perform work herein provided, where such stoppages or delays result from inclement weather, drought or excessive rain, acts of God, fire, or any other cause not within the control of the City and/or the Contractor.

CONTRACT PERFORMANCE: It is the intent of the City to ensure that the Contractor provides a quality level of landscape and ground maintenance services. All complaints will be reported to, and promptly resolved by the Contractor. The Contractor shall have twenty-four (24) hours to resolve any such complaints. The City may levy administrative charges for infractions by the Contractor at $100.00 per day per incident. Such infractions shall include, but not be limited to:

(a) Failure to resolve complaints within twenty-four (24) hour period.
(b) Failure to provide safe equipment.
(c) Failure to provide required documentation in a timely and accurate manner.
(d) Failure to report damage to irrigation system(s).
(e) Failure to report property damage or personal injury.
(f) Failure to remove all trash from site(s).
(g) Failure to perform scheduled service.
(h) Landscape employees not adhering to uniform/protective clothing requirements.

For the purpose of this section, the City may deduct any charges from payments due the Contractor. The City shall notify the Contractor in writing of any action to be taken. In the event the Contractor wishes to contest such assessment, the contractor shall submit a written protest within five (5) days after receiving such notice for an opportunity to be heard by the City and present a defense to such assessment. The City will notify the Contractor in writing of any action taken with respect to Contractor's claims. The decision of the City shall be final.

Based on limited funds, the City may eliminate certain contracted areas or groups in order to stay within the budget. The City may, at its discretion, add or delete similar sized areas as a result of construction or unanticipated impacts. Therefore, the City reserves the right to reject any and all the bids, eliminate areas from the contract and/or reduce maintenance to any given area when it is in the City's best interest.

INVOICING: Payment shall be determined monthly based on sites inspected and verified. A template will be provided to the contractor, from the City, by Excel format. The template will detail and itemize the contractor’s service areas for the month.

***DEDUCTIONS will occur if areas are not completed upon inspection and invoice has been submitted**.

Contract Time: This contract is for 12 months with no renewal options.

SUPERVISION: The Contractor shall be responsible for all personnel and supervision required in performing work in accordance with these specifications. Supervision will be required for all working hours of the contract.

The Contractor shall comply with all City regulations.

Contractor shall notify the City (via fax, e-mail or in person) daily when the specified scheduled services are fully completed. This is to allow the City to inspect for contract compliance and authorization for scheduled payments. City approved representatives of the Contractor shall be available to meet with the City as required to accomplish the City's objectives. All meetings with the City will be at no charge.

CONTACT PERSON: The Contractor shall provide the name and telephone number of a contact person in case of an emergency. The Contractor shall provide the name and telephone number of a representative to meet periodically with the City. The City reserves the right to accept or reject any employee of the Contractor.

All personnel must be visible as Contractor's employee(s) by uniform while on City property. The Contractor's work force shall be neat and clean in appearance and shall wear identification. Identification shall include the employee's name and company name.

Exhibit A

City Properties to be serviced:

CLASS C Maintenance
Pumping Stations – Area to be serviced varies with location. (0.5-2.0 acres)

NAME	ADDRESS
Cypress Head (Cypress Head Pump Station)	6262 S. Williamson Blvd
Major Street (Peninsula Pump Station)	4270 S. Atlantic Ave
Ridge Road (Oceans Pump Station)	2842 Ridge Rd.
Williamson Reclaimed Tank	5955 S. Williamson Blvd
Garnsey Water Plant	4400 Wellfield Drive.
Reclaimed Water Plant & Lab	817 Oak Street

CLASS C Maintenance
Augmentation Stations – Area to be serviced (0.25 acre)

NAME	ADDRESS
Richel Street Stormwater Station	1098 Richel Dr.

CLASS D Maintenance
Lift Stations – Average lot size is 30'x30'

NAME	ADDRESS
Brandy Hills	1380 THOMPKINS DR, LS-44
City Hall	2015 CITY CENTER CIR, LS-58
Ravenwood	2 WOODSIDE DR, LS-30
Atlantic High	1250 REED CANAL RD, LS-12
Herbert & Nova	3655 S NOVA RD, LS-39
Samm Ave	980 CANALVIEW BLVD, LS-59
Los Olas	37 MAR AZUL NORTH, LS-162
Laurelwood	717 LAREDO DR, LS-33
Golden Pond	6200 SPRUCE CREEK RD, LS-34
Beacon Woods	3634 DONNA ST, LS-19
Glenwood Village	4692 HIDDEN LAKE DR, LS-55
Carwash	1784 DUNLAWTON AVE, LS-61
Cambridge Estates	220 N BRIGHTON, LS-18
Lowes	5401 YORKTOWNE BLVD, LS-82
Halifax Estates	1206 SPARTON AVE, LS-9
Riverwood	6148 DEL MAR DR, LS-48
Falconcrest	6043 SPRUCE CREEK RD, LS-65
Hawks Ridge	782 OSPREY DR, LS-47
Sky Lake	5932 BOGGS FORD RD, LS-74
Water's Edge	1698 CREEKWATER BLVD, LS-38
Baywood	401 BAYWOOD CIR, LS-76

Seagull Landing	**4431 PENINSULA DR, LS-157**
Deep Forest	**919 TREE GARDEN RD, LS-27**
Foxboro	**5561 MILES DR, LS-71**
Riverside Drive	**5801 RIVERSIDE DR, LS-79**
Summertree	**5950 S WILLIAMSON BLVD, LS-24**
Cypress Head	**6410 CYPRESS SPRING PARK, LS-8**
Sable Creek	**6103 SABAL CREEK BLVD, LS-15**
Surfside Terrace	**3601 SURFSIDE TERR, LS-153**
Cardinal Blvd	**3812 CARDINAL BLVD, LS-154**
Venetian Way	**230 S VENETIAN WAY, LS-155**
Ponce Inlet Master	**4668 S PENINSULA DR, LS-159**
Oceans Ave	**86 OCEAN WAY, LS-164**
Intracoastal Villas	**3333 RIDGEWOOD AVE, LS-70**
Charles Street	**1000 CHARLES ST, LS-5**
Nixon	**850 NIXON LN, LS-10**
Sugar Forest	**800 SUGAR HOUSE DR, LS-40**
Southwind	**1481 MADELINE AVE, LS-49**
Commonwealth	**114 COMMONWEALTH BLVD, LS-81**
Lamplighter	**3202 S NOVA RD, LS-41**
Townhomes West	**3532 CREEKSIDE RD, LS-64**
Willow Run #1	**1105 WILLOW RUN BLVD, LS-36**
Willow Run #2	**1271 ROBIN DR, LS-50**
Oakland Park	**432 BRAHMA LN, LS-69**
The Woods	**469 APPLE COURT, LS-35**
Cambridge	**445 WILTSHIRE, LS-23**
Bayshore #1	**5479 WEST BAYSHORE DR, LS-66**
Bayshore #2	**5539 WEST BAYSHORE DR, LS-67**
Lancewood	**5658 LANCEWOOD DR, LS-63**
Christiancy	**5403 CHRISTIANCLY AVE, LS-11**
Anglers	**4863 ORANGE BLVD, LS-62**
Spruce Creek High School	**791 TAYLOR RD, LS-21**
Countryside	**633 TAYLOR RD, LS-46**
Vineyards	**1480 TAYLOR RD, LS-17**
Cypress Head	**6251 S. Williamson Blvd LS-3**
Pavillion	**5433 S. Williamson Blvd LS-83**
Plantation 1	**1508 McGinnis Ave LS-85**
Plantation 2	**1771 Town West Blvd LS-88**
Bourbon	**3660 Bourbon Street LS-93**
Sunset Cove	**3885 Sunset Cove Dr. LS-90**
Buttermilk	**1151 Buttermilk Ln. LS-92**
WaterEdge	**6872 Forkmead Ln LS-91**
Brown Landing	**1823 Deens Creek Ln LS-96**

Herbert & Nova	**3665 S. Nova Rd**

CLASS E Maintenance
Additional locations Area to be serviced varies with location. (0.1-0.75 acres)

NAME	ADDRESS
North Brighton Ave Property	**220 N. Brighton Ave**
Buschman Park Lift Station	**4560 Spruce Creek Rd**
Enviro Control Site	**5100 Spruce Creek Rd**
Old Water Tower Site	**5730 Spruce Creek Rd**
Empty Lot	**5797 Devon Street**

Exhibit B

Location Maps

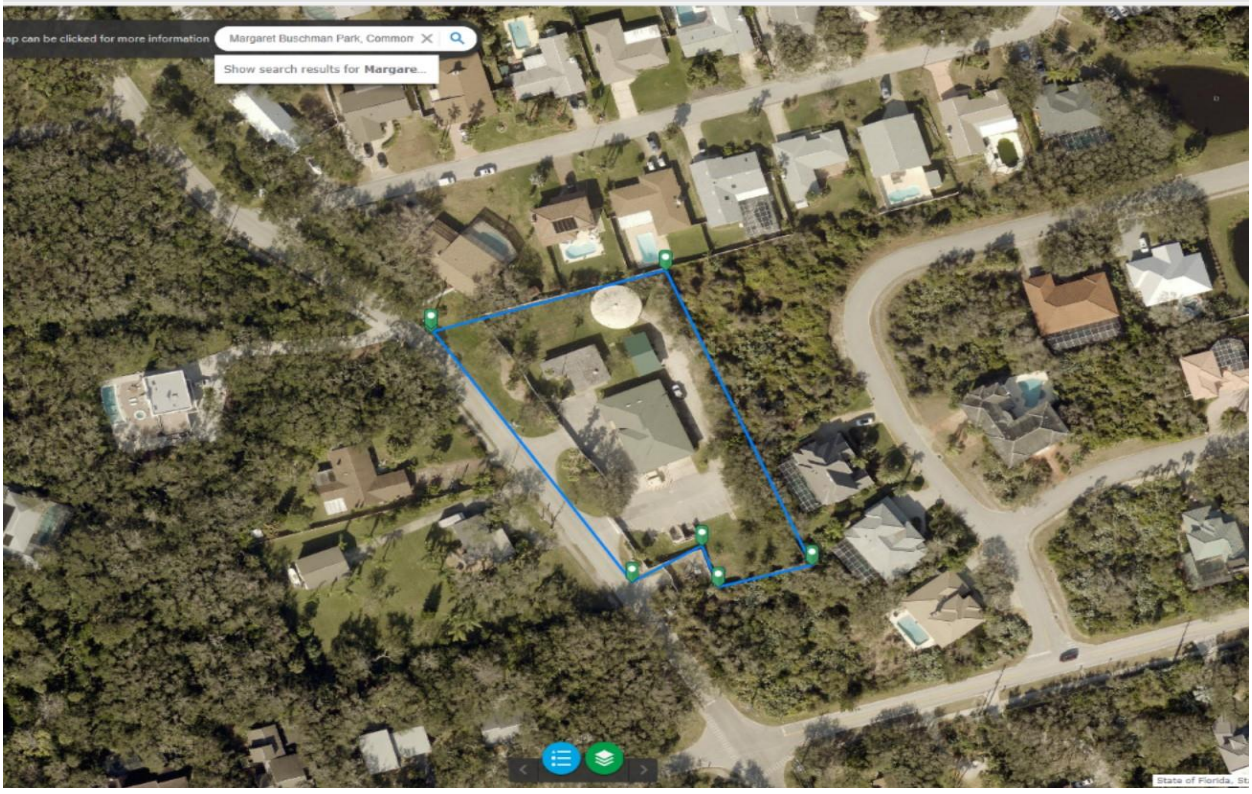
Cypress Head Pump Station



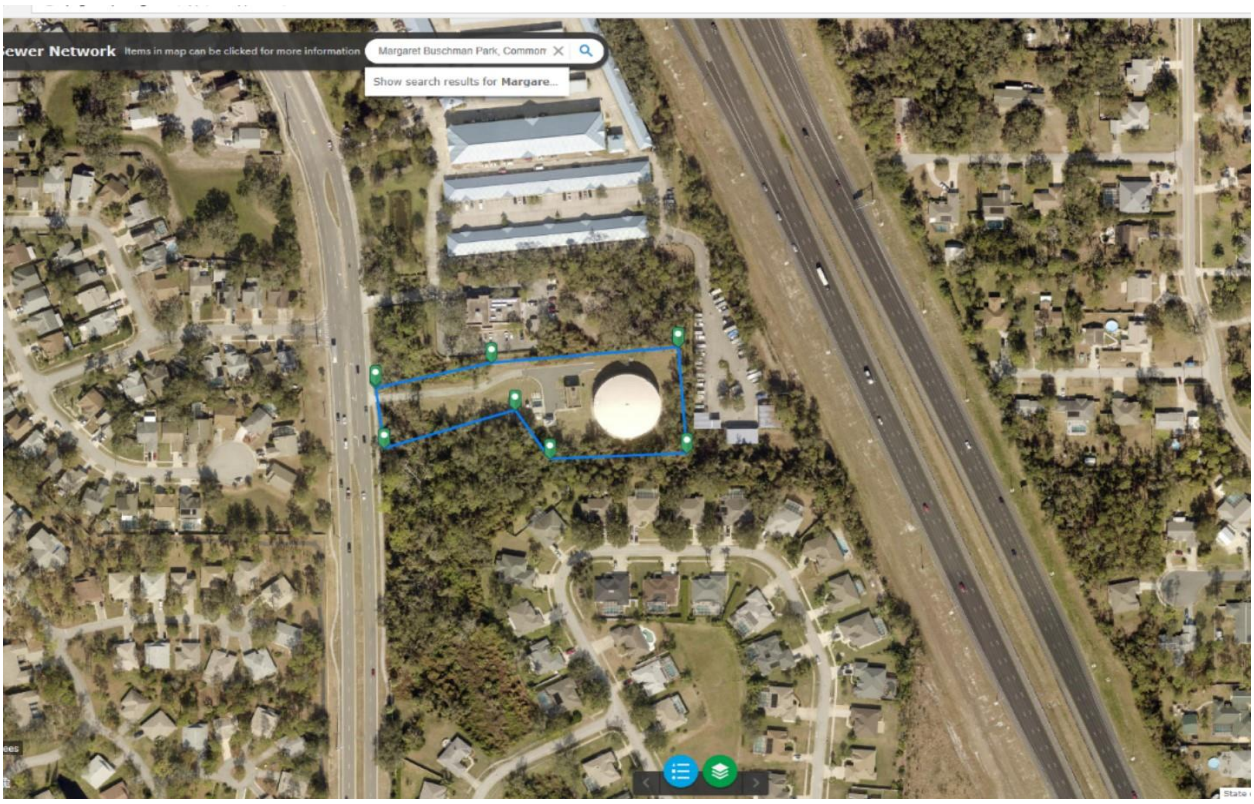
Major Pump Station (Peninsula Pump Station)



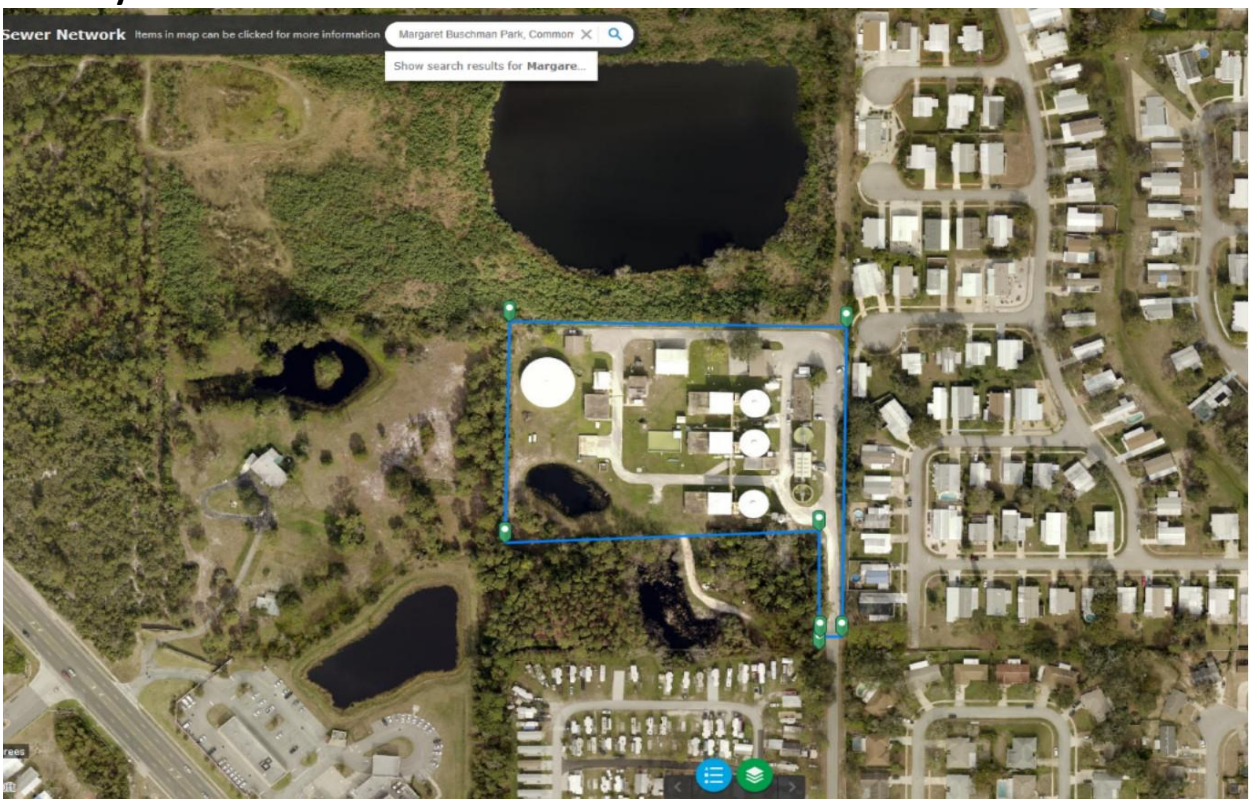
Ridge Rd Pump Station (Oceans Pump Station)



Williamson Pump Station



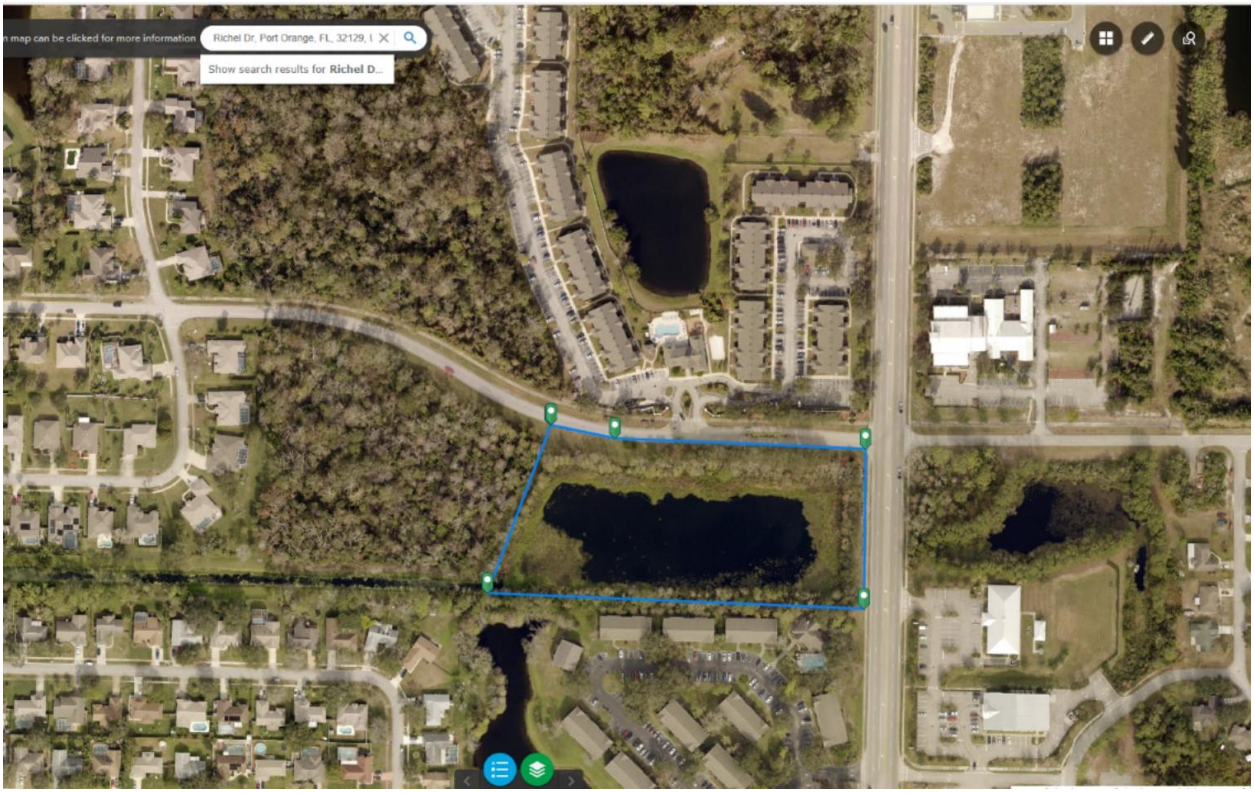
Garnsey Water Plant



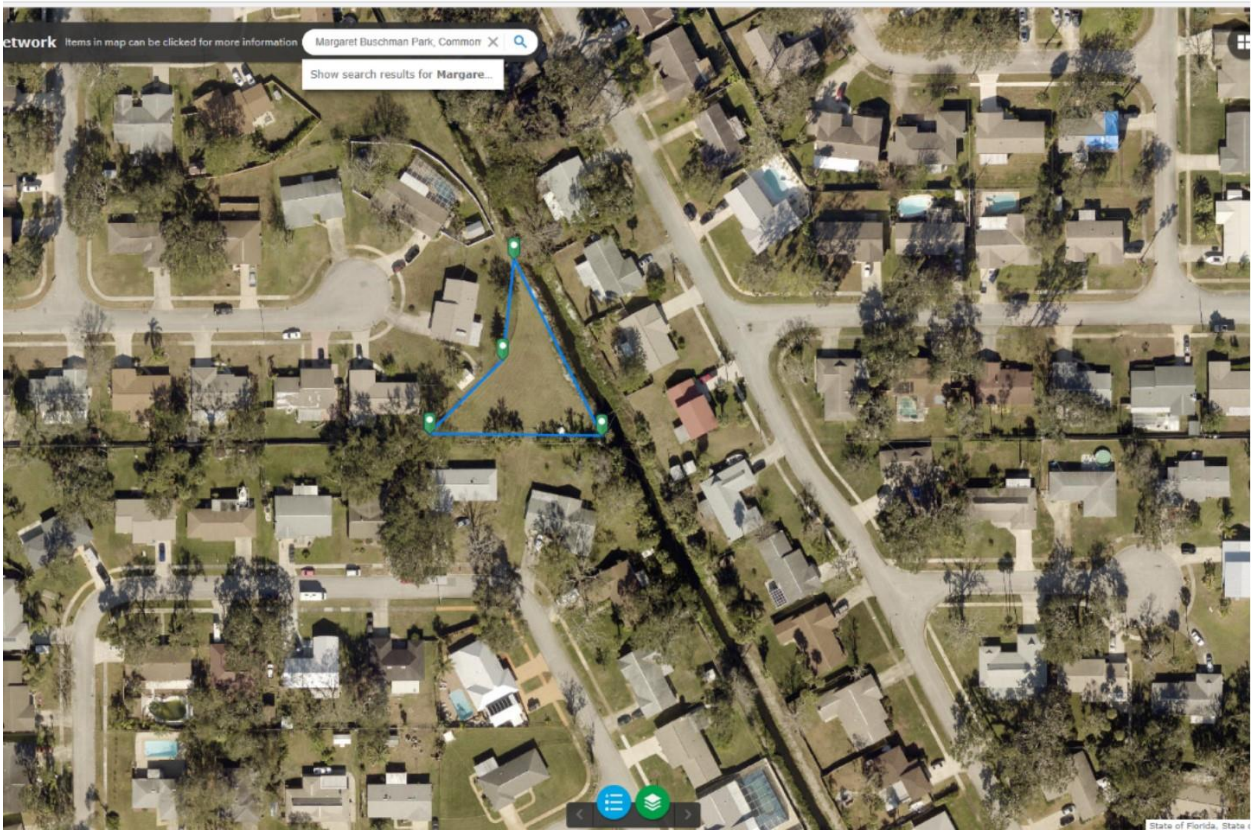
Water Reclamation Facility



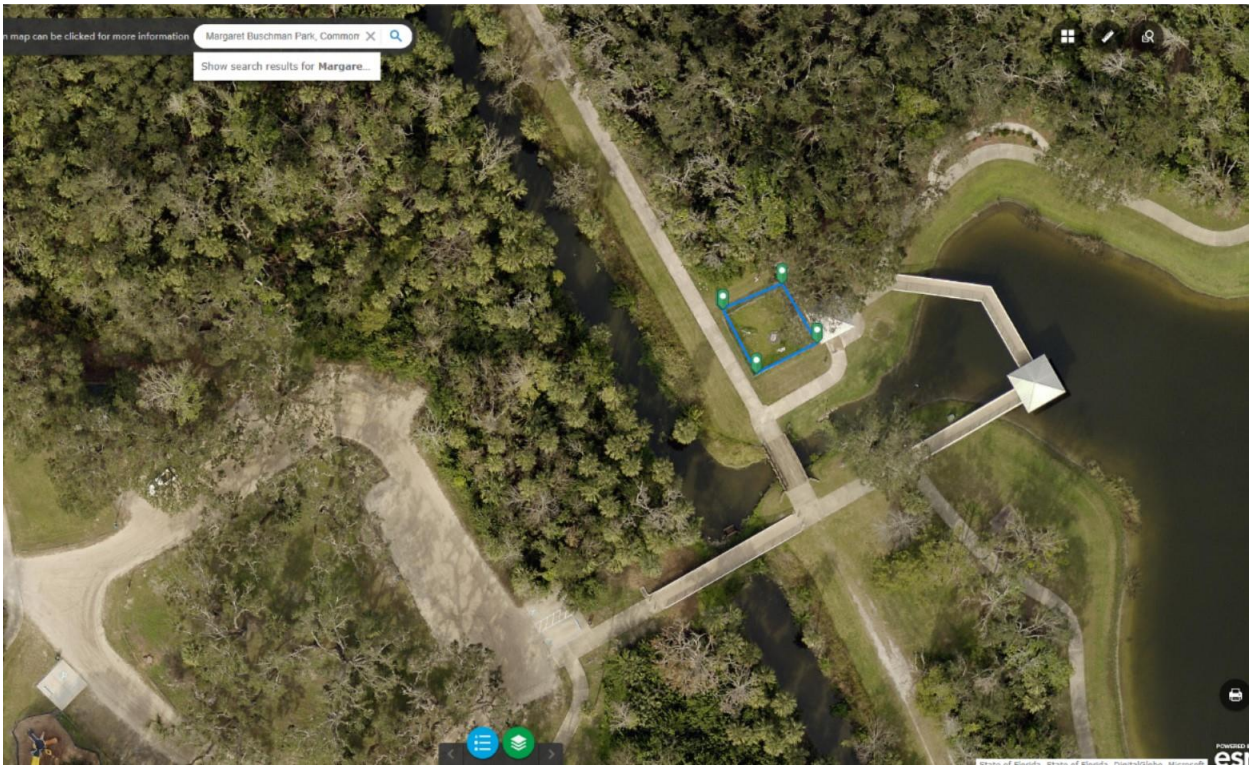
Richel Drive



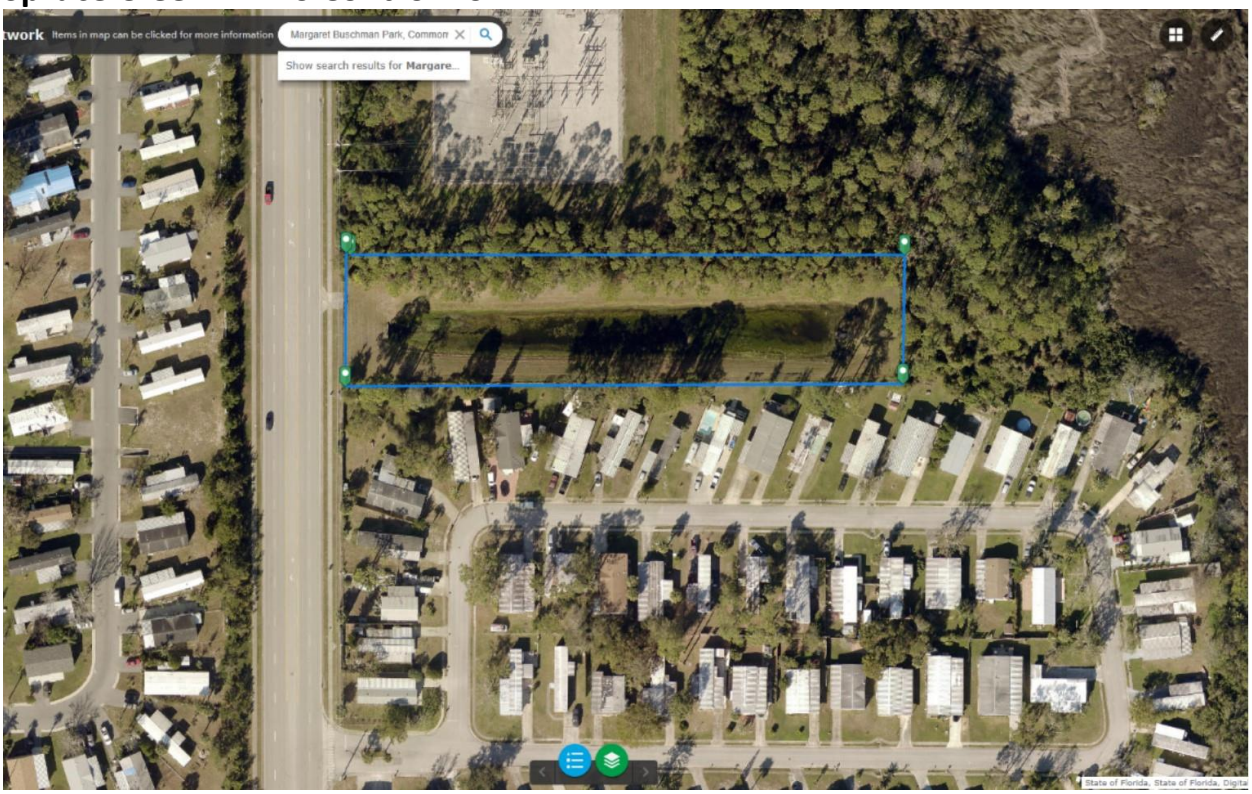
North Brighton Ave



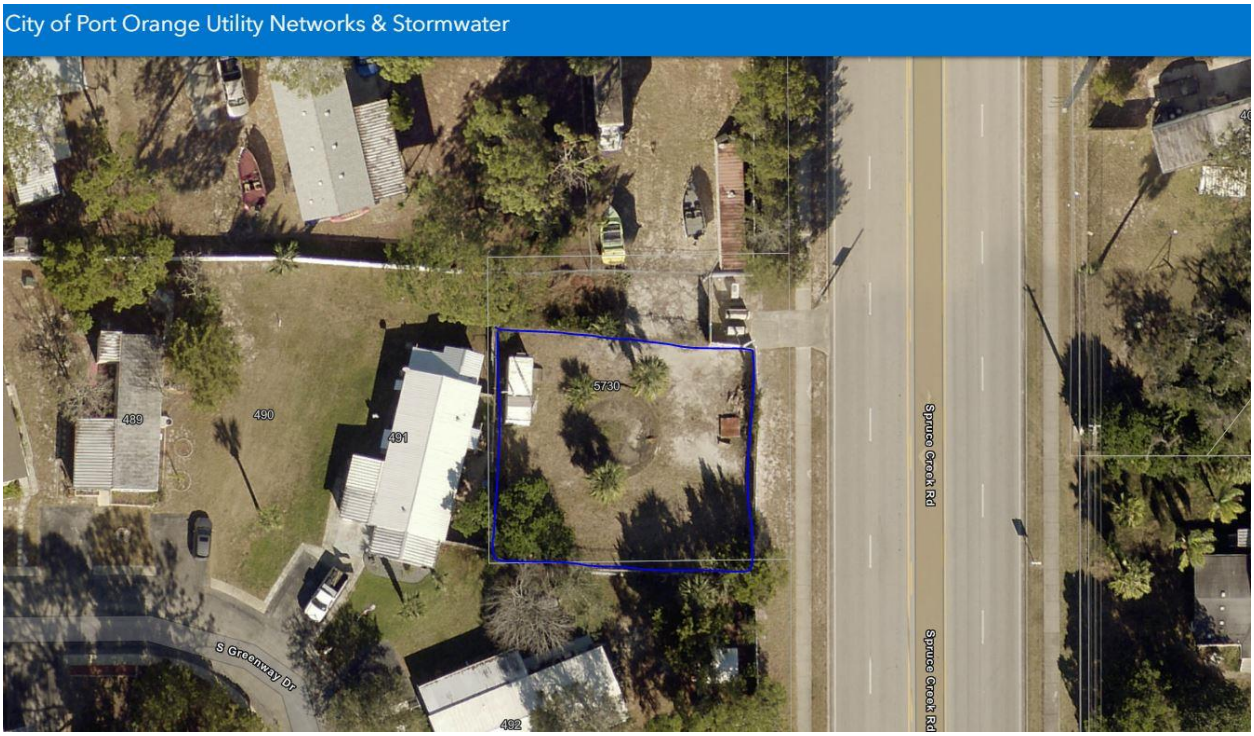
Buschman Park



Spruce Creek Enviro Control Box



Old Water Tower Site



SIKORSKI LANDSCAPING INC.

Landscape Maintenance Agreement

Last, First Name:	Parnell, Steve	**Company Name:**	City of Port Orange
Service Address:	See Exhibit A	**Phone Number:**	386-505-5761
City, State:	Port Orange, FL	**Email:**	sparnell@port-orange.org
Zip:	32123	**Date:**	2/28/25

This exhibit sets forth the performance specifications and scope of service to be provided by Sikorksi Landscaping, Inc. for the client.

1. Landscape Maintenance Program

INCLUDED	Lawn Maintenance - Frequency will be based on an applicable visitation schedule with the objective of maintaining a consistent, healthy appearance of the turf. Property will be mowed, edged, blown off and clean of debris. SCHEDULE: See Scope
INCLUDED	Shrubs - All pruning and thinning will be performed to retain the intended shape and function of the plant material using horticulture techniques. Shrubs will be trimmed with a slight inward slope from bottom to top, which allows for proper fullness of foliage at all levels of plant material. Plant replacement will be at additional charge and negotiated as needed.
INCLUDED	Trees - Any plant material obstructing pedestrians and automobile traffic will be pruned as necessary. Palms trees less than 8 feet tall will be maintained as part of the monthly service. Larger tree trimming such as Palms, Oaks, Elms, etc., will be done on a proposal basis as needed.
INCLUDED	Weed Control - Open ground in plant beds will be treated by manual or chemical means weekly to control weed pressure.
NOT INCLUDED	Irrigation - System Checks will be done N/A. This includes the checking of all lines, valves, and heads. Adjustments will be made as necessary for proper coverage of landscape and turf. All repairs will be made on a cost-plus labor basis.
NOT INCLUDED	Fert + Pest Turf - Service includes fertilization with liquid and granular applications, as well as treatment of lawn damaging insects and broadleaf weeds. Fungus treatment is not included and will be a separate charge. Treatments performed N/A times per year.

NOT INCLUDED	Fert + Pest Shrubs - Service includes fertilization, as well as treatment of shrub damaging insects , diseases, and fungus. This does not include shrubs in pool areas, annuals, potted plants, palms, and/or shrubs over 6 ft in height. Treatments performed N/A times per year.

3. Payment Schedule
    a. The contract rate listed below will be invoiced monthly. Payment is due within thirty (30) days of the invoice date.
    b. All late payments will be subject to a late charge of ten percent (10%) of the amount due. If payment is late for greater than thirty (30) days, an additional late charge of 10% of the full amount due, including initial late fee, will incur every month until payment is received in full.
    c. If any event of client default for nonpayment or otherwise shall occur, all obligations of Sikorski Landscaping under this Agreement will terminate. In addition, Sikorski Landscaping shall have all rights and remedies available by law, in equity or otherwise. All of Sikorski Landscaping's rights and remedies shall be cumulative and may be exercised singularly or concurrently. Owner shall pay all costs and expenses of Sikorski Landscaping included in enforcing this agreement, including reasonable attorney fees and court costs for negotiations, arbitration procedures, suits and appeals.

Job Notes: All specifications in "Scope of Work and Service", exhibit A and exhibit B are included. See attached pricing sheet.

Total annual fee for above $134,667.00

Approved By: _____ Date: _____

The contract is effective for twelve months and will automatically be renewed unless canceled in writing thirty days prior to expiration date.

Verdego LLC

The City of Port Orange Utilities

- Class C Maintenance (0.5-2.0 acres) $148.20 per cut/per site
- Class C Maintenance (0.25 acres) $148.20 per cut/per site
- Class D Maintenance Average Lot 30ft x 30ft $17.48 per cut/per site
- Class E Maintenance (0.1-0.75 acres) $44.51 per cut/per site

Total Cost Annually $63,754.53

Presented by Aaron Wilbanks
3/11/25

"EXHIBIT A" SCHEDULE OF UNIT PRICING
BID FORM
CITY OF PORT ORANGE

PUBLIC UTILITIES LANDSCAPE MAINTENANCE SERVICES
26-Feb-25

Bidders are required to complete all fields shaded in green. All other fields will be automatically calculated.

NAME OF BUSINESS:	Yellowstone Landscape
CONTACT PERSON:	Barry Critcher
EMAIL ADDRESS:	bcritcher@yellowstonelandscape.com
AUTHORIZED NAME:	Barry Critcher
AUTHORIZED SIGNATURE:	

	Name	ACRES	COST PER VISIT	MAINTENANCE VISITS PER YEAR	TOTAL ANNUAL COST
	Class "C" Maintenance (Pumping Stations)				
1	Cypress Head (Cypress Head Pump Station)	0.50-2.0	$ 80.00	33	$ 2,640.00
2	Major Street (Peninsula Pump Station)	0.50-2.0	$ 80.00	33	$ 2,640.00
3	Ridge Road (Oceans Pump Station)	0.50-2.0	$ 80.00	33	$ 2,640.00
4	Williamson Reclaimed Tank	0.50-2.0	$ 120.00	33	$ 3,960.00
5	Garnsey Water Plant	0.50-2.0	$ 400.00	33	$ 13,200.00
6	Reclaimed Water Plant & Lab	0.50-2.0	$ 400.00	33	$ 13,200.00
7	Richel Street Stormwater Station (Augmentation Station)	0.25	$ 80.00	33	$ 2,640.00
			Class "C" Maintenance Subtotal:		$ 40,920.00
	Class "D" Maintenance (Lift Stations)				
1	Brandy Hills	0.02 (30'x30')	$ 15.00	24	$ 360.00
2	City Hall	0.02 (30'x30')	$ 15.00	24	$ 360.00
3	Ravenwood	0.02 (30'x30')	$ 15.00	24	$ 360.00
4	Atlantic High School	0.02 (30'x30')	$ 15.00	24	$ 360.00
5	Herbert & Nova - 3655 S. Nova Rd	0.02 (30'x30')	$ 15.00	24	$ 360.00
6	Samm Ave	0.02 (30'x30')	$ 15.00	24	$ 360.00
7	Los Olas	0.02 (30'x30')	$ 15.00	24	$ 360.00
8	Laurelwood	0.02 (30'x30')	$ 15.00	24	$ 360.00
9	Golden Pond	0.02 (30'x30')	$ 15.00	24	$ 360.00
10	Beacon Woods	0.02 (30'x30')	$ 15.00	24	$ 360.00
11	Glenwood Village	0.02 (30'x30')	$ 15.00	24	$ 360.00
12	Carwash	0.02 (30'x30')	$ 15.00	24	$ 360.00
13	Cambridge Estates	0.02 (30'x30')	$ 15.00	24	$ 360.00
14	Lowes	0.02 (30'x30')	$ 15.00	24	$ 360.00
15	Halifax Estates	0.02 (30'x30')	$ 15.00	24	$ 360.00
16	Riverwood	0.02 (30'x30')	$ 15.00	24	$ 360.00
17	Falconcrest	0.02 (30'x30')	$ 15.00	24	$ 360.00
18	Hawks Ridge	0.02 (30'x30')	$ 15.00	24	$ 360.00
19	Sky Lake	0.02 (30'x30')	$ 15.00	24	$ 360.00

20	Water's Edge - 1698 Creekwater Blvd	0.02 (30'x30')	$ 15.00	24	$ 360.00
21	Baywood	0.02 (30'x30')	$ 15.00	24	$ 360.00
22	Seagull Landing	0.02 (30'x30')	$ 15.00	24	$ 360.00
23	Deep Forest	0.02 (30'x30')	$ 15.00	24	$ 360.00
24	Foxboro	0.02 (30'x30')	$ 15.00	24	$ 360.00
25	Riverside Drive	0.02 (30'x30')	$ 15.00	24	$ 360.00
26	Summertree	0.02 (30'x30')	$ 15.00	24	$ 360.00
27	Cypress Head	0.02 (30'x30')	$ 15.00	24	$ 360.00
28	Sable Creek	0.02 (30'x30')	$ 15.00	24	$ 360.00
29	Surfside Terrace	0.02 (30'x30')	$ 15.00	24	$ 360.00
30	Cardinal Blvd	0.02 (30'x30')	$ 15.00	24	$ 360.00
31	Venetian Way	0.02 (30'x30')	$ 15.00	24	$ 360.00
32	Ponce Inlet Master	0.02 (30'x30')	$ 15.00	24	$ 360.00
33	Oceans Ave	0.02 (30'x30')	$ 15.00	24	$ 360.00
34	Intracoastal Villas	0.02 (30'x30')	$ 15.00	24	$ 360.00
35	Charles Street	0.02 (30'x30')	$ 15.00	24	$ 360.00
36	Nixon	0.02 (30'x30')	$ 15.00	24	$ 360.00
37	Sugar Forest	0.02 (30'x30')	$ 15.00	24	$ 360.00
38	Southwind	0.02 (30'x30')	$ 15.00	24	$ 360.00
39	Commonwealth	0.02 (30'x30')	$ 15.00	24	$ 360.00
40	Lamplighter	0.02 (30'x30')	$ 15.00	24	$ 360.00
41	Townhomes West	0.02 (30'x30')	$ 15.00	24	$ 360.00
42	Willow Run #1	0.02 (30'x30')	$ 15.00	24	$ 360.00
43	Willow Run #2	0.02 (30'x30')	$ 15.00	24	$ 360.00
44	Oakland Park	0.02 (30'x30')	$ 15.00	24	$ 360.00
45	The Woods	0.02 (30'x30')	$ 15.00	24	$ 360.00
46	Cambridge	0.02 (30'x30')	$ 15.00	24	$ 360.00
47	Bayshore #1	0.02 (30'x30')	$ 15.00	24	$ 360.00
48	Bayshore #2	0.02 (30'x30')	$ 15.00	24	$ 360.00
49	Lancewood	0.02 (30'x30')	$ 15.00	24	$ 360.00
50	Christiancy	0.02 (30'x30')	$ 15.00	24	$ 360.00
51	Anglers	0.02 (30'x30')	$ 15.00	24	$ 360.00
52	Spruce Creek High School	0.02 (30'x30')	$ 15.00	24	$ 360.00
53	Countryside	0.02 (30'x30')	$ 15.00	24	$ 360.00
54	Vineyards	0.02 (30'x30')	$ 15.00	24	$ 360.00
55	Cypress Head	0.02 (30'x30')	$ 15.00	24	$ 360.00
56	Pavillion	0.02 (30'x30')	$ 15.00	24	$ 360.00
57	Plantation 1	0.02 (30'x30')	$ 15.00	24	$ 360.00
58	Plantation 2	0.02 (30'x30')	$ 15.00	24	$ 360.00
59	Bourbon	0.02 (30'x30')	$ 15.00	24	$ 360.00
60	Sunset Cove	0.02 (30'x30')	$ 15.00	24	$ 360.00
61	Buttermilk	0.02 (30'x30')	$ 15.00	24	$ 360.00
62	WaterEdge - 6872 Forkmead LN	0.02 (30'x30')	$ 15.00	24	$ 360.00

63	Brown Landing	0.02 (30'x30')	$ 15.00	24	$ 360.00
64	Herbert & Nova - 3665 S. Nova	0.02 (30'x30')	$ 15.00	24	$ 360.00
			Class "D" Maintenance Subtotal:		$ 23,040.00
	Class "E" Maintenance				
1	North Brighton Ave Property	0.10-.75	$ 25.00	12	$ 300.00
2	Buschman Park Lift Station	0.10-.75	$ 50.00	12	$ 600.00
3	Enviro Control Site	0.10-.75	$ 25.00	12	$ 300.00
4	Old Water Tower Site	0.10-.75	$ 50.00	12	$ 600.00
5	Empty Lot	0.10-.75	$ 50.00	12	$ 600.00
			Class "E" Maintenance Subtotal:		$ 2,400.00
			TOTAL PRICE (Class C, D, & E):		$ 66,360.00

"ATTACHMENT 1" SCHEDULE OF UNIT PRICING
BID FORM
CITY OF PORT ORANGE

LANDSCAPING SERVICES for PUBLIC UTILITIES FACILITIES & LIFT STATIONS
Completed Attachment 1 Bid Proposal form MUST be included with Bid Submission
Instruction to save Attachment from DemandStar website:

Bidders are required to complete all fields shaded in green. All other fields will be automatically calculated.

NAME OF BUSINESS:	**G&G Outdoors**
CONTACT PERSON:	**Ander Goiriena**
EMAIL ADDRESS:	ggoutdoorsllc@gmail.com
AUTHORIZED NAME:	**Ander Goiriena**
AUTHORIZED SIGNATURE:	Ander Goiriena

	Name	ACRES	COST PER VISIT	MAINTENANCE VISITS PER YEAR	TOTAL ANNUAL COST
	Class "C" Maintenance (Pumping Stations)				
1	Cypress Head (Cypress Head Pump Station)	0.50-2.0	$ 140.50	33	$ 4,636.50
2	Major Street (Peninsula Pump Station)	0.50-2.0	$ 140.50	33	$ 4,636.50
3	Ridge Road (Oceans Pump Station)	0.50-2.0	$ 140.50	33	$ 4,636.50
4	Williamson Reclaimed Tank	0.50-2.0	$ 140.50	33	$ 4,636.50
5	Garnsey Water Plant	0.50-2.0	$ 140.50	33	$ 4,636.50
6	Reclaimed Water Plant & Lab	0.50-2.0	$ 140.50	33	$ 4,636.50
7	Richel Street Stormwater Station (Augmentation Station)	0.25	$ 85.00	33	$ 2,805.00
			Class "C" Maintenance Subtotal:		$ 30,624.00
	Class "D" Maintenance (Lift Stations)				
1	Brandy Hills	0.02 (30'x30')	$ 19.45	24	$ 466.80
2	City Hall	0.02 (30'x30')	$ 19.45	24	$ 466.80
3	Ravenwood	0.02 (30'x30')	$ 19.45	24	$ 466.80
4	Atlantic High School	0.02 (30'x30')	$ 19.45	24	$ 466.80
5	Herbert & Nova	0.02 (30'x30')	$ 19.45	24	$ 466.80
6	Samm Ave	0.02 (30'x30')	$ 19.45	24	$ 466.80
7	Los Olas	0.02 (30'x30')	$ 19.45	24	$ 466.80
8	Laurelwood	0.02 (30'x30')	$ 19.45	24	$ 466.80
9	Golden Pond	0.02 (30'x30')	$ 19.45	24	$ 466.80
10	Beacon Woods	0.02 (30'x30')	$ 19.45	24	$ 466.80
11	Glenwood Village	0.02 (30'x30')	$ 19.45	24	$ 466.80
12	Carwash	0.02 (30'x30')	$ 19.45	24	$ 466.80
13	Cambridge Estates	0.02 (30'x30')	$ 19.45	24	$ 466.80
14	Lowes	0.02 (30'x30')	$ 19.45	24	$ 466.80
15	Halifax Estates	0.02 (30'x30')	$ 19.45	24	$ 466.80
16	Riverwood	0.02 (30'x30')	$ 19.45	24	$ 466.80
17	Falconcrest	0.02 (30'x30')	$ 19.45	24	$ 466.80
18	Hawks Ridge	0.02 (30'x30')	$ 19.45	24	$ 466.80
19	Sky Lake	0.02 (30'x30')	$ 19.45	24	$ 466.80
20	Water's Edge	0.02 (30'x30')	$ 19.45	24	$ 466.80
21	Baywood	0.02 (30'x30')	$ 19.45	24	$ 466.80
22	Seagull Landing	0.02 (30'x30')	$ 19.45	24	$ 466.80
23	Deep Forest	0.02 (30'x30')	$ 19.45	24	$ 466.80
24	Foxboro	0.02 (30'x30')	$ 19.45	24	$ 466.80
25	Riverside Drive	0.02 (30'x30')	$ 19.45	24	$ 466.80
26	Summertree	0.02 (30'x30')	$ 19.45	24	$ 466.80
27	Cypress Head	0.02 (30'x30')	$ 19.45	24	$ 466.80
28	Sable Creek	0.02 (30'x30')	$ 19.45	24	$ 466.80
29	Surfside Terrace	0.02 (30'x30')	$ 19.45	24	$ 466.80
30	Cardinal Blvd	0.02 (30'x30')	$ 19.45	24	$ 466.80
31	Venetian Way	0.02 (30'x30')	$ 19.45	24	$ 466.80
32	Ponce Inlet Master	0.02 (30'x30')	$ 19.45	24	$ 466.80
33	Oceans Ave	0.02 (30'x30')	$ 19.45	24	$ 466.80
34	Intracoastal Villas	0.02 (30'x30')	$ 19.45	24	$ 466.80
35	Charles Street	0.02 (30'x30')	$ 19.45	24	$ 466.80
36	Nixon	0.02 (30'x30')	$ 19.45	24	$ 466.80
37	Sugar Forest	0.02 (30'x30')	$ 19.45	24	$ 466.80
38	Southwind	0.02 (30'x30')	$ 19.45	24	$ 466.80
39	Commonwealth	0.02 (30'x30')	$ 19.45	24	$ 466.80
40	Lamplighter	0.02 (30'x30')	$ 19.45	24	$ 466.80
41	Townhomes West	0.02 (30'x30')	$ 19.45	24	$ 466.80
42	Willow Run #1	0.02 (30'x30')	$ 19.45	24	$ 466.80
43	Willow Run #2	0.02 (30'x30')	$ 19.45	24	$ 466.80
44	Oakland Park	0.02 (30'x30')	$ 19.45	24	$ 466.80
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47	Bayshore #1	0.02 (30'x30')	$ 19.45	24	$ 466.80
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60	Sunset Cove	0.02 (30'x30')	$ 19.45	24	$ 466.80
61	Buttermilk	0.02 (30'x30')	$ 19.45	24	$ 466.80
62	WaterEdge	0.02 (30'x30')	$ 19.45	24	$ 466.80
63	Brown Landing	0.02 (30'x30')	$ 19.45	24	$ 466.80
64	Herbert & Nova	0.02 (30'x30')	$ 19.45	24	$ 466.80
			Class "D" Maintenance Subtotal:		$ 29,875.20
	Class "E" Maintenance				
1	North Brighton Ave Property	0.10-.75	$ 35.75	12	$ 429.00
2	Buschman Park Lift Station	0.10-.75	$ 35.75	12	$ 429.00
3	Enviro Control Site	0.10-.75	$ 35.75	12	$ 429.00
4	Old Water Tower Site	0.10-.75	$ 35.75	12	$ 429.00
5	empty Lot	0.10-.75	$ 35.75	12	$ 429.00
			Class "E" Maintenance Subtotal:		$ 2,145.00
			TOTAL PRICE (Class C, D, & E):		$ 62,644.20

AWARD: THIS BID WILL BE AWARDED TO THE LOWEST, RESPONSIVE, RESPONSIBLE BIDDER

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 2/06/2025

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER

Smith & Associates Insurance Agency, Inc.
PO Box 1578
New Smyrna Beach, FL 32170

CONTACT NAME: Autumn Scarsella
PHONE (A/C, No, Ext): 386-409-8004 **FAX (A/C, No):** 386-409-0012
E-MAIL ADDRESS: Autumn@smithinsagencyinc.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Cypress Property & Casualty Insurance	10953
INSURER B : Markel Insurance Company	38970
INSURER C :	
INSURER D :	
INSURER E :	
INSURER F :	

INSURED

G&G Outdoors, LLC
4059 Quail Nest Lane
New Smyrna Beach, FL 32168

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 X OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: X POLICY PRO-JECT LOC OTHER:	X		SGL00639200781	06/23/2024	06/23/2025	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 $ 2,000,000 $ 1,000,000 $ 2,000,000
	AUTOMOBILE LIABILITY ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS HIRED AUTOS NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident) Bodily Injury/Property Damage	$ $ $ $ $
	UMBRELLA LIAB OCCUR EXCESS LIAB CLAIMS-MADE DED RETENTION $						EACH OCCURRENCE AGGREGATE	$ $
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y / N **(Mandatory in NH)** If yes, describe under DESCRIPTION OF OPERATIONS below	N / A	X	MWC0174457-05	09/21/2024	09/21/2025	X PER STATUTE OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	 $ 500,000 $ 500,000 $ 500,000

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

Lawn Care Services

*The City of Port Orange is included as additional insured for General Liability and Workers Compensation.
A Waiver of Subrogation is included for Workers Compensation.

CERTIFICATE HOLDER

CITY OF PORT ORANGE
1000 CITY CENTER CIRCLE
PORT ORANGE, FL 32129

CANCELLATION

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

AUTHORIZED REPRESENTATIVE
Autumn Scarsella *Autumn Scarsella* W056088

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POLICY NUMBER: ISG0063920-09

CYPRESS PROPERTY & CASUALTY INSURANCE COMPANY

Commercial General Liability

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS AUTOMATIC WHEN REQUIRED IN CONSTRUCTION AGREEMENT WITH YOU

Automatic Additional Insured Status - 20 10 Additional Insured Form

It is hereby understood and agreed that "**Section II - Who is an Insured"** is amended to provide automatic coverage as an Additional Insured in conformance with the terms and conditions of the CG 20 10 07 04 endorsement, a copy of which is attached hereto and incorporated by reference. Automatic coverage as Additional Insured provided by this paragraph is only provided if you and the person or organization have agreed in writing in a contract or agreement that such person or organization be added as an Additional Insured under your policy and only if such contract or agreement is executed by each party prior to the start of your work for such person or organization.

All other terms and conditions remain the same.

© Copyright, Cypress Property & Casualty Insurance Co.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):	Location(s) Of Covered Operations
SEE FORM CGL 1002 AUTOMATIC 2010 ADDITIONAL INSURED	
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. **Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or

2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or

2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

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CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 5/20/2025

SUBJECT: (C8) Resolution No. 25-27 - Authorizing the Submittal of the Florida Boating Improvement Program (FBIP) Grant Application

DEPARTMENT: Community Development

GOAL: 2 - Infrastructure
5 - Fiscal Sustainability

RECOMMENDED MOTION: Move to approve Resolution No. 25-27.

SUMMARY: At the March 18 City Council Meeting, the Council authorized City staff to prepare and submit a grant application to the Florida Boating Improvement Program (FBIP), administered by the Florida Fish and Wildlife Conservation Commission (FWC), for construction funding for the Riverwalk Day Dock at Riverwalk Park. Following further discussions with the FWC, it was determined that a Resolution approved by the City Council is required as part of the grant application. This Resolution affirms the City's commitment to the Riverwalk Day Dock project and authorizes staff to move forward with submitting the FBIP grant application. The FBIP provides funding support to local governments for projects that enhance public boating access, safety, and recreational boating opportunities.

City staff intends to apply for up to $400,000 in funding to assist with the construction of the day dock. The proposed project includes the installation of a dock perpendicular to the shoreline, capable of mooring up to ten (10) vessels up to 35 feet in length. The design also allows for future expansion of additional slips based on demand and includes accommodations for a future water taxi stop. The project scope also includes dredging a navigational access channel from the dock to the adjacent deep-water channel leading to the Intracoastal Waterway (ICW) and installing channel markers to safely guide boaters between the dock and the ICW.

The total estimated construction cost is $1,620,520. The City has already submitted a grant application to the Florida Inland Navigation District (FIND) requesting $810,260 in construction funds. If both the FIND and FBIP grants are awarded, the City's share of the construction cost would be reduced to $410,250.

Design and permitting for the project are expected to be completed by Summer 2025, with construction anticipated to begin in 2026. Approval of this resolution does not obligate the City to fund this project; it is only for staff to apply to FBIP for construction funds. Should the City be selected for funding, a separate Resolution will be required to

accept the grant funds and any land use restrictions.

PRESENTER: Tim Burman

ATTACHMENTS:

1.	Resolution No. 25-27	Resolution No. 25-27 .pdf

Tim Burman	Created/Initiated - 5/1/2025
Tim Burman	Approved - 5/1/2025
Mark Simpson	Approved - 5/1/2025
Shannon Balmer	Approved - 5/8/2025
Wayne Clark	Final Approval - 5/8/2025

RESOLUTION NO. 25-27

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, APPROVING AND AUTHORIZING THE CITY MANAGER OR DESIGNEE TO SUBMIT A GRANT APPLICATION TO THE FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION UNDER THE FLORIDA BOATING IMPROVEMENT PROGRAM ("FBIP") FOR FUNDS TO ASSIST IN THE CONSTRUCTION OF THE RIVERWALK DAY DOCK AT RIVERWALK PARK; PROVIDING AN EFFECTIVE DATE.

WHEREAS, Florida Fish and Wildlife Conservation Commission ("FWCC") by and through Florida Boating Improvement Program ("FBIP") provides funding support to local governments for projects that enhance public boating access, safety, and recreational boating opportunities; and

WHEREAS, the City of Port Orange desires to submit a grant application to FWCC for FBIP funds to assist in the construction of a day dock at Riverwalk Park ("Project"); and

WHEREAS, the City of Port Orange meets the circumstances for priority consideration for FBIP grant funding in that the City has a population of 100,000 or fewer people, and the City is a coastal city having a high level of boating-related activities from individuals residing in throughout county; and

WHEREAS, this Project will provide access to waterway/boat recreation activities to our residents and surrounding areas; and

WHEREAS, as part of the FBIP grant application process, the City of Port Orange Board desires to authorize certain City representatives to execute an FBIP grant application for the Project.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA:

Section 1. The City Council as the governing body of the City of Port Orange hereby certifies that it has the authority to submit an FBIP grant application for the Project to FWCC.

Section 2. The City Council hereby authorizes the City Manager or his designee to execute and submit the completed Grant Application on behalf of the City of Port Orange.

Section 3. This Resolution shall become effective immediately upon adoption by the City Council.

_____

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

CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 5/20/2025

SUBJECT: (C9) Approval of the Closest Unit Response Interlocal Agreement with Neighboring Municipalities for Fire-Rescue and Emergency Medical Services

DEPARTMENT: Fire/Rescue Services

GOAL: 1 - Public Safety

RECOMMENDED MOTION: Move to approve the Closest Unit Response Agreement with Neighboring Municipalities for Fire-Rescue and Emergency Medical Services.

SUMMARY: Since 2004, the City of Port Orange and other municipalities in East Volusia County have participated in an Automatic Aid and Closest Unit Response System for Fire-Rescue and Emergency Medical Services (EMS). This system, authorized through an Interlocal Agreement between participating jurisdictions, ensures that emergency fire-rescue and medical services are dispatched based on proximity, rather than jurisdictional boundaries, thereby improving response times and resource availability.

Since then, the agreement has been amended six times to maintain an uninterrupted closest unit response. The Sixth Amendment to the original agreement has expired, and the participating municipalities have determined that a new, updated Interlocal Agreement is necessary.

The new agreement will continue to support cooperative emergency response efforts while including essential provisions to ensure compliance with the Insurance Services Office (ISO). ISO evaluates the efficiency of fire departments around the country. Port Orange Fire Department is evaluated every five years, and a written automatic aid agreement is required for compliance.

The participating municipalities are as follows:

- City of Port Orange
- City of Daytona Beach Shores
- City of Edgewater
- City of New Smyrna Beach
- City of South Daytona
- Town of Ponce Inlet

PRESENTER: Joe Wulfing

ATTACHMENTS:

1.	2025 Southeast Volusia Cooperative Final for Council	2025 Southeast Volusia Cooperative Final for Council.docx
2.	Fire Station Map	Fire Station Map.pdf

Joe Wulfing	Created/Initiated - 4/25/2025
Joe Wulfing	Approved - 4/25/2025
Mark Simpson	Approved - 4/25/2025
Matthew Jones	Approved - 5/7/2025
Wayne Clark	Final Approval - 5/8/2025

INTERLOCAL AGREEMENT BETWEEN THE SOUTHEAST VOLUSIA COUNTY FIRE AGENCIES FOR FIRE RESCUE AUTOMATIC AID

THIS INTERLOCAL AGREEMENT for the continuation of the Fire Rescue and Emergency Medical Services Automatic Aid and Closest Unit Response System in Southeast Volusia County is entered into between the Municipalities executing this Agreement, as defined herein (collectively, the "Parties").

WITNESSETH

WHEREAS, § 163.01, Florida Statutes, authorizes local governments to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities that will harmonize geographic, economic, population, and other factors influencing the needs and development of local communities; and

WHEREAS, in 2004, the Parties entered into an interlocal agreement establishing an automatic aid via closest unit response system for fire rescue and emergency medical services to enhance public safety and emergency response in the southeastern region of Volusia County (the "Prior Agreement"); and

WHEREAS, since then, the Parties have successfully implemented and maintained the mutual aid services established under the Prior Agreement; and

WHEREAS, the Parties desire to continue the mutual aid services established under the Prior Agreement while expanding cooperative efforts to further enhance the quality and scope of essential public safety services provided to their respective communities; and

WHEREAS, the Parties agree that the continuation and expansion of these cooperative services are in the best interest of the public and will promote a coordinated response to life-threatening emergencies and an efficient use of resources.

NOW, THEREFORE, in consideration of the mutual covenants and provisions contained herein, the Parties hereto agree as follows:

1. **Recitals**. The above recitals are true and correct and are hereby incorporated herein by reference.

2. **Definitions.**

2.1 *Automatic Aid* shall mean the automatic dispatch of, and response by, emergency response units to an incident within the defined service area, as identified in Exhibit "A" attached hereto and incorporated herein by this reference, without the initiation of a Mutual Aid request.

2.2 *Closest Unit Response* shall mean a response protocol in which the emergency response unit geographically closest to an incident, regardless of jurisdictional boundaries, that is available is dispatched to provide immediate aid.

2.3 *Emergency Services* shall include, but not be limited to, fire suppression, emergency medical, hazardous material, and technical rescue. Other related Emergency Services not expressly identified in this Agreement may also be provided if mutually agreed upon by the Parties.

2.4 *Municipalities* shall mean the following municipal incorporations, each of which is organized under the laws of the State of Florida and is a signatory to this Agreement: City of Daytona Beach Shores, City of Edgewater, City of New Smyrna Beach, Town of Ponce Inlet, City of Port Orange, and City of South Daytona.

2.5 *Mutual Aid* shall mean assistance dispatched upon request by one Party to one or more other Parties, in which the Responding Party approves such request to lend assistance across jurisdictional boundaries for a particular incident.

2.6 *Southeast Volusia County* shall mean the regional geographical land area within the political subdivisions of City of Daytona Beach Shores, the City of Edgewater, the City of New Smyrna Beach, the Town of Ponce Inlet, the City of Port Orange, and the City of South Daytona.

2.7 *Responding Party* shall mean the agency providing assistance to another agency that has declared an emergency incident.

2.8 *Receiving Party* shall mean the agency receiving assistance from another agency to mitigate an emergency incident.

3. Background; Purpose. Those fire rescue and medical emergency agencies from the City of Daytona Beach Shores, City of Edgewater, City of New Smyrna Beach, Town of Ponce Inlet, City of Port Orange, and City of South Daytona (hereafter referred to as the "Southeast Volusia Fire Agencies" or "SVFA"), have a long-standing history of cooperation in providing emergency services to residents in the Southeast Volusia County community. The purpose of this Interlocal Agreement (hereafter known as the "Agreement") is to provide for the continuation of the Fire Rescue and Emergency Medical Services Automatic Aid and Closest Unit Response System established under the Prior Agreement, as well as identify other areas of cooperative efforts that would further enhance emergency services in Southeast Volusia County.

4. Effective Date. This Agreement shall become effective upon approval and execution by the elected governing bodies of the Parties and filing with the Clerk of the Circuit Court in and for Volusia County, Florida. However, the failure of any individual Party to approve or execute this Agreement shall not affect its validity or enforceability among the Parties that have duly approved and executed it. The participating Parties acknowledge that this

Agreement may be amended or supplemented in the future to include additional local government agencies upon their approval and execution.

5. Term; Termination.

5.1 Upon proper execution and recordation, this Agreement shall remain in full force and effect for five (5) years from the effective date. Upon expiration of the initial term, this Agreement shall automatically renew for three-year periods.

5.2 Any Party may withdraw from participating in this Agreement by providing written notice of withdrawal to all other Parties hereto. The notice shall be provided at least sixty (60) days prior to the effective date of withdrawal and state the reason for withdrawal. A Party's withdrawal shall not affect this Agreement's validity among the remaining Parties.

6. Amendment. Any Party may propose amendments to this Agreement at least ninety (90) days prior to the renewal date. All proposed amendment must be distributed in writing to the Parties for review. Any amendments to this Agreement must be agreed upon by all Parties and formalized in a written amendment signed by each Party. If no modifications are agreed upon by all, the Agreement shall renew under its existing terms.

7. Acknowledgement. The Parties acknowledge that the ability to fully comply with the provisions of this Agreement may vary due to the differences in organizational nature, authority, scope of service, and operational capability of each fire rescue and emergency medical service agency providing Emergency Services under this Agreement. As such, the Parties agree to provide such reciprocal assistance on a mutual-aid basis based on the availability of the providing Party's resources at the time. Further, each Party commits to making reasonable efforts to enhance their respective capacity and strive toward full compliance with the provisions of this Agreement in the future.

8. Joint Operational Coordination. The Parties agree to work collaboratively to coordinate the delivery of Emergency Services under this Agreement, including, but not limited to, the following:

8.1 Cross-utilization of command staff for emergency incident management.

8.2 Cross-utilization of administrative staff to coordinate and provide fire and EMS training.

8.3 Cross-utilization of support staff to provide IT and other technical support.

8.4 Cross-utilization of fire inspection and fire investigation resources.

8.5 Coordination of EMS and fire equipment purchasing to ensure maximum purchasing power.

8.6 Coordination of fire resource deployment within Southeast Volusia County to ensure maximum geographical coverage during periods of high call volume.

8.7 Collaborative strategic planning for the future placement of apparatuses to maximize flexibility of available resources.

8.8 Coordination of training activities to achieve maximum participation with minimal impact on overtime.

8.9 Coordination in the development of emergency operational guidelines to maximize the effectiveness, efficiency, and consistency of regional service delivery.

9. Rendering Aid.

9.1 *Automatic Aid*.

A. *Generally*. The Parties agree to provide Automatic Aid utilizing the Closest Unit Response protocol for all emergency fire and EMS-related incidents that occur within the defined response area. Under this protocol, the emergency response unit geographically closest to an incident, regardless of jurisdictional boundaries, that is available shall be automatically dispatched to provide assistance. The Parties agree that Automatic Aid responses shall apply exclusively to emergency fire and EMS-related incidents; all emergency incidents that are not classified as emergency fire or EMS-related will be classified as Mutual Aid requests.

B. *Dispatch Assignments*. The Parties shall establish and maintain predefined Automatic Aid unit response assignments through a collaborative process led by the fire chiefs or their designees. This process shall include:

1. *Assessment and Development*: The fire chiefs shall evaluate geographic proximity, resource availability, and incident types to develop appropriate unit response assignments.

2. *Dispatch Coordination*: The assignments shall be integrated with dispatch systems to ensure efficient deployment of resources.

3. *Review and Agreement*: The fire chiefs shall review and mutually agree upon the assignments, documenting them in the Automatic Aid operational procedures.

4. *Ongoing Evaluation*: Response assignments shall be reviewed at least every three (3) years or as needed based on operational changes, with updates made by mutual agreement.

C. *Incident Command.* The Parties understand and agree that the Incident Command System ("ICS"), as defined by the National Incident Management System ("NIMS"), is the framework for controlling and managing Automatic Aid incidents within a given jurisdiction. Accordingly, unless otherwise specified in the Standard Operating Procedures or in a written instrument executed by the applicable Parties, the first arriving officer on scene, regardless of jurisdiction, shall be in command of the

emergency incident and responsible for tactical coordination of all personnel and equipment used to control the incident until command is transferred to an appropriate command officer of the Receiving Party.

9.2 ***Mutual Aid.*** The Parties agree to provide Mutual Aid to one another upon request, subject to the availability of personnel, equipment, and resources. Mutual Aid shall be provided when an incident exceeds the capabilities of the Receiving Party, and the Responding Party determines it can render assistance without compromising its own operational readiness. Requests for Mutual Aid shall be made through the designated communication channels and in accordance with the Standard Operating Procedures established under this Agreement.

10. Standard Operating Procedures.

10.1 The Parties agree to collaboratively develop, implement, and maintain Standard Operating Procedures that will govern automatic and mutual aid operations (the "SOPs"). Such SOPs shall comprehensively address topics such as, but not limited to, dispatch procedures, communications, apparatus response, tactical operations, medical control, EMS protocols, incident command, and incident reporting.

10.2 Each Party shall maintain copies of all current and updated SOPs, ensuring they are readily accessible to command staff, emergency personnel, and dispatch centers. Additionally, the Parties shall ensure that all relevant personnel receive appropriate training and updates regarding any modifications to these procedures.

10.3 The SOPs shall be formally reviewed no less than every three (3) years by the respective fire chiefs of the Parties, or their designees, to assess the effectiveness of existing procedures, identify areas for improvement, and incorporate lessons learned from joint operations and evolving best practices. Any necessary updates or revisions shall be mutually agreed upon and documented, with revised SOPs distributed to all affected personnel in a timely manner.

11. Records. Requests for aid under this Agreement may be made by telephone, radio, computer network, or as otherwise designated in the SOPs. Records, reports, and other relevant information pertaining to incidents requiring aid will be maintained by the Volusia County Emergency Operations and Sheriff's Communications Center ("Center") in accordance with the Center's established policies and procedures. Lawful access to such records, reports, and information shall be upon request in accordance with the Center's established policies and procedures and as provided by law.

12. Reimbursement.

12.1 All costs associated with providing aid as contemplated under this Agreement shall be the responsibility of the Responding Party except as otherwise expressly stated in this Agreement or any other written agreement between the applicable Parties, or, for a

declared emergency only, the applicable respective funding responsibilities per Federal Emergency Management Agency requirements. Any other agreements relating to payment for fire protection and emergency medical services shall remain in effect.

12.2 Except as otherwise expressly provided in this Agreement, each Party is solely responsible for the wages, salaries, cost of workers' compensation or other insurance premiums and benefits, and retirement and other job benefits to any of its employees or contractors, whether said persons provided any services to any other Party under this this Agreement.

12.3 Except as otherwise expressly provided in this Agreement, the Responding Party furnishing any equipment pursuant to this Agreement shall bear the cost of any loss or damage to its equipment and shall be solely responsible for any expenses incurred in the operation or maintenance of such equipment.

12.4 Any Responding Party that provides transport service may require reimbursement for the transport service from the transported patient to the extent permitted by law. The Responding Party will handle billing, insurance claims, and collection in accordance with their policies and procedures and any applicable laws and regulations, including the latest federal Medicare guidelines, if applicable. The requesting Party shall receive, upon request, a copy of any such invoices or other documentation, provided that neither Party shall use or disclose Protected Health Information ("PHI") or Electronic Protected Health Information ("ePHI") except as permitted by the Health Insurance Portability and Accountability Act or the Health Information Technology for Economic and Clinical Health Act ("HITECH"), each as amended, and the regulations promulgated thereunder (collectively "HIPAA"), and any other applicable laws and regulations, all as may be amended from time to time.

12.5 In the event of minor discrepancies in cost under this Agreement, the Parties agree to make reasonable efforts to resolve such differences through "in-kind reimbursement." The process for determining the form and timing of in-kind reimbursement shall involve a mutual agreement process, which includes:

A. *Notification*: The Party identifying the discrepancy shall notify the other Party in writing, providing a clear explanation of the cost variance and any supporting documentation.

B. *Review and Discussion*: Both Parties shall review the discrepancy and engage in a discussion to assess the nature and extent of the difference, considering operational impacts and equitable resolution options.

C. *Proposal of In-Kind Reimbursement*: Each Party shall have the opportunity to propose a form of in-kind reimbursement that is appropriate and proportionate to the discrepancy, ensuring the exchange maintains the spirit of fairness and operational feasibility.

D. *Mutual Agreement*: The Parties shall negotiate in good faith to reach a mutual agreement on the in-kind reimbursement, documenting the agreed-upon terms, including the specific services, goods, or other forms of compensation to be provided, along with the timeline for fulfillment.

13. Indemnity.

13.1 To the extent permitted and as limited by § 768.28, *Florida Statutes*, the Parties shall each individually defend any action or proceeding brought against their respective agency and shall be individually responsible for all of its own costs, attorney's fees, expenses, and liabilities incurred as a result of any such claims, demands, suits, actions, damages, and causes of action, including the investigation of the defense thereof and any appellate proceedings, and from and against any orders, judgments, or decrees that may be entered as a result thereof.

13.2 Each Party shall bear its own responsibility and be liable for any claims, demands, suits, actions, damages, and causes of actions arising out of or occurring during travel to or from its own incident or emergency or from an incident or emergency covered by this Agreement.

13.3 The Parties agree that this Agreement does not require any Party to provide, nor entitle any Party to demand, indemnification, defense, or hold harmless relating to any claims, demands, damages, or causes of action that may be brought against any Party pursuant to this Agreement.

13.4 Any existing privileges and immunities, limitations from liability, exemptions from laws, ordinances, and rules, and all pensions, benefits, and other relief, disability, workers' compensation, and other benefits that apply to the officers, agents, or employees of the Parties hereto when performing their respective functions and duties within their respective territorial limits for their respective agencies, shall apply to the same degree and extent to the performance of those functions and duties of such officers, agents, or employees extraterritorially under the provisions of this Agreement.

13.5 Nothing herein shall be construed as a waiver of any Party's sovereign immunity under § 768.28, *Florida Statutes*. Any indemnification shall be limited to the monetary thresholds of Two Hundred Thousand Dollars ($200,000.00) for any single claim and Three Hundred Thousand Dollars ($300,000.00) for aggregate claims, as set forth in § 768.28, *Florida Statutes*, or any applicable amendment. This provision shall survive the natural expiration or earlier termination of this Agreement.

14. Assignment. No Party hereto shall assign, delegate, or otherwise transfer its rights and obligations as set forth in this Agreement to any other entity without the prior written consent of all Parties to this Agreement.

15. **Third-Party Beneficiaries.** The Parties expressly acknowledge and agree that this Agreement is intended solely for the benefit of the Parties hereto and shall not be construed to create any rights, benefits, or causes of action in any third parties. No person or entity other than the Parties to this Agreement shall have any legal or equitable right, remedy, or claim under this Agreement.

16. **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the Parties regarding the subject matter hereof and supersedes any prior discussions, agreements, or understandings, whether oral or written.

17. **Severability.** If any provision of this Agreement is held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, this Agreement shall be construed as if such invalid, illegal, or unenforceable provision were omitted, and all other provisions will remain in full force and effect.

18. **Waiver.** No failure of the Parties to insist upon strict performance of any of the covenants, terms, provisions, or conditions of this Agreement or to exercise any right or option herein contained, shall be construed as a waiver or a relinquishment for the future of any such covenant, term, provision, or condition, or right of election, but same shall remain in full force and effect.

19. **Dispute Resolution.** If the Parties to this Agreement fail to resolve any conflicts related to issues covered in this Agreement, such dispute shall be resolved in accordance with governmental conflict resolution procedures specified in the Florida Governmental Conflict Resolution Act, Fla. Stat. §§ 164.l01-164.1061. If these efforts are unsuccessful, the matter shall be submitted to a court of appropriate jurisdiction within Volusia County, Florida.

20. **Governing Law; Venue; Jury Trial Waiver.** Notwithstanding any conflict of laws, this Agreement shall be construed in accordance with and governed by the laws of the State of Florida. The exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts located in Volusia County, Florida, or federal courts for the Middle District of Florida, as applicable. BY ENTERING INTO THIS AGREEMENT, THE PARTIES HEREBY EXPRESSLY WAIVE ANY RIGHTS ANY PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.

21. **Recording.** This Agreement and any subsequent amendments shall be recorded in the Official Records of Volusia County, Florida.

[signatures on following page]

IN WITNESS WHEREOF, the Parties hereto, by their duly authorized representatives, have executed this Agreement as of the dates written below.

CITY OF DAYTONA BEACH SHORES

_____ _____
[Name, Title] Date

ATTEST:

_____
[Name], City Clerk

CITY OF EDGEWATER

_____ _____
[Name, Title] Date

ATTEST:

_____
[Name], City Clerk

CITY OF NEW SMYRNA BEACH

_____ _____
[Name, Title] Date

ATTEST:

_____
[Name], City Clerk

THE TOWN OF PONCE INLET

_____ _____

[Name, Title] Date

ATTEST:

_____

[Name], City Clerk

THE CITY OF PORT ORANGE

_____ _____

[Name, Title] Date

ATTEST:

_____

[Name], City Clerk

THE CITY OF SOUTH DAYTONA

_____ _____

[Name, Title] Date

ATTEST:

_____

[Name], City Clerk

Exhibit A
(Service/Response Area)

SOUTH DAYTONA FIRE STATION

DAYTONA BEACH SHORES

SOUTH DAYTONA

DAYTONA BEACH SHORES 77

PORT ORANGE 71

PORT ORANGE 73

PORT ORANGE 75

PORT ORANGE

SPRUCE CREEK 12

PORT ORANGE 72

PORT ORANGE 74

PONCE INLET 78

PONCE INLET

NEW SMYRNA BEACH 53

NEW SMYRNA BEACH

NEW SMYRNA BEACH 51

TURNBULL 23

NEW SMYRNA BEACH 52

NEW SMYRNA BEACH 50

EDGEWATER

EDGEWATER 55

SOUTH BEACH 21

EDGEWATER 57

Fire Stations

Cities

- DAYTONA BEACH SHORES
- EDGEWATER
- NEW SMYRNA BEACH
- PONCE INLET
- PORT ORANGE
- SOUTH DAYTONA

Date: 3/6/2025

CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 5/20/2025

SUBJECT: (G14) Volusia Growth Management Commission Member Appointment

DEPARTMENT: City Manager

GOAL: 4 - Economic Development

RECOMMENDED MOTION: Move to re-appoint Debbie Connors to serve on the Volusia Growth Management Commission for the four-year term beginning July 1, 2025.

SUMMARY: Debbie Connors currently represents the City on the Volusia Growth Management Commission (VGMC). Ms. Connors' term is scheduled to expire on June 30, 2025. Ms. Connors has expressed an interest to continue serving the City in this capacity. She has held many leadership roles during her tenure and currently serves as Chair of the Commission. Ms. Connors is highly respected by her fellow members and staff, and she brings significant historical knowledge and expertise to the commission.

PRESENTER: Robin Fenwick

ATTACHMENTS:

Robin Fenwick	Created/Initiated - 4/16/2025
Robin Fenwick	Approved - 4/16/2025
Wayne Clark	Final Approval - 5/8/2025

CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 5/20/2025

SUBJECT: (G15) Fire Pension Board Appointment - Council Appointment

DEPARTMENT: City Clerk

GOAL: 6 - Organizational Excellence

RECOMMENDED MOTION: Move to appoint Michael Rusin to the Fire Pension Board to serve a 4-year term expiring in December 2029.

SUMMARY: Michael Rusin would like to be appointed to the Fire Pension Board. The appointment is a 4-year term that will expire in December 2029. Mr. Rusin's application is attached for your consideration. No other applications have been received by the Clerk's Office.

PRESENTER: Robin Fenwick

ATTACHMENTS:

1.	Mike Rusin Resume	Mike Rusin Resume.pdf
2.	Mike Rusin Advisory Boards and Commissions Volunteer Application 4-3-2025	Mike Rusin Advisory Boards and Commissions Volunteer Application 4-3-2025.pdf

Amanda Bonin	Created/Initiated - 5/7/2025
Robin Fenwick	Approved - 5/7/2025
Wayne Clark	Final Approval - 5/8/2025

MIKE RUSIN

SERVICE OPERATIONS LEADER

CONTACT

404-285-6222

michael.rusin1@gmail.com

140 Wimbledon Ct.
Port Orange, FL 32127

SKILLS

Microsoft Office Suite

Project & Performance Management

Employee Benefits Technical Skills

Benefit Account Management (BAM)

AMS 360

EDUCATION

B.A Political Science
B.A. History

Georgia State University

2005 - 2009

HONORS

EB IO Refresh Workstream Lead - Process Documentation

Present

EB Steering Committee (BAM)

Present

Business Partner of the Year

2016

PROFILE

As an accomplished insurance business professional, I bring 14 years of experience in leading successful teams within dynamic professional environments. My expertise lies in operations, with a proven track record in designing efficient processes and evaluating risk and control landscapes. I specialize in crafting and managing Group Employee Benefit Solutions, ensuring strict adherence to local, state, and federal compliance regulations. My commitment to offering top-tier customer service is aimed at enhancing the experiences of both employers and employees. Furthermore, I excel in the implementation of new products and technology, driving innovation within the industry. My skills extend to performance management, nurturing the growth and development of team members, managing inventory, and fostering a team culture rooted in integrity, gratitude, and excellence.

WORK EXPERIENCE

Service Operations Leader

Brown & Brown Insurance Services, Inc. February 2020- Present

- Maintain oversight of 22 Service, Implementation, & BIT teammates focusing on direct feedback, growth, & development
- Drive adherence to annual goals including margin & growth, teammate engagement, and performance related to service processes
- Manage book of business consisting of assigned clients' employee benefit programs
- Develop and maintain oversight of operation functions, policies, procedures, and controls related to servicing employee benefits clients
- Establish and maintain relationships with internal & external (carrier/vendor) contacts to monitor, track, & escalate issues to ensure timely resolutions
- Support service team activities and initiatives by providing escalated support and guidance on matters requiring additional attention
- Oversee the execution of renewal implementation and close-outs
- Research, obtain information, and implement processes related to general operational procedures, corporate best practices, as well as employee benefit legislation and regulation
- Collaborate with national resources and Benefit Leaders from other profit centers to share and implement best practices
- Evaluate and manage service team workload to ensure adequate coverage for new business customers
- Coordinate scheduling for implementation and develop high-level strategy to improve customer engagement for new products & value-added services

Brokerage Analyst

Brown & Brown of Florida, Inc. February 2018 - February 2020

- Manage book of business consisting of assigned clients' employee benefit programs
- Prepare and submit requests for proposals to employee benefits carriers to obtain quotes
- Facilitate the gathering of claims experience from carriers, including assembly and dissemination of monthly experience, large claims, and pharmacy data prior to market release
- Act as liaison and negotiate with carriers: inquire about outstanding items, evaluate coverage options, and negotiate terms and pricing for clients
- Manage the renewal marketing process, timelines, and expectations
- Oversee the execution of renewal implementation and close-outs
- Research, obtain information, and implement processes related to general operational procedures, as well as employee benefit legislation and regulation
- Provide detailed analysis of new/existing carrier partners

MIKE RUSIN

SERVICE OPERATIONS LEADER

CONTACT

404-285-6222

michael.rusin1@gmail.com

140 Wimbledon Ct.
Port Orange, FL 32127

COMMUNITY INVOLVEMENT

Rotary Club of Port Orange-South Daytona

Secretary - 2019 - 2024

Vice President - Present

Salty Family Services

Advisory Committee - Present

REFERENCES

Available Upon Request

WORK EXPERIENCE

Insurance Operations Regional Manager

Brown & Brown, Inc. August 2015 - January 2018

- Led a series of onsite reviews for small, medium, and large retail profit centers while participating in ~ 20 reviews in various retail, wholesale, and program profit centers
- Manage 7 local and remote teammates tracking progress of regional team in completing all review activities, including the timely & successful distribution of all Insurance Operations reports
- Source and recruit new talent to join Insurance Operations review team and handle all onboarding responsibilities
- Partner with Insurance Operations Director to draft department budget based on actual and forecasted data sets
- Developed and maintained Acquisition financial Proforma template currently in use by Acquisitions team
- Built processes for Internal Operations board reporting, monthly expense management tracking, and action plan management
- Designed SharePoint user sites for all disciplines within Insurance Operations and built mechanism to transfer data securely with profit centers, as well as, custom applications for tracking exceptions, suspense activities, recruiting documentation, and review tracking
- Act as liaison between IT and review teams for rebuild of Audit Tracking Database using SharePoint platforms
- Conducted Training webinars across all regions and disciplines on new application and tool release dates

Vendor Portfolio Liaison

JPMorgan Chase Specialty Operations July 2011 - August 2015

- Manage operational relationship with 4 law firm vendors throughout the US with a gross recovery of $1m in 2014
- Oversaw 10 internal FTE and 17 External FTE along with processes spanning 4 varying areas of financial recovery
- Drafted and maintained policies and procedures to outline legal operational requirements
- Collaborate with peers in 5 lines of business to drive consistency among similar processes related to Auto, Mortgage, Business Banking, and Retail
- Key contact within Card Services line of business for $1.6b system creation and migration for sworn documents and collections litigation activities
- Design and present strategic ideas to senior leadership that has a positive operational and financial impact
- Develop audit preparation plan and manage audit requests for production of documents, while maintain daily operational activity
- Successfully managed internal and regulatory audits to resolution scoring the highest possible rating

Advisory Boards and Commissions Volunteer Application

City of Port Orange

Purpose

Complete this form to apply to be a member of the Advisory Committee.

Eligibility

Residents who wish to serve on the Advisory Committee.

Prerequisites

Applicants must be residents of the municipality to apply for membership.

Required Documents

A cover letter and resume are recommended supporting documents to fill out this application.

Full Name	Michael Rusin
Address	140 Wimbledon Court
City	Port Orange
State	FL
ZIP Code	32127
Phone Number	4042856222
Email Address	mike.rusin@bbrown.com
Which boards would you like to serve on?	• Planning Commission • Environmental Advisory Board • Parks and Recreation Advisory Board
Link to financial disclosure	
Are you a registered voter?	Yes
Can you regularly attend meetings?	Yes
Are you currently serving on a City Board?	No

Why do you desire to serve on this board?	I'm looking to get involved in the community at the community level. I've had the privilege of being a member of Port Orange/South Daytona Rotary Club for several years and have been introduced the need for public service in our community. This is the best way i know to get involved with the City of Port Orange where I have called home since 2011.

Reference Information

i.

Full Name

Shawn Goepfert

Address

1000 City Center Circle

City

Port Orange

State

FL

ZIP Code

32129

Phone Number

3862994774

ii.

Full Name

Dustin Smurdon

Address

243 N Halifax Dr

City

Ormond Beach

State

FL

ZIP Code

32176

Phone Number

6145702160

iii.

Full Name

Brandon Young

Address

1 Aerospace Boulevard

City

Daytona Beach

State

FL

ZIP Code

32114

Phone Number

3862267245

Work Experience	See Resume
Interests / Activities	Camping, Church, Family, Brazilian Jiu-Jitsu
Community Involvement	Vice President- Rotary Club Port Orange/South Daytona Member - Advisory Committee Salty Family Services

You may upload a resume to outline your educational, work and community service experiences.

Resume Rusin, MIke - Resume 2024.pdf

Signature Agreement

I understand the responsibilities associated with being a board member, and I have adequate time to serve if appointed.

By submitting this application, applicant attests that he/she has reviewed the Code of Ethics for Public Officers and Employees (Part III of Chapter 112, Florida Statutes), and that applicant does not hold any public position, employment or other relationship (i.e. dual office holding prohibition, conflicting employment or contractual relationship, etc.) that would prohibit or otherwise disqualify applicant from serving on the City board/commission for which the applicant now seeks to serve.

Note: If you are unsure whether a Code of Ethics issue exists or require assistance determining if a Code of Ethics issue is present, feel free to reach out to the City Attorney's Office prior to submitting your application at (386) 506-5525.

All statements and information provided in this application are true to the best of my knowledge. Please note that Florida has a broad public records law. Your entire application and the information & responses contained therein, including your name, address, email, and phone number, will become a public record upon submission of the application to the City. In limited circumstances, certain public servants who are afforded protections pursuant to Ch. 119, F.S. may elect to have certain information exempted from public disclosure, upon written request.

Signature



Date 04/02/2025

Thank you for your interest in serving the City of Port Orange. Your completion of this application is necessary so that the members of the City Council can thoroughly review each application as part of their consideration for your

appointment. After clicking ‘Submit’ you will receive a Submission ID number that can be retained for future reference.

You will be updated by our staff, if necessary, as your submission is processed.

Have a great day!

CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 5/20/2025

SUBJECT: (H16) Second Reading - Ordinance No. 2025-05 - Amending Chapter 58 - Streets, Sidewalks and Other Public Places, Article IV. Communications Facilities in Public Rights-of-Way

DEPARTMENT: Engineering

GOAL: 2 - Infrastructure

RECOMMENDED MOTION: Move to approve Ordinance No. 2025-05.

SUMMARY: In 2018, the City Council adopted Ordinance No. 2018-13, to implement amendments to Florida Statutes, including the Florida Advanced Wireless Infrastructure Deployment Act ("Small Cell Statute"). Ordinance No. 2018-13, created the Port Orange Communications in Rights-of-Way Ordinance, which regulates the processing of applications and installation of communications facilities in the City's public Rights-of-Way. The ordinance was updated in 2021 to be consistent with 2019 amendments to Florida Statues.

The City has proactively solicited industry comments on this ordinance in an effort to continually improve its permitting process. Chapter 58, Article IV of the Code of Ordinances spells out the registration and permitting process for communications facilities located in City rights-of-way in order to minimize disruption to the rights-of-way and protect the City's infrastructure located therein.

Based on the comments received from the communications providers and the experience of permitting the installation and repair of communications facilities in the city's rights-of-way since the ordinance was adopted in 2018, staff has determined that some of the requirements in the ordinance are not practical or necessary to properly install the communications facilities and protect public infrastructure. Staff is recommending changes to the ordinance to help streamline the permitting process by removing requirements such as photographic/videographic documentation of the work area prior to construction, dispensing with permitting requirements for certain routine maintenance tasks, removing various certifications of the engineering plan, and the requirement to provide as-builts upon completion.

The proposed changes to the ordinance will not affect the city's ability to effectively minimize disruption to public rights-of-way and to protect public infrastructure from damage during the installation of communications facilities. The ordinance still includes the requirements of an engineering plan that shows the type of proposed facility,

location of the proposed facility, and the dimensions, height, footprint, and concealment features or other pertinent engineering information requested by the city to insure the communications facilities are installed correctly and within rights-of-way.

PRESENTER: Junos Reed

ATTACHMENTS:

1.	Ord. 2025-05 - Telecommunications in ROW	Ord. 2025-05 - Telecommunications in ROW.pdf
2.	Business Impact Statement Ordinance 2025-05	Business Impact Statement Ordinance 2025-05.pdf

Amanda Bonin Created/Initiated - 5/7/2025

ORDINANCE NO. 2025-05

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, AMENDING CHAPTER 58, ARTICLE IV, SECTIONS 58-74, 58-75, 58-77 AND 58-78; TO REMOVE REQUIREMENT FOR PHOTOGRAPHIC/VIDEOGRAPHIC DOCUMENTATION OF THE WORK AREA PRIOR TO CONSTRUCTION, DISPENSING WITH PERMITTING REQUIREMENTS FOR CERTAIN ROUTINE MAINTENANCE TASKS, REMOVING VARIOUS CERTIFICATIONS OF THE ENGINEERING PLAN, AND THE REQUIREMENT TO PROVIDE AS-BUILTS UPON COMPLETION; PROVIDING FOR CODIFICATION; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, City of Port Orange ("City") staff periodically reviews City Ordinances and makes recommendations to the City Council to revise its Ordinances; and

WHEREAS, the City Council of the City of Port Orange has determined that the following amendments promote and protect the general health, safety and welfare of the residents of the City of Port Orange by regulating the siting of communications facilities and utility poles within the public rights-of-way; and

WHEREAS, this Ordinance accommodates the growing needs and demand for communications services; and

WHEREAS, this Ordinance seeks to address expressly new and existing communications facilities and technologies, while also protecting, preserving, and maintaining the public safety and aesthetic characters of areas where such public rights-of-way exist; and

WHEREAS, Section 337.401, Florida Statutes, addresses inter alia, the authority of local governments to regulate the placement and maintenance of communications facilities in the public rights-of-way; and

WHEREAS, rules and regulations imposed by a local government relating to communications service providers that desire to place or maintain communications facilities in its rights-of-way must be generally nondiscriminatory and competitively neutral; and

WHEREAS, Section 337.401(3)(g), Florida Statutes, provides that a local government may not use its authority over the placement of facilities in its rights-of-way as a basis for asserting or exercising regulatory control over a provider of communications services regarding matters within the exclusive jurisdiction of the Florida Public Service Commission or Federal Communications Commission, including, but not limited to, the operations, systems, qualifications, services, service quality, service territory, and prices of a provider of communications services; and

WHEREAS, in 2017, the Florida Legislature enacted and the Governor approved the Advanced Wireless Infrastructure Deployment Act, Section 337.401(7), Florida Statutes ("Small Cell Statute"); and

WHEREAS, the Small Cell Statute creates new requirements and allowances for local governments relating to the installation of utility poles in the public rights-of-way to collocate small wireless facilities, and the placement and maintenance of small wireless facilities and micro wireless facilities in the public rights-of-way; and

WHEREAS, the Small Cell Statute provides that a local government may adopt by ordinance objective design standards requiring a small wireless facility to meet reasonable location context, color, stealth, and concealment requirements, objective design standards requiring a new utility pole intended to support the collocation of small wireless facilities that replace an existing facility to be of substantially similar design, material, and color, and reasonable spacing requirements concerning the location of ground mounted equipment; and

WHEREAS, the Small Cell Statute also provides that a local government may adopt by ordinance provisions for insurance coverage, indemnification, performance bonds, security funds, force majeure, abandonment, municipal liability, and municipal warranties provided such provisions are reasonable and nondiscriminatory; and

WHEREAS, the City Council adopted Ordinance No. 2018-13 on August 7, 2018, to implement the Small Cell Statute; and

WHEREAS, in 2019, the Florida Legislature enacted and the Governor approved CS/CS/CS/SB 1000 (“SB 1000”), amending Section 337.401, Florida Statutes, including portions of the Small Cell Statute; and

WHEREAS, in 2021, the City adopted Ordinance No. 2021-22 to be consistent with amendments to the Florida Statutes; and

WHEREAS, it is the City Council’s intent to exercise its authority over the placement and maintenance of communications facilities in its rights-of-way to the full extent consistent with applicable state and federal law; and

WHEREAS, it is the City Council’s further intent to treat each such communications services provider in a reasonable, nondiscriminatory, and competitively neutral manner in exercising such authority to the extent consistent with applicable law; and

WHEREAS, the city’s rights-of-way are essential for the travel of persons and the transport of goods throughout the city and are a unique and physically limited resource requiring proper management by the city in order to ensure public safety, maximize efficiency, minimize costs to city taxpayers for the foregoing uses, reasonably balance the potential inconvenience to and negative effects upon the public from the placement and maintenance of communications

facilities in the rights-of-way against the substantial benefits that accrue from such placement and maintenance, and promote the public health, safety and general welfare; and

WHEREAS, a duly noticed public hearing as required by law was held by the City Council of the City of Port Orange, at which public hearing all residents and interested persons were given an opportunity to be heard; and

WHEREAS, the City Clerk submitted notice of the first hearing on this proposed Ordinance to the Florida Secretary of State, consistent with Section 337.401(3)(d), Florida Statutes; and

WHEREAS, staff has determined that some of the existing requirements in the ordinance are not practical or necessary to properly install the communications facilities and protect public infrastructure and is desirous to streamline the permitting process and remove superfluous requirements; and,

WHEREAS, the City Council has reviewed the regulations set forth in this Ordinance and has determined that such regulations are consistent with the city's plans.

WHEREAS, for purposes of this Ordinance, text with underlined (<u>underlined</u>) type shall constitute additions to the original text and text with strike-through (~~strike-through~~) type shall constitute deletions to the original text;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA:

<u>SECTION 1.</u> The foregoing WHEREAS clauses are ratified and incorporated as the legislative intent of this Ordinance.

<u>SECTION 2.</u> The City Council of the City of Port Orange, Florida hereby amends Chapter 58, Article IV of the Code of Ordinances to read as follows:

Chapter 58 - STREETS, SIDEWALKS AND OTHER PUBLIC PLACES

ARTICLE IV. COMMUNICATIONS FACILITIES IN PUBLIC RIGHTS-OF-WAY

[No Changes to Sections 58-70, 58-71, 58-72 and 58-73]

Sec. 58-74. – Requirement of a permit.

(a) In accordance with applicable law, city ordinances, codes and regulations, including this article, a right-of-way use permit issued by the city shall be required for a communications services provider, communications facility provider, or a pass-through provider to place or to maintain a communications facility, including, but not limited to, backhaul facilities, in the public rights-of-way unless otherwise exempt pursuant to this article. An effective registration shall be a condition of obtaining a permit. Notwithstanding an effective registration, permitting requirements shall continue to apply. A permit may be obtained by or on behalf of a registrant having an effective registration if all permitting requirements are met. A registrant shall not commence to place or to maintain a communications facility in the public rights-of-way until all applicable permits have been issued by the city or other appropriate authority. Registrant shall comply with all city requirements for issuing permits, including reasonable rules or regulations governing the placement or maintenance of a communications facility in public rights-of-way. Permits shall apply only to the areas of public rights-of-way specifically identified in the permit. The city may issue a blanket permit to cover certain activities, such as routine maintenance and repair activities, that may otherwise require individual permits or may impose lesser requirements. Requests for ancillary permits required to operate a communications facility, including, but not limited to, electrical permits, shall be processed pursuant to the city's rules and regulations. The city may deny or withhold the ancillary permit if the registrant is otherwise in violation of the City Code or applicable codes.

(b) Limited exceptions to permit requirement.

(1) A registrant that is in compliance with this article shall be allowed to perform service restoration work on existing facilities, ~~or aerial, or repair work,~~ including, but not limited to, emergency repairs of existing facilities or extensions of such facilities for providing communications services to customers without a permit issued by the city. ~~A registrant performing work without a permit shall ensure that there is photographic and video documentation of the work, including depiction of the area of the public rights-of way impacted, and such photographic and video documentation shall be provided to the city upon request or, if not requested, within ten business days.~~ The term "emergency" shall mean a condition that affects the public's health, safety or welfare, which includes an unplanned out-of-service condition of a pre-existing service. Registrant shall provide prompt notice to the city of the service restoration work or repair work and, within two business days of commencing the work, and shall apply for a permit if such activity required a permit under this article within 30 days. <u>The registrant shall bear the expense of restoring the rights-of-way to the condition prior to the service restoration.</u> Any

maintenance of traffic required for service restoration or repair work shall meet the applicable requirements of the latest edition of the FDOT Design Manual.

(2) A registrant shall be allowed to perform routine maintenance within the public rights-of-way without a permit if such proposed routine maintenance does not involve excavation, construction, or disruption to transportation or utilities in the public rights-of-way. A registrant shall be allowed to perform maintenance, repair, replacement, extension, or upgrade of existing aerial lines or underground communications facilities located on private property outside of the public rights-of-way without a right-of-way use permit, although other permits, such as building or electrical, may be required. ~~In the case of routine maintenance, a registrant shall provide reasonable advance written notice to the city identifying the areas where such maintenance will occur, scope of maintenance, date(s) and duration of work to be performed.~~ If routine maintenance requires the closure of the public rights-of-way regardless of the duration, a rights-of-way permit consistent with the city's rules and regulations shall be required. A registrant shall be allowed to perform maintenance, repair, replacement, extension, or upgrade of existing aerial lines or underground communications facilities located on private property outside of the public rights-of-way without first obtaining a rights-of-way permit. ~~All underground work or excavation, whether in the public rights-of-way or on private property without a permit shall be photographed and videotaped, and such photograph and videotape documentation shall be provided to the city upon request or, if not requested, within ten business days.~~ The registrant shall bear the expense of restoring the rights-of-way to the condition prior to the service restoration.

(3) A permit shall not be required for replacement of existing ~~wireless~~ communications facilities with ~~wireless~~ communications facilities that are substantially similar or of the same or smaller size, unless said replacement requires excavation or directional drilling in the right-of-way. If such replacement will require the closure of a rights-of-way, the registrant shall obtain a rights-of-way permit consistent with the city's rules and regulations. A registrant shall provide 48 hours' notice to the city prior to such work being done. As-built plans shall be provided to the city within ten business days.

(4) A registrant shall be allowed to place or to maintain a service drop within the public rights-of-way without a permit if such proposed work does not involve excavation, construction, or the temporary closure of the public rights-of-way.

(5) A permit shall not be required for the installation, placement, maintenance, or replacement of micro wireless facilities that are suspended on cable strung between existing utility poles in the public rights- of-way, in compliance with applicable codes by or for a communications services provider authorized to occupy the public rights-of-way and who is remitting communications services tax under F.S. ch. 202. Prior to placing a micro wireless facility in the public rights-of-way pursuant to this subsection, the registrant shall submit a ~~notarized~~ letter to the city from or on behalf of the communications services provider, which shall be effective upon filing, attesting that the micro wireless facility's dimensions comply with F.S. § 337.401(7) and this article. A registrant's submission to demonstrate a micro wireless facility's dimensions may apply to all of the same, substantially similar, or smaller size micro wireless facilities sought to be placed in the public rights-of-way by such registrant. If the micro wireless

facility's dimensions exceed the dimensions to constitute a micro wireless facility, the registrant shall not be authorized to place such facility in the public rights-of-way. As-built plans shall be provided to the city within ten business days.

(6) Notwithstanding the exceptions to permit requirements contained in this subsection, a registrant shall obtain from the city a right-of-way permit for work that involves excavation, closure of a sidewalk regardless how temporary, or closure of a vehicular lane or parking lane regardless how temporary, unless the registrant is a communications services provider that is performing service restoration on an existing facility and the work is done in compliance with the 2017 edition of the Florida Department of Transportation Utility Accommodation Manual, including, but not limited to, the requirement to notify Sunshine 811 prior to any excavation or demolition activities in accordance with F.S. ch. 556, and to comply with all city Codes. In such instance, to the extent not inconsistent with the 2017 edition of the FDOT Utility Accommodation Manual, the registrant communications services provider shall provide reasonable advance notice to the city so that the city may have an observer present and provide information acceptable to the city as to the service restoration work. The registrant shall bear the expense of restoring the rights-of-way to the condition prior to the service restoration. In such instances, the registrant shall provide notice of such work within 30 days after restoration and may be required to submit an after-the-fact permit for work which would otherwise have required a permit. The city may require a specific method of excavation and a maintenance of traffic or sidewalk closure plan, as applicable. A registrant performing work without a permit shall file for an after the fact permit within 30 days after completing restoration of the public rights-of-way. ~~A registrant performing work without a permit shall ensure that the work is photographed and videotaped, including of the area of the public rights-of way impacted, and such photograph and videotape documentation shall be provided to the city upon request or, if not requested, with the after the fact permit application.~~

(c) The city manager may cause an immediate stop work order where any permitted or unpermitted construction or other work in the public rights-of-way poses a serious threat to the health, safety or welfare of the public until such serious threat has been abated. Failure to comply with such order may subject a registrant, and its agents, employees, and contractors as applicable to appropriate enforcement remedies as set forth in this article and applicable law.

Sec. 58-75. – Permit information requirements and review procedures.

(a) *Pre-submittal meeting.* To minimize issues related to a permit, prior to submitting materials for a permit request or application, registrants are strongly encouraged to engage in a pre-submittal meeting, in particular if multiple work locations are considered and/or underground work will be performed. The city shall undertake efforts to accommodate a registrant's request for a pre-submittal meeting either in person or through electronic communications within ten business days. There is no requirement of a pre-submittal meeting for applications. A pre-submittal meeting shall not commence the time frames provided herein for city review and processing of a request or an application.

(b) *Requirements for all communications facilities in the public rights-of-way.* As part of any permit application or request to place or maintain any facility pursuant to this article in the public rights-of-way, a registrant or a registrant's agent or contractor shall complete a right-of-way permit form provided by the city that, at a minimum, includes the following information:

(1) If the person seeking the permit is not the registrant, a statement of authority by the registrant to act on behalf of the registrant. In addition, if the person seeking the permit is a contractor, the contractor's license or registration and contractor's insurance information confirming the contractor's authority to perform construction in the city and statements as to whether the contractor has any open permits with the city, and if so, the permit identification number or information.

(2) *Engineering plan.* An engineering plan signed and sealed by a licensed engineer, that includes the following:

a. For new installations only, ~~A~~ a certification from a licensed surveyor stating that the proposed location of the facility or utility pole is within public rights-of-way. For upgrading of utilities in the same footprint as existing communications, or for any maintenance or repair work requiring a permit, a detailed site plan will be accepted in lieu of surveyor certification. The detailed site plan must include the proximity of work to existing utilities and infrastructure, and minimum clearance distances of at least 24" therefrom. The City may request additional location information in the event of a boundary dispute~~At no time will the proposed location based on aerial interpretation based on services such as Google or county records be accepted~~;

b. The type of proposed facility, location of the proposed facility, and the dimensions, height, footprint, stealth design, and concealment features of the proposed facility;

c. The global positioning system (GPS) coordinates of the proposed facility. The GPS coordinates shall be based on the reading from a handheld mobile GPS unit set to Datum NAD 83 or WGS84. GPS coordinates based on Google Earth or similar application may be used where areas of shading occur due to overhead canopy. GPS coordinates shall be provided in decimal degrees at a six decimal point precision or as otherwise required by the city.~~;~~ The global positioning system (GPS) coordinates of any structural boxes, cabinets, and similar improvements, excluding aerial or underground wirelines. The GPS coordinates shall be based on the reading from a handheld mobile GPS unit set of Datum NAD 83 or WGS84;

d. Whether the proposed facility is proposed within a location subject to restrictions pursuant to subsection 58-78(b) of this article;

e. ~~For new communications facilities and extensions of existing communications facilities that require a permit, within 50 feet beyond of the edge of the location of the proposed work, inclusive of underground work, in all directions, a sketch showing pavement, sidewalks, driveways, ramps, trees, below-grade utilities, and other above-grade and below-grade structures and facilities located within the public rights-of-way and the distances from the proposed facility and the edge of nearby pavement, sidewalks,~~

~~driveways, ramps, the nearest residential properties, nearby drainage systems, trees, ground-mounted equipment, nearby structures in the public rights-of-way, underground utilities and other above-grade and below-grade structures and utilities located within the public rights-of-way;~~

~~f.~~ Sufficient specificity demonstrating compliance with applicable codes, as defined herein and as may be amended;

~~g~~. ~~If applicable, the routes of all backhaul facilities and power lines to be placed or maintained in the public rights-of-way in connection with the proposed facility. Power lines may be subject to separate permit requirements, such as a building permit;~~

~~h. Certification that the proposed facility will not materially interfere with the safe operation of traffic control equipment;~~

~~i. Certification that the proposed facility will not interfere with sight lines or clear zones for transportation, pedestrians, or public safety purposes or result in the public rights-of-way being inconsistent with the Florida greenbook;~~

~~j. Certification that the proposed facility will not materially interfere with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement; and~~

~~k.~~f. Other engineering information that may be requested by the city.

(3) Trees or landscaping proposed to be removed or impacted upon the placement or maintenance of the proposed facility.

(4) ~~Photographic or video documentation of the pre-construction condition of the public rights-of-way in the area to be affected by the installation of the proposed facility.~~

~~(5)~~ *Management of traffic (MOT).* The registrant shall provide a MOT with applicable FDOT indexes, if appropriate.

~~(6)~~(5) *Restoration plan and estimated cost of restoration of the public rights-of-way.* A restoration plan and a good faith estimate of the cost of restoration of the public rights-of-way by a licensed engineer. Such good faith estimate shall be accepted by the city unless the city determines such estimated costs are not representative of the actual costs of the restoration of the public rights-of-way. Estimates of the cost to restore the public rights-of-way shall include all costs necessary to restore the public rights-of-way to its original condition. Such good faith estimate may include, but shall not be limited to, costs to restore the paving, curbs/gutters, sidewalks, multi-purpose trails, and landscaping. All existing planted or naturally occurring shrubbery or vegetation, including sod, damaged or destroyed during work in the public rights-of-way shall be replaced.

~~(7)~~(6) *Timetable for construction or installation.* The timetable for construction, placement or maintenance of the proposed facility or each phase thereof.

~~(8)~~(7) *Indemnification.* A statement shall be included with the permit application or request that by execution of the application or request and by filing for the permit, the registrant

shall be bound to the city with respect to the indemnification provisions set forth in subsection 58-73(5)e of this article.

~~(9)~~(8) *Airport airspace protection.* If applicable, certification of compliance with F.S. ch. 333, and all city, state and federal laws and regulations, as amended, pertaining to airport airspace protections.

~~(10)~~(9) *Attestation.* For applications by a wireless infrastructure provider or its contractor for the placement or maintenance of a utility pole in the public rights-of-way for collocation of a small wireless facility, the registrant shall provide an attestation by an officer of the registrant that a small wireless facility will be collocated on the utility pole and will be used by a wireless services provider to provide communication service within nine months after the date the application is approved.

~~(11)~~(10) *Pole attachment agreement.* If applicable for the proposed facility, except for registrants whose pole attachments are regulated by 47 U.S.C. §224, or applicable Florida Public Service Commission regulations the registrant shall provide a copy of a fully executed valid pole attachment agreement between the owner of the utility pole and registrant. In lieu of providing the complete pole attachment agreement between the owner of the utility pole and registrant, the registrant may provide the first page of such agreement and the signature page or a notarized letter of authorization from the owner of the utility pole, providing adequate identifying information, acceptable to the city, and indicating the registrant is authorized to install its facility on the identified utility pole. By submitting the city's permit form, the registrant certifies to the city that it has authority from the utility pole owner to collocate its facility.

~~(12)~~(11) *Information regarding height limitations.* For an application for a new utility pole to support the collocation of a small wireless facility, the registrant shall provide information regarding the height and GPS location of the tallest utility pole located in the same public rights-of-way as of July 1, 2017, measured from grade in place within 500 feet of the proposed location of the utility pole. If there is no utility pole within 500 feet of the proposed utility pole as of July 1, 2017, the registrant shall so certify.

~~(13)~~(12) If the permit request includes a power service connection or backup power supply to be installed at the same time as the communication facility, a copy of the city's building permit shall be provided.

~~(14)~~(13) In addition to the requirements herein, as part of any permit application to place or maintain a small wireless facility or utility pole in the public rights-of-way, the registrant shall provide the following:

a. Documentation to the satisfaction of the city from a licensed engineer, that the structure and foundation of the utility pole intended to support the collocation of the small wireless facility can support the additional load of the proposed small wireless facility consistent with the requirements of the Florida Building Code;
b. Certification and description by the registrant to the satisfaction of the city how the proposed small wireless facility or utility pole complies with the objective design standards set forth in this article. For a proposed ground-mounted small wireless facility, such information shall include whether the proposed small wireless facility

includes a wrap that has been approved by the city or is of an architectural design that is substantially similar to other infrastructure in the area of the public rights-of-way or has been approved by the city.

c. Accurate photo simulations of the proposed utility pole or small wireless facility and if applicable, as collocated on the utility pole.

~~(15) Applicable permit fees including reimbursement for city consultants, to the extent not inconsistent with applicable law. The city acknowledges that currently, applicable law does not allow the city to charge permit fees.~~

~~(16)~~(14) *Consolidated permit application and single application or request for multiple locations.* A registrant may submit a single application or request to place or to maintain multiple facilities in the public rights-of-way, where it would be more efficient for the registrant and the city to address multiple facilities in one permit. A registrant seeking to collocate multiple small wireless facilities may file a consolidated permit application and receive a single permit for the collocation of up to 30 small wireless facilities. The application must include the information required for an application for each of the proposed small wireless facilities. In addition, prior to applying for a consolidated permit, the registrant is strongly encouraged to engage in a pre-submittal meeting with the city to discuss all proposed small wireless facilities. If the application includes multiple small wireless facilities, the city may separately address small wireless facility collocations for which incomplete information has been received or which are denied.

~~(17)~~(15) To the extent not inconsistent with applicable law, such additional information requested by the city reasonably necessary for the permit application or request.

(c) *Application review and procedures for ~~small wireless~~ communications facilities including small wireless facilities and utility poles for collocation of small wireless facilities.*

(1) Time periods within this subsection shall be extended for the period of time impacted by a force majeure event or by a declared state of emergency by the city or governor of the state that impacts the city ("force majeure extension). If a registrant opposes a force majeure extension pursuant to this subsection, it shall notify the city within 24 hours of such extension becoming effective or the registrant shall be deemed to have consented to the extension. Except as otherwise provided herein, requests for permits for the placement of communications facilities in the public rights-of-way, including, but not limited to, backhaul facilities, shall be subject to the time frames and review procedures set forth in this subsection; requests shall be considered to be applications; and requesters shall be considered to be registrants for purposes of time frames as referenced in this subsection. The time frames and procedures herein shall not apply to other requests that do not involve the placement of communications facilities in the public rights-of-way, including, but not limited to, request for permits to perform maintenance on existing communications facilities in the public rights-of-way.

a. Unless extended by mutual consent of the registrant and city, within 14 days after receiving an application, the city manager will notify the applicant by electronic mail as to whether the application is complete. If an application is deemed incomplete, the

city will specifically identify the missing information. An application is deemed complete if the city fails to provide notification to the registrant within 14 days.

b. *Negotiation process.*

1. Unless extended by mutual consent of the registrant and the city, within 14 days after the date of filing the application, the city may request that the proposed location of a small wireless facility be moved to another location in the right-of-way and placed on an alternative city utility pole or support structure. The city and the applicant may negotiate the alternative location, including any objective design standards and reasonable spacing requirements for ground-based equipment, for 30 days after the date of the request.
2. At the conclusion of the negotiation period, if the alternative location is accepted by the registrant, the registrant must notify the city of such acceptance and the application shall be deemed granted for any new location for which there is agreement and all other locations in the application.
3. If an agreement is not reached, the registrant must notify the city of such nonagreement and the city must grant or deny the original application within 90 days after the date the application was filed unless extended by mutual consent of the applicant and city. Failure of the applicant to so notify the city as required herein shall be deemed to constitute the applicant's consent to the city's alternative location. A request for an alternative location, an acceptance of an alternative location, or a rejection of an alternative location must be in writing and provided by electronic mail.

c. The city processes all applications on a nondiscriminatory basis. Unless the city and the registrant engage in negotiations as provided above, the city will approve or deny the application and will notify the registrant by electronic mail whether the application is approved or denied within 60 days after the receipt of a completed application.

d. *Extension of time.* If the city and the registrant do not engage in negotiations, the registrant and city may mutually agree to extend the 60-day application review period. The city shall grant or deny the application at the end of the extended period.

e. *Basis to deny applications.* The city may deny an application for a proposed collocation of a small wireless facility or to place a utility pole used to support a small wireless facility in the public rights-of-way if the proposed small wireless facility or utility pole to support a small wireless facility:

1. Materially interferes with the safe operation of traffic control equipment;
2. Materially interferes with sight lines or clear zones for transportation, pedestrians, or public safety purposes;
3. Materially interferes with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement;

4. Materially fails to comply with the 2017 edition of the Florida Department of Transportation Utility Accommodation Manual;
5. Fails to comply with applicable codes;
6. Fails to comply with objective design standards set forth in this Article; or
7. Fails to comply with the City Code, to the extent not inconsistent with applicable law.

f. *Cure procedure.*

1. If the application or request is denied, the city will specify the basis for the denial, including the specific code provisions on which the denial was based, on the day the city denies the application or request.
2. The registrant may cure the deficiencies identified by the city and resubmit the application or request within 30 days after the notice of denial is sent.
3. If an attempt to cure is submitted by the registrant within such 30-day period, the city will approve or deny the revised application or request within 30 days after receipt of the revised application. If the registrant revises any information in the application or request other than to address expressly the deficiencies identified by the city, the registrant shall submit a new application or request and the denial of the pending application or request shall be final.
4. The city's second and subsequent reviews of revised applications or requests will be limited to the deficiencies cited in the denial notice.

g. A permit issued pursuant to an approved application or request to install a new communications facility shall remain in effect for one year unless closed or otherwise extended, suspended, or revoked by the city pursuant to this article. If a communications facility including a small wireless facility or utility pole is going to be installed without a permit pursuant to this article or applicable state or federal law, the applicant or requester shall nevertheless be required to have an effective registration, comply with development standards and provide the bonds required in this article prior to performing construction.
h. A permit from the city constitutes authorization to undertake only certain activities in the public rights-of-way in accordance with this article, and does not create a property right or grant authority to impinge upon the rights of others who may have an interest in the public rights-of-way.

(2) *Basis to deny requests.*

a. *Basis to deny.* Except for applications for permits to collocate small wireless facilities or for utility poles to support the collocation of a small wireless facility addressed above, the city may deny a request for a permit to place or to maintain communications

facilities in the public rights-of-way, including, but not limited to, a permit to place backhaul facilities, consistent with applicable law and the city's standard procedures.

(3) *Suspension and revocation of permits.*

a. The city may order the suspension of placement and maintenance work under a permit and ultimately may suspend or revoke any permit, in the event of a material breach of the terms and conditions of any applicable codes, this article, state and federal laws and regulations, or any condition of the permit. A material breach by the permittee may include, but is not limited to:

1. The violation of any material provision of the permit or applicable codes;
2. An evasion of ~~or attempt to evade~~ any material provision of the permit or the perpetration or attempt to perpetrate any fraud or deceit upon the city;
3. Any material misrepresentation of fact in the process of permittee's request or application for a permit or registration;
4. The failure to maintain the required performance cash bond or insurance;
5. The failure to properly restore the public rights-of-way;
6. The failure to comply within the specified time with an order issued by the city;
7. The failure to register, renew a registration, or provide notice of transfer in accordance with this article;
8. The failure to relocate or remove facilities pursuant to this article and F.S. §§ 337.402, 337.403 and 337.404, as amended;
9. Conducting work in the public rights-of-way without a permit, if required.

b. If the city determines that a registrant has committed a substantial breach of a term or condition of the permit or violation of applicable codes or this article, the city shall make a written demand upon the registrant to remedy such violation. The demand shall state that the continued violation(s) may be cause for suspension or revocation of the permit. Further, the city may place additional or revised permit conditions on the permit following a substantial breach. In addition, the city may refuse to issue new permits and may deny an application or request for a new permit to a registrant or registrant's contractor that has materially violated any provisions of a permit or applicable codes or this article, until such time as the registrant cures the violation to the satisfaction of the city, including paying any damages, costs or penalties that may have been assessed.

c. Within 30 days of receiving notification of the breach, the registrant shall contact the city and provide a remediation plan, acceptable to the city. The city shall provide additional time as reasonably necessary for a registrant to establish an acceptable plan taking into account the nature and scope of the alleged breach. The registrant's failure to so contact the city, or the registrant's permittee's failure to submit an acceptable plan, or the registrant's failure to reasonably implement the approved plan,

shall be cause for revocation or suspension of the permit. A final determination to suspend or to revoke a permit may be appealed in accordance with the procedures set forth in this article. Nothing herein shall affect the city's ability to take immediate action or to cause a registrant to take immediate action pursuant to this article or applicable law to address any condition that threatens the health, safety or welfare of persons or property.

d. If a permit is revoked, the registrant shall reimburse the city for the city's reasonable costs, including restoration costs, administrative costs, and the cost of collection. These costs may also be deducted from the performance construction cash bond in the city's discretion.
e. The city manager may cause an immediate stop work order where the construction poses a serious threat to the health, safety or welfare of the public until such time as such serious threat has been abated.

(4) *Requests for waivers.*

a. Nothing in this article shall be construed to prohibit or have the effect of prohibiting the nondiscriminatory and competitively neutral use of public rights-of-way by communications service providers, communications facility providers or pass-through providers, in violation of federal or state law.
b. A waiver may be granted by the city manager in those circumstances where a competitively neutral use of the public rights-of-way is impaired by strict application of the requirements of this Article, in violation of applicable law.
c. A request for a waiver shall be filed either prior to or contemporaneously with the permit application. The request for waiver shall contain each provision for which a waiver is sought. A request for a waiver shall include the following information:

    1. A detailed explanation, with supporting engineering information by a Florida licensed engineer or other data, as to why a waiver from the requirements of this Article is required to allow the registrant to have nondiscriminatory and competitively neutral use of the public rights-of-way, including a detailed explanation addressing the relevant engineering criteria;
    2. Nature and characteristics of the surrounding neighborhood;
    3. Any special conditions and circumstances affecting the proposed site which prevent compliance with the article or subsection for which a waiver is being sought;
    4. If applicable, topography, tree coverage and foliage in the immediate surrounding area of the proposed facility or within the surrounding neighborhood;
    5. Design of the proposed facility with particular reference to achieving compatibility with the surrounding neighborhood and other structures in the public rights-of-way and eliminating adverse visual impacts;

6. If the proposed waiver is compliant with the Americans With Disabilities Act, 42 U.S.C. §12101, et seq., and applicable codes;
7. A request for waiver of the objective design standards contained herein shall include a showing that the design standards are not reasonably compatible for the particular location of a small wireless facility or utility pole, or are technically infeasible with supporting information from a licensed engineer, or that the design standards impose an excessive expense on the registrant with information as to the additional costs of compliance with the standards and the registrant's anticipated revenue from the proposed facility or assets. The city shall grant or deny a request for a waiver of objective design standards within 45 days after receiving the request for waiver unless the registrant and city consent to an extension, subject to a force majeure event.
8. Any other information the city may reasonably require to process the request for waiver.

d. Except for a request for a waiver of objective design standards, the city shall grant or deny a request for a waiver of any other provisions of the City Code pursuant to its standard procedures for requests for waivers or variance of its Code, consistent with applicable law. If a request for waiver or variance is not processed by the city within the time frame for granting or denying an application or request for a permit, the city shall deny the permit application or request unless the city and the registrant consent to an applicable extension. In granting any waiver, the city may impose conditions to the extent the city determines such conditions are necessary to minimize any adverse effects of the proposed facility on the surrounding neighborhood or to protect the health, safety and welfare of the public.
e. Should a request for waiver, and ultimately a permit, be denied by the city, the denial of the waiver may be appealed with an appeal of the permit denial in accordance with this article.

(5) *Appeals.*

a. Final, written decisions of a designee of the city manager, including, but not limited to, a decision suspending, revoking, or denying a permit, denying a registration, denying a renewal of a registration, suspending or terminating a registration or denying a request for a waiver, or imposing costs or a fine, are subject to appeal to the city manager. An appeal must be filed with the city manager within 30 days of the date of the final, written decision to be appealed. An appeal that is not timely filed as set forth herein shall be waived. The city manager shall hear or may appoint a hearing officer to consider the appeal. The decision on appeal shall be based on the information submitted previously to the city and no new information shall be considered. Subject to a force majeure event, the hearing shall occur within 30 days of the receipt of the

appeal, unless waived by the registrant, and a written decision shall be rendered within 20 days of the hearing.

b. An appeal from a decision of the city manager may be appealed to the city council within 30 days, by filing a written notice of appeal with the city clerk and providing copies to the city manager and the city attorney. Any appeal not timely filed shall be waived. The notice of appeal shall state the decision, which is being appealed, the grounds for appeal, a brief summary of the relief, which is sought, and shall be accompanied by a nonrefundable fee to be established by administrative order of the city manager. The city council may affirm, modify or reverse the decision of the city manager. The city manager shall notify any party who has filed a written request for such notification of the date when the matter will be presented to the city council. Nothing contained herein shall preclude the city council from seeking additional information prior to rendering a final decision. The decision of the city council shall be by resolution and a copy of the decision shall be forwarded to the city manager and the appealing party. Within the time prescribed by the appropriate Florida Rules of Appellate Procedure, a party aggrieved by a decision of the city council may appeal an adverse decision to the circuit court in and for Volusia County or applicable federal district court. The party making the appeal shall be required to pay to the city clerk a fee to be established by administrative order of the city manager, to defray the costs of preparing the record on appeal. Said fee shall be effective upon approval by the council. To the extent required by applicable law, the city shall waive any claim or defense based on failure to exhaust administrative remedies if the city's administrative review is not complete within 45 days after a person files a complete request for review.

[No changes to Sec. 58-76]

Sec. 58-77. – Construction methods for placing or maintaining communications facilities in public rights-of-way.

(a) A registrant shall place and maintain its communications facility in public rights-of-way in a manner consistent with accepted industry practice and applicable codes and must comply with the 2017 edition of the Florida Department of Transportation Utility Accommodation Manual. For purpose of complying with the notice and approval requirements contained within the 2017 edition of the Florida Department of Transportation Utility Accommodation Manual, the registrant shall provide notice and seek approval from the city manager. All safety practices required by applicable codes or accepted industry practices and standards shall be used during the placement or maintenance of communications facilities, including, but not limited to, chapter 33 of the Florida Building Code. Registrant shall use and exercise due caution, care and skill in performing work in the public rights-of-way, and shall take all reasonable steps to safeguard work site areas including maintenance of traffic.

(b) In connection with excavation in the public rights-of-way, the requirements of this article shall control to the extent of any conflict with chapter 58, article II, sections 58-33 through 58-36 of the Code.

(c) In addition, in connection with excavation in the public rights-of-way, a registrant shall, where applicable, comply with the Underground Facility Damage Prevention and Safety Act set forth in F.S. ch. 556, as it may be amended. In the event of any conflicts with existing utilities or utility service laterals, the proposed location of the communications facility will be adjusted, not the utility.

(d) To the extent not inconsistent with applicable codes, underground cables, where required, shall have consistent alignment parallel with the edge of pavement, a 36-inch depth of cover for the paved portion of roadways, sidewalks and driveway aprons a 24-inch to 30-inch depth of cover in all areas except the paved portion of roadways, sidewalks and driveway aprons, and shall have a three-foot horizontal clearance from underground utilities and their appurtenances. Below grade communication facility shall not be allowed under a swale or ditch unless such restriction is waived by the public works and public utilities director or city manager with appropriate conditions of a permit that the registrant or permittee clean or re-excavate the swale or ditch to its appropriate grade prior to installation of the facility.

(e) *Grounding rods and pull boxes.* The grounding rod may not extend above the top of the public right-of-way or sidewalk and must be placed in a pull box, and the ground wire between the pole and ground rod must be inside an underground conduit. All pull boxes shall be vehicle load bearing, comply with applicable codes and FDOT standard specifications and be listed on the FDOT approved products list. A four-inch-thick concrete pad shall be installed extending 12 inches around all pull boxes not located in the sidewalk. No new or replacement pull boxes shall be located in pedestrian ramps.

(f) Consistent with section 58-36 of the Code, the city may require the use of trenchless technology (i.e., directional bore method) or may prohibit underground missile boring for the installation of facilities underground in the public rights-of-way. The registrant shall be solely liable for the displacement, damage or destruction of any property, public rights-of-way, irrigation system, utility, or landscaping as a result of the placement or maintenance of its facility within the public rights-of-way. The city may issue such rules and regulations concerning the method for placement or maintenance of a communications facility in public rights-of-way as may be consistent with this article and other applicable codes and standards. The provisions of this subsection are not intended to prevent the use of any method of construction not specifically prescribed by this subsection, provided that any such method has been approved by the city.

(g) In an effort to minimize adverse impacts and disruption in the public rights-of-way and to other municipal improvements, the city may require the registrant to coordinate the placement or maintenance of its facilities with any work, construction, installation in or repairs of the subject public rights-of-way or other facilities therein, that is occurring or is scheduled to occur within a reasonable time from the date(s) requested in the registrant's permit application. The city may require a registrant to alter reasonably its placement or maintenance schedule as necessary to minimize disruptions and disturbance in the public rights-of-way. The city may provide a more definite time frame based on specific city construction or maintenance schedules. Registrants seeking to place communications

facilities in the public rights-of-way through excavation are strongly encouraged to contact other registrants and communications services providers to coordinate the placement of communications facilities in the public rights-of-way.

(h) Within the public rights-of-way, every communications services provider shall make space available in its trench and/or conduit to other communications services providers to the extent consistent with the federal requirements of 47 U.S.C. §224 or applicable regulations of the Florida Public Service Commission. Every communications services provider shall utilize existing conduits, pathways and other facilities whenever possible, and shall not place or maintain any new, different, or additional poles, conduits, pathways or other facilities, whether in the public rights-of-way or on privately-owned property, until written approval is obtained from the city or other appropriate governmental authority, and, where applicable, from the private property owner.

(i) *Limits on excavation in restored rights-of-way.* To avoid continual disruption and degradation to the public rights-of-way and in the interest of public safety, an area of the public rights-of-way that has been subject to excavation and restored shall not be subject to re-excavation until at least two years following the completion of such restoration, to the extent not inconsistent with applicable codes and law, unless waived by the city. If the areas where the excavation is to occur has not been fully restored by a permittee, the subsequent permittee may apply for and the city may issue a permit that requires the subsequent permittee to restore the public rights-of-way to the original condition and to warrant such restoration consistent with this article.

(j) *Trees.* A registrant shall comply with the requirements of chapter 9, article II of the city's land development code with respect to the proposed removal or disturbance of any trees on private property. A registrant shall not prune, remove or materially disturb trees during placement or maintenance of communications facilities, small wireless facilities, micro wireless facility, or utility poles in the public rights-of-way, unless approved pursuant to an applicable permit issued by the city, to the extent not inconsistent with applicable law. Tree removal or pruning is not permitted within the public rights-of-way to increase signal strength or to provide a line-of-sight for wireless facilities. Landscaping may only be disturbed or removed during placement or maintenance of communications facilities pursuant to a permit issued by the city. The city may require that any landscaping or trees so removed shall be replaced or mitigated in accordance with the approved restoration plan.

(k) *Restoration of public rights-of-way.* A registrant shall, at its own expense, restore the public rights-of-way to at least its original condition before such work in public rights-of-way was initiated, subject to the city's satisfaction upon inspection. Registrant shall warrant its restoration for a period of 12 months after completion of such restoration. If the registrant fails to make such restoration within 21 calendar days after completion of construction, or such other time as may be required by the city, the city may, after written notice to the registrant, perform such restoration using city employees, agents or contractors, and charge all costs of the restoration to the registrant in accordance with F.S. § 337.402, as it may be amended, and require reimbursement within 30 days after the submission of the invoice by the city to the registrant. Consistent with section 58-37 of the Code, if the registrant fails to complete restoration work by the estimated date for completion listed in the permit, following notice to the registrant or permittee, the city shall have the right to restore the right-of-way

and to charge the registrant or permittee for actual costs of such restoration work plus 25 percent of such costs for administrative expenses, to the extent not inconsistent with F.S. § 337.402, as it may be amended. The costs and administrative expenses shall not be eligible for credit against any other payments that may be owed by the registrant to the city. Consistent with section 58-39 of the Code, the city manager shall make inspections to administer and enforce the provisions of this subsection. The registrant or permittee shall notify the city manager 48 hours prior to commencing construction and at the time of completion of work under the permit. Upon completion, the city manager shall inspect the work to determine whether the restoration has been acceptably completed. In such event, the city shall notify the registrant in writing that the 12-month restoration warranty period has begun.

(l) A registrant shall immediately notify the city of any damage to city utilities, city fiber or other city facilities as a result of a registrant's construction in the public rights-of-way. The registrant shall repair such damage at its expense within the time frame required by the city given the nature of the damage and impact on city services. In its discretion, the city may repair or arrange for the repair of such damage and charge such expense to the registrant.

(m) Any communications facilities heretofore or hereafter placed upon, under, over, or along any public rights-of-way that is found by the city to be unreasonably interfering in any way with the convenient, safe or continuous use or the maintenance, improvement, extension or expansion of such public rights-of-way shall, upon 30 days' written notice to the registrant or its agent, be removed or relocated by such registrant at its own expense except as explicitly provided under F.S. § 337.403. The city may waive or extend the time within which a registrant shall remove or relocate a communications facility for good cause shown.

(n) Removal or relocation at the direction of the city of a registrant's communications facility in public rights-of-way shall be governed by the provisions of F.S. §§ 337.403 and 337.404, as they may be amended. Subject to F.S. § 337.403, whenever an order of the city requires such removal or change in the location of any communications facility from the public rights-of-way, and the facility owner fails to remove or change the same at its own expense to conform to the order within the time stated in the notice, the city may proceed to cause the communications facility to be removed. The expense thereby incurred except as provided in F.S. § 337.403(1)(a)—(c), shall be paid out of any money available therefor, and such expense shall be charged against the registrant of the communications facility and levied, collected and paid to the city.

(o) Subject to F.S. § 337.403, whenever it shall be necessary for the city to remove or relocate any communications facility, the registrant of the communications facility shall be given notice of such removal or relocation and an order requiring the payment of the costs thereof, and shall be given reasonable time, which shall not be less than 20 nor more than 30 days in which to appear before the city council to contest the reasonableness of the order. Should the registrant not appear, the determination of the cost to the registrant shall be final, in accordance with F.S. § 337.404.

(p) A final order of the city shall constitute a lien on any property of the registrant and may be enforced by filing an authenticated copy of the order in the office of the clerk of the circuit court of the county wherein the registrant's property is located and/or by drawing upon the registrant's fund and/or performance bond.

(q) The city retains the right and privilege to cut or move any communications facilities located within the public rights-of-way of the city, as the city may determine to be necessary, appropriate or useful in response to any public health or safety emergency. If circumstances permit, the city shall attempt to notify the registrant of the communications facility, if known, prior to cutting or removing a communications facility and shall notify the registrant of the communications facility, if known, after cutting or removing a facility.

(r) The city shall have the right to make such inspections of facilities placed or maintained in public rights-of-way as it finds necessary to ensure compliance with this article. The city shall have access without charge to any manholes or hand holes at any time, of a communications services provider in which the city has facilities, provided the city has given such provider reasonable prior notice so that such provider can have trained personnel present when the accesses such manholes. Notwithstanding the foregoing, the city, in the proper exercise of its municipal police powers and duties with respect to the public rights-of-way, shall have access to all manholes and hand holes without charge of such provider. In the event the city determines that a violation exists with respect to registrant's placement or maintenance of facilities in the public rights-of-way that is not considered to be an emergency or danger to the public health, safety or welfare, the city will provide registrant no less than three days written notice setting forth the violation and requesting correction.

(s) ~~Following the completion of construction to place a new or replace an existing communications facility in the public rights-of-way, the registrant shall promptly provide "as-builts" upon completion of any installation or construction. The plans shall be in a PDF file or other format required by the city and sealed by a licensed engineer and CAD (computer aided design) file formats, showing the two-dimensional location of the facilities, based on the city's geographical database or other format acceptable to the city. The registrant shall provide such plans at no cost to the city. The city shall maintain the confidentiality of such plans and any other information provided in accordance with F.S. § 202.195, as it may be amended.~~

~~(t)~~ The city reserves the right to place and maintain, and permit to be placed or maintained, sewer, gas, water, electric, storm drainage, communications, and other facilities, fiber, cables or conduit, and to do, and to permit to be done, any underground and overhead installation or improvement that may be deemed necessary or proper by the city in public rights-of-way occupied by the registrant. To the extent not inconsistent with applicable law, a registrant shall allow city facilities to be collocated within city's public rights-of-way through the use of a joint trench during registrant's construction project. Such joint trench projects shall be negotiated in good faith by separate agreement between registrant and city and may be subjected to other city rights-of-way requirements. The city further reserves without limitation the right to alter, change, or cause to be changed, the grading, installation, relocation or width of the public rights-of-way within the limits of the city and within said limits as same may from time to time be altered.

~~(u)~~(t) A registrant shall, on the request of any person holding a permit issued by the city, temporarily raise or lower its communications facilities to permit the work authorized by the permit. The expense of such temporary raising or lowering of facilities shall be paid by the person requesting the same, and the registrant shall have the authority to require such payment in advance. The registrant shall be given not less than 30-days advance written

notice to arrange for such temporary relocation. If the city requests a temporary raising or lowering of a facility for a public purpose, the city shall not be charged for the temporary raising or lowering of the facility.

~~(v)~~(u) This article does not authorize a person to collocate or attach wireless facilities, including any antenna, micro wireless facility, or small wireless facility, on a privately owned utility pole, a utility pole owned by an electric cooperative or a municipal electric utility, a privately owned wireless support structure, or other private property without the consent of the property owner.

~~(w)~~(v) *Abandonment.* Upon determination by a registrant that one or more of its communications facilities in the public rights-of-way is to be abandoned, the registrant shall notify the city no later than 90 days from such determination, or no later than 30 days following such abandonment, whichever is sooner. The city may independently establish that a communications facility has been abandoned. In reaching such determination, the city may request documentation and/or affidavits from the registrant regarding the active use of the facility. If registrant fails to provide the requested documentation within 30 days, a rebuttable presumption shall exist that registrant has abandoned the communications facility. Any small wireless facility, micro wireless facility, utility pole for collocation of a small wireless facility, or other communications facility installed within the public rights-of-way that is abandoned shall be removed by the registrant at its expense within 30 days of receipt of notice from the city. Failure to remove an abandoned facility within the 30 days' period shall be deemed to be the registrant's consent for the city to remove the facility at the registrant's or provider's expense or for the city to allow another person to remove the facility at the registrant's or provider's expense. All permit applications and requests by the registrant will be suspended until the completion of the abandonment in accordance with code to the city's satisfaction to the extent not inconsistent with applicable law. The registrant shall be responsible for all damage to the public rights-of-way and any facilities or utilities damaged as a result of such removal, and shall restore the public rights-of-way as required in this subjection.

~~(x)~~(w) If there are two or more users of a single facility, then this provision shall not become effective until all users cease using the facility. Notwithstanding the foregoing, if the facility is attached to an existing structure that has an independent function such as a light pole, intersection signal, pedestrian signal, utility pole or the like, said abandonment of the facility requires removal of the facility only and does not require the removal of the existing structure.

Sec. 58-78. – Development and objective design standards for the placement or maintenance of communications facilities in the public rights-of-way.

(a) *Terms and conditions for collocation on city utility poles.*

(1) The city shall not enter into an exclusive arrangement with any person for the right to attach equipment to city utility poles. The city reserves the right to enter into agreements for collocation on city utility poles in its discretion.

(2) *Reservation of space on city utility poles.* The city hereby reserves the top one-third of the useable space of the vertical pole component of all city utility poles in the public

rights-of-way for future public safety uses. The city manager may waive the reservation of space on city utility poles. The city may reserve additional space on city utility poles for future public safety uses. However, a reservation of space may not preclude collocation of a small wireless facility. If replacement of the city utility pole is necessary to accommodate the collocation of the small wireless facility and the future public safety use, the pole replacement is subject to make-ready provisions and the replaced pole shall accommodate the future public safety use. The replaced pole shall continue to be owned by the city.

(3) The rate to collocate a small wireless facility on a city utility pole shall be $150.00 per pole annually, or the highest rate authorized by applicable law. This amount shall not be deducted from any fees or taxes that may be due to the city. The fee shall be paid upon the city's issuance of a permit to collocate a small wireless facility on a city utility pole and annually thereafter on October 1.

(4) Agreements between the city and wireless providers that were in effect on July 1, 2017, and that relate to the collocation of small wireless facilities in the right-of-way, including the collocation of small wireless facilities on city utility poles, remain in effect, subject to applicable termination provisions. The wireless provider may accept the rates, fees, and terms established under this article for small wireless facilities and utility poles that are the subject of an application submitted after the rates, fees, and terms become effective.

(5) For a city utility pole that supports an aerial facility used to provide communications services or electric service, the parties shall comply with the process for make-ready work under 47 U.S.C. §224 and implementing regulations or applicable regulations of the Florida Public Service Commission. The good faith estimate of the city for any make-ready work necessary to enable the pole to support the requested collocation must include pole replacement if necessary.

(6) For a city utility pole that does not support an aerial facility used to provide communications services or electric service, the city shall provide a good faith estimate for any make-ready work necessary to enable the pole to support the requested collocation, including necessary pole replacement, within 60 days after receipt of a complete application. Make-ready work, including any pole replacement, must be completed within 60 days after written acceptance of the good faith estimate by the registrant. Alternatively, the city may require the registrant seeking to collocate a small wireless facility to provide a make-ready estimate at the applicant's expense for the work necessary to support the small wireless facility, including pole replacement, and perform the make-ready work. If pole replacement is required, the scope of the make-ready estimate is limited to the design, fabrication, and installation of a utility pole that is substantially similar in color and composition. The city may not condition or restrict the manner in which the registrant obtains, develops, or provides the estimate or conducts the make-ready work subject to usual construction restoration standards for work in the right-of-way. The replaced or altered utility pole shall accommodate the city's equipment and intended function and shall remain the property of the city, subject to the city's acceptance of the replaced or altered pole that complies with these requirements.

(7) The city may not require more make-ready work than is required to meet applicable codes or industry standards. Fees for make-ready work may not include costs related to preexisting damage or prior noncompliance. Fees for make-ready work, including any pole replacement, may not exceed actual costs or the amount charged to communications services providers other than wireless services providers for similar work and may not include any consultant fee or expense.

(8) A collocation of a small wireless facility on a city utility pole shall comply with all applicable codes and this article, and shall not compromise the city utility pole's finish, functionality, or structural integrity particularly with respect to vulnerability to high velocity wind conditions.

(9) A collocation of a small wireless facility on a city utility pole shall not affect the city's ability to remove or to replace the pole in its sole discretion. A city utility pole that has been partially removed or has been designated to be removed by the city shall not be available for collocation or repurpose for collocation. Within 30 days after receiving notification that the city intends to remove or to replace the utility pole, the registrant shall remove its collocated small wireless facility at its cost. In the interest of public safety and safety of city employees, a city structure in the public rights-of-way used to support an avian structure or facility shall not be available for collocation or repurpose or replacement for collocation. A city building or city utility pole extending from a building in the public rights-of-way shall not be available for collocation, or repurpose or replacement for collocation.

[No changes to the remainder of Section 58-78]

[No changes to Sections 58-79 and 58-80]

SECTION 3. The provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of Port Orange, and the Sections of this Ordinance may be renumbered or re-lettered to accomplish such intention. The Code codifier is granted liberal authority to codify the provisions of this Ordinance.

SECTION 4. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

SECTION 5. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared severable.

SECTION 6. This ordinance shall become effective immediately upon final passage by the City Council.

_____
MAYOR SCOTT STILTNER

ATTEST:

_____
Robin L. Fenwick, MMC, City Clerk

Passed on first reading on the day of _____, 2025

Passed and adopted on second and final reading on the day of _____, 2025

Reviewed and Approved:_____
Matthew Jones, City Attorney

[CA-6109]

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. 2025-05 – Amending Chapter 58 - Streets, Sidewalks and Other Public Places, Article IV. Communications Facilities in Public Rights-of-Way

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 proposed amendment to the Code of Ordinances amends Chapter 58 - Streets, Sidewalks and Other Public Places, Article IV. Communications Facilities in Public Rights-of-Way.

The proposed Ordinance 2025-05 serves the public health, safety, morals, and welfare of the municipality by optimizing operations for the City of Port Orange and its citizens, by removing certain requirements for facilities in public rights-of-way, such as photographic/videographic documentation of the work area prior to construction, dispensing with permitting requirements for certain routine maintenance tasks, removing various certifications of the engineering plan, and the requirement to provide as-builts upon completion.

2. An estimate of the direct economic impact of the proposed ordinance on private, for-profit businesses in the City, if any:

(a) An estimate of direct compliance costs that businesses may reasonably incur:
No new direct compliance costs to businesses are estimated by Ordinance 2025-05.

(b) Any new charge or fee imposed by the proposed ordinance or for which businesses will be financially responsible:
N/A

(c) An estimate of the City's regulatory costs, including estimated revenues from any new charges or fees to cover such costs:
No new regulatory costs are anticipated. No new charges or fees are anticipated to business owners.

3. Good faith estimate of the number of businesses likely to be impacted by the proposed ordinance:
A small number of communication businesses are estimated to be impacted by Ordinance 2025-05; however, the impact is estimated to be a positive one, by streamlining their operations and interactions with the City.

4. Additional information the governing body deems useful[2] (if any):

[2] *You may wish to include in this section the methodology or data used to prepare the Business Impact Estimate. For example: City staff solicited comments from businesses in the City as to the potential impact of the proposed ordinance by contacting the local Chamber of Commerce, social media posting, direct mail or direct email, posting on City website, public workshop, etc. You may also wish to include efforts made to reduce the potential fiscal impact on businesses. You may also wish to state here that the proposed ordinance is a generally applicable ordinance that applies to all persons similarly situated (individuals as well as businesses) and, therefore, the proposed ordinance does not affect only businesses*.

CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 5/20/2025

SUBJECT: (H17a) Second Reading - Ordinance No. 2025-15 - Authorizing and Securing Capital Improvement & Refunding Revenue Bonds Series 2025

DEPARTMENT: Finance

GOAL: 2 - Infrastructure

RECOMMENDED MOTION: Move to approve Ordinance No. 2025-15 authorizing and securing Capital Improvement and Refunding Revenue Bonds Series 2025.

SUMMARY: Council discussed capital financing items on November 19, 2024 and April 1, 2025. As a follow-up to those discussions, this Ordinance authorizes the issuance of Capital Improvement and Refunding Revenue Bonds not to exceed $38 million. Approximately $22 million is expected to be new loan proceeds to fund the design and construction of the Public Utilities Field Operations Facility on City-owned property adjacent to the Police Department. The remaining $14 million will refund a portion of the outstanding series 2014 Capital Improvement Bonds and the 2005 Stormwater Bonds. This refunding will save $1.5 million and has a net present value savings of $667,000, or 4.91%. Closing is scheduled for June 24, 2025.

PRESENTER: Mark Simpson

ATTACHMENTS:

1.	Ord. No. 2025-15 - Port Orange CIB25 - Authorizing Ordinance-80966353-v3 (002)MJrev4.28 (1)	Ord. No. 2025-15 - Port Orange CIB25 - Authorizing Ordinance-80966353-v3 (002)MJrev4.28 (1).pdf

Amanda Bonin Created/Initiated - 5/7/2025

ORDINANCE NO. 2025-15

AN ORDINANCE OF THE CITY OF PORT ORANGE, FLORIDA, AUTHORIZING THE ISSUANCE OF NOT EXCEEDING $38,000,000 CAPITAL IMPROVEMENT REFUNDING REVENUE BONDS, SERIES 2025, TO REFUND ALL OR A PORTION OF THE CITY'S OUTSTANDING STORMWATER UTILITY REVENUE BONDS, SERIES 2005 AND CAPITAL IMPROVEMENT REFUNDING REVENUE BONDS, SERIES 2014, TO FINANCE OR REIMBURSE CAPITAL IMPROVEMENTS; PROVIDING FOR THE PAYMENT OF SUCH BONDS FROM LEGALLY AVAILABLE NON-AD VALOREM REVENUES DEPOSITED PURSUANT TO A COVENANT TO BUDGET AND APPROPRIATE; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA:

SECTION 1. AUTHORITY FOR THIS ORDINANCE. This ordinance is enacted pursuant to the provisions of Chapter 166, Parts I and II, and Chapter 159, Part I, Florida Statutes; Chapter 2, Article VI, Division 4, Section 2-317 of the Code of Ordinances of the City of Port Orange, Florida (the "City"), as amended and other applicable provisions of law.

SECTION 2. FINDINGS. It is hereby ascertained, determined and declared that:

(a) It is necessary and desirable to provide for the refunding of all or a portion of the City's outstanding Stormwater Utility Revenue Bonds, Series 2005 (the "Refunded Series 2005 Bonds"), and to provide for the refunding of all or a portion of the City's outstanding Capital Improvement Refunding Revenue Bonds, Series 2014 (the "Refunded Series 2014 Bonds" and together with the Refunded Series 2005 Bonds, the "Refunded Bonds"), in order to reduce debt service thereon;

(b) There is a significant need for capital improvements to the City's water and sewer systems, including without limitation the acquisition, design, construction, improvement and equipping of facility to be used primarily by the Public Utilities Department, and it is necessary and desirable to finance or reimburse such capital improvements with the proceeds of additional bonds issued by the City;

(c) It is necessary and desirable to provide for the issuance of not exceeding $38,000,000 of City of Port Orange, Florida Capital Improvement Refunding Revenue Bonds, Series 2025 (the "Series 2025 Bonds") for the purposes described in (a) and (b) above.

(d) It is necessary and desirable to provide for the repayment of the Series 2025 Bonds from legally available non-ad valorem revenues of the City.

SECTION 3. AUTHORIZATION OF THE SERIES 2025 BONDS. Subject and pursuant to the provisions hereof, the Series 2025 Bonds are authorized to be issued for the purposes stated in Section 2 hereof, in aggregate principal amount not exceeding $38,000,000. It is hereby authorized that the Series 2025 Bonds shall be payable from legally available non-ad valorem revenues that are deposited in the debt service fund established for the Series 2025 Bonds pursuant to a City covenant to budget, appropriate and deposit non-ad valorem revenues sufficient to pay the debt service on the Series 2025 Bonds. The Council shall adopt a bond resolution (including any resolutions supplemental thereto), supplemental to this ordinance, setting forth the fiscal details and other terms, covenants and provisions necessary for the security, marketing, sale and issuance of the Series 2025 Bonds.

SECTION 4. REPEAL OF INCONSISTENT PROVISIONS. All ordinances, resolutions or parts thereof in conflict with this ordinance are hereby repealed to the extent of such conflict.

SECTION 5. SEVERABILITY. In the event that any portion or section of this Ordinance is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or sections of this Ordinance which shall remain in full force and effect.

[The remainder of this page is intentionally blank; signature page follows.]

SECTION 6. EFFECTIVE DATE. This Ordinance shall take effect immediately upon its final passage and adoption.

[SEAL]

_____
Scott Stiltner, Mayor

ATTEST:

_____
Robin L. Fenwick, City Clerk

Passed on first reading the ___ day of _____, 2025.

Passed and adopted on second and final reading on the ___ day of _____, 2025.

Reviewed and Approved: _____
City Attorney

[CA 8591]

CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 5/20/2025

SUBJECT: (H17b) Resolution No. 25-28 – Authorizing the issuance of not-to-exceed $38,000,000 City of Port Orange Capital Improvement Refunding Revenue Bonds, Series 2025

DEPARTMENT: Finance

GOAL: 5 - Fiscal Sustainability

RECOMMENDED MOTION: Move to approve Resolution No. 25-28.

SUMMARY: The resolution authorizes the issuance of not-to-exceed $38,000,000 of Capital Improvement Refunding Revenue Bonds, Series 2025 for the purposes of financing and/or reimbursing the 2025 Project and the refunding of all or a portion of the City's outstanding Capital Improvement Refunding Revenue Bonds, Series 2014 and Stormwater Utility Revenue Bonds, Series 2005. The 2025 Project includes the acquisition, design, construction, improvement and equipping of a facility including one or more buildings for use primarily by the Public Utilities Department. The resolution provides for the security for the Series 2025 Bonds, the form of the Series 2025 Bonds, certain details of the Series 2025 Bonds, and authorizes certain City officers, attorneys and other to perform all acts and things required by the resolution or any supplemental resolution.

PRESENTER: Mark Simpson

ATTACHMENTS:

1.	Resolution No. 25-28	Resolution No. 25-28 .pdf

Amanda Bonin	Created/Initiated - 5/7/2025
Mark Simpson	Approved - 5/7/2025
Matthew Jones	Approved - 5/13/2025
Wayne Clark	Final Approval - 5/15/2025

RESOLUTION NO. 25-28

A RESOLUTION OF THE CITY OF PORT ORANGE, FLORIDA AUTHORIZING THE ISSUANCE OF NOT TO EXCEED $38,000,000 CITY OF PORT ORANGE, FLORIDA CAPITAL IMPROVEMENT REFUNDING REVENUE BONDS, SERIES 2025 FOR THE PURPOSE OF FINANCING AND/OR REIMBURSING THE PROJECTS DESCRIBED HEREIN AND REFUNDING THE CITY'S OUTSTANDING STORMWATER UTILITY REVENUE BONDS, SERIES 2005 AND CAPITAL IMPROVEMENT REFUNDING REVENUE BONDS, SERIES 2014; PROVIDING THAT SUCH BONDS SHALL BE LIMITED OBLIGATIONS OF THE CITY PAYABLE FROM NON-AD VALOREM REVENUES BUDGETED, APPROPRIATED AND DEPOSITED AS PROVIDED HEREIN; PROVIDING FOR THE RIGHTS, SECURITIES AND REMEDIES FOR THE HOLDERS OF THE SUCH BONDS; AUTHORIZING CERTAIN OFFICIALS AND EMPLOYEES OF THE CITY TO TAKE ALL ACTIONS REQUIRED IN CONNECTION WITH THE SALE, ISSUANCE AND DELIVERY OF SUCH BONDS; AUTHORIZING THE OPTION TO INSURE ALL, A PORTION, OR NONE OF THE BONDS; MAKING CERTAIN COVENANTS AND AGREEMENTS IN CONNECTION THEREWITH; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY AND PROVIDING AN EFFECTIVE DATE.

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BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PORT ORANGE, FLORIDA:

ARTICLE I
GENERAL

Section 1.01 Definitions. When used in this Resolution, the following terms shall have the following meanings, unless the context clearly otherwise requires:

"2025 Project" shall mean the acquisition, design, construction, improvement and equipping of a facility including one or more buildings for use primarily by the Public Utilities Department. Such 2025 Project shall include, without limitation, all property rights, appurtenances, easements, franchises and equipment relating thereto and deemed necessary or convenient for the acquisition, designing, permitting, construction, improving, reconstruction, rehabilitation and equipping thereof, in accordance with certain plans on file or to be on file with the City Clerk, with such changes, deletions, additions or modifications to the enumerated improvements, equipment and facilities, or such other improvements as approved by the City Council of the Issuer in a Supplemental Resolution in accordance with the Act.

"Act" shall mean the Constitution and laws of the State of Florida, Chapter 166, Parts I and II, and Chapter 159, Part I, Florida Statutes, the municipal charter of the Issuer, Ordinance 2025-15 enacted by the City Council of the Issuer on May [__], 2025, and other applicable provisions of law.

"Amortization Installment" shall mean an amount designated as such by Supplemental Resolution of the Issuer and established with respect to any Term Bonds.

"Annual Debt Service" shall mean, with respect to any Bond Year, the aggregate amount of (1) all interest required to be paid on the Outstanding Bonds during such Bond Year, except to the extent that such interest is to be paid from deposits in the Interest Account made from Bond proceeds, (2) all principal of Outstanding Serial Bonds maturing in such Bond Year, and (3) all Amortization Installments herein designated with respect to such Bond Year.

"Authorized Issuer Officer" shall mean any person authorized by this Resolution or Supplemental Resolution of the Issuer to perform such act or sign such document.

"Bond Amortization Account" shall mean the Series 2025 Bond Amortization Account in the Debt Service Fund established pursuant to Section 4.03 hereof.

"Bond Counsel" shall mean any attorney at law or firm of attorneys, of nationally recognized standing in matters pertaining to the exclusion from gross income for federal income tax purposes of interest on obligations issued by states and political subdivisions, and duly admitted to practice law before the highest court of any state of the United States of America.

"Bond Year" shall mean the period commencing on October 2 and ending twelve months later on October 1, or such other dates as may be determined by the Issuer by Supplemental Resolution of the Issuer adopted prior to the issuance of the Bonds.

"Bondholder" or "Holder" or "holder" or any similar term, when used with reference to a Bond or Bonds, shall mean any person who shall be the registered holder of any Outstanding Bond or Bonds as provided in the registration books of the Issuer.

"Bonds" shall mean, collectively, the City of Port Orange, Florida Capital Improvement Refunding Revenue Bonds, Series 2025 issued pursuant to this Resolution.

"City" or "Issuer" shall mean City of Port Orange, Florida, a municipal corporation, organized and existing under the laws of the State of Florida, including the Act.

"City Attorney" shall mean the City Attorney, or her or his designee.

"City Clerk" shall mean the City Clerk of the Issuer, any deputy, interim or acting City Clerk, or her or his designee.

"City Council" shall mean the City Council of the Issuer.

"City Manager" shall mean the City Manager of the Issuer, Deputy City Manager, Assistant City Manager, or his or her designee.

"Code" shall mean the Internal Revenue Code of 1986, as amended, and the regulations and rules thereunder in effect or proposed.

"Debt Service Fund" shall mean the City of Port Orange, Florida Capital Improvement Refunding Revenue Bonds, Series 2025 Debt Service Fund established pursuant to Section 4.02 hereof.

"Escrow Deposit Agreement" shall mean any agreement by and between the City and an Escrow Holder for any Refunded Bonds, which agreement provides for the holding in trust of moneys sufficient to pay the principal of and interest on such Refunded Bonds as the same shall become due and payable, and shall be in the form approved pursuant to a Supplemental Resolution.

"Escrow Holder" shall mean, collectively, any escrow agent and its successors or assigns appointed by or pursuant to a Supplemental Resolution, which will hold a portion of the proceeds of the sale of the Series 2025 Bonds in trust pursuant to the provisions of one or more Escrow Deposit Agreement, to be applied to pay the principal of, premium, if specified, and interest on the Refunded Bonds, and any other Person which may at any time be substituted in its place pursuant to this Resolution or a Supplemental Resolution.

"Federal Securities" shall mean cash, direct non-callable obligations of the United States of America and securities fully and unconditionally guaranteed as to the timely payment of principal and interest by the United States of America, to which direct obligation or guarantee the full faith and credit of the United States of America has been pledged (including, but not limited to State and Local Government Securities), Refcorp interest strips, CATS, TIGRS, STRPS, defeased municipal bonds rated AAA by S&P or Aaa by Moody's (or any combination thereof) or direct obligations or fully guaranteed certificates of beneficial ownership of the U.S. Export-Import Bank, certificates of beneficial ownership of the Farmers Home Administration, obligations of the Federal Financing Bank, participation certificates of the General Services Administration, Guaranteed Title XI financings of the U.S. Maritime Administration and project notes of the U.S. Department of Housing and Urban Development.

"Finance Director" shall mean the Finance Director of the Issuer, or such other person as may be duly authorized by the City Manager of the Issuer to act on his or her behalf.

"Financial Advisor" shall mean Southeastern Investment Securities, LLC, an independent SEC and MSRB registered financial advisor, or another financial advisor acceptable to the Issuer.

"Fiscal Year" shall mean the period commencing on October 1 of each year and continuing through the next succeeding September 30, or such other period as may be prescribed by law.

"Insurer" shall mean as the issuer of the Municipal Bond Insurance Policy, if any, or any successor corporation that assumes the obligations of the issuer of such Municipal Bond Insurance Policy. All references in this Resolution to the Insurer shall be of no force and effect at such time as there are no Bonds Outstanding with respect to which the Insurer has issued the Municipal Bond Insurance Policy.

"Interest Account" shall mean the Series 2025 Interest Account in the Debt Service Fund established pursuant to Section 4.03 hereof.

"Interest Date" shall be such date or dates for the payment of interest on the Bonds as shall be provided by Supplemental Resolution.

"Mayor" shall mean the Mayor or Vice Mayor of the Issuer, or his or her designee.

"Municipal Bond Insurance Policy" shall mean the municipal bond insurance policy, if any, issued by the Insurer insuring the payment when due of the principal of and interest on the Bonds as provided therein.

"Non-Ad Valorem Revenues" shall mean all revenues of the Issuer not derived from ad valorem taxation, and which are lawfully available to be used to pay debt service on the Bonds.

"Outstanding" when used with reference to Bonds and as of any particular date, shall describe all Bonds theretofore and thereupon being authenticated and delivered except, (1) any Bond in lieu of which another Bond or other Bonds have been issued under an agreement to

replace lost, mutilated or destroyed Bonds, (2) any Bond surrendered by the Holder thereof in exchange for another Bond or other Bonds under Section 2.07 hereof, and (3) Bonds canceled after purchase in the open market or because of payment at or redemption prior to maturity, and (4) Bonds deemed paid in accordance with Section 9.01 hereof.

"Paying Agent" shall mean any paying agent for Bonds appointed by or pursuant to a Supplemental Resolution and its successors or assigns, and any other Person which may at any time be substituted in its place pursuant to this Resolution.

"Permitted Investments" shall mean any legal investment under the laws of the State and the written investment policy of the Issuer.

"Person" shall mean an individual, a corporation, a partnership, an association, a joint stock company, a trust, any unincorporated organization or governmental entity.

"Pledged Funds" shall mean (1) Non-Ad Valorem Revenues budgeted and appropriated by the Issuer in accordance with Section 4.02 hereof and deposited into the Debt Service Fund, and (2) until applied in accordance with the provisions of this Resolution, all moneys, including the investments thereof, in the funds and accounts established hereunder, with the exception of the Rebate Fund.

"Principal Account" shall mean the Series 2025 Interest Account in the Debt Service Fund established pursuant to Section 4.03 hereof.

"Project Fund" shall mean the Series 2025 Project Fund.

"Rebate Amount" shall mean the excess of the future value, as of a computation date, of all receipts on nonpurpose investments (as defined in Section 1.148-1(b) of the Income Tax Regulations) over the future value, as of that date, of all payments on nonpurpose investments, all as provided by regulations under the Code implementing Section 148 thereof.

"Rebate Fund" shall mean the City of Port Orange, Florida Capital Improvement Refunding Revenue Bonds, Series 2025 Rebate Fund established pursuant to Section 5.05 hereof.

"Redemption Price" shall mean, with respect to any Bond or portion thereof, the principal amount or portion thereof, plus the applicable premium, if any, payable upon redemption thereof pursuant to such Bond or this Resolution.

"Refunded Bonds" shall mean the Outstanding Series 2005 Bonds and Outstanding the Series 2014 Bonds.

"Registrar" shall mean any registrar for the Bonds appointed by or pursuant to a Supplemental Resolution and its successors and assigns, and any other Person which may at any time be substituted in its place pursuant to Supplemental Resolution.

"Resolution" shall mean this Resolution, as the same may from time to time be amended, modified or supplemented by Supplemental Resolution.

"Serial Bonds" shall mean all of the Bonds other than the Term Bonds.

"Series 2005 Bonds" shall mean the City of Port Orange, Florida Stormwater Utility Revenue Bonds, Series 2005.

"Series 2014 Bonds" shall mean the City of Port Orange, Florida Capital Improvement Refunding Revenue Bonds, Series 2014.

"Series 2025 Bonds" shall mean the City of Port Orange, Florida Capital Improvement Refunding Revenue Bonds, Series 2025 Bonds.

"Series 2025 Project Fund" shall mean the City of Port Orange, Florida, Capital Improvement Refunding Revenue Bonds, Series 2025 Project Fund established pursuant to Section 2.03 hereof.

"State" shall mean the State of Florida.

"Supplemental Resolution" shall mean any resolution of the Issuer amending or supplementing this Resolution adopted and becoming effective in accordance with the terms of Sections 7.01 and 7.02 hereof.

"Term Bonds" shall mean those Bonds which shall be designated as Term Bonds hereby or by Supplemental Resolution of the Issuer and which are subject to mandatory redemption by Amortization Installments.

The terms "herein," "hereunder," "hereby," "hereto," "hereof" and any similar terms, shall refer to this Resolution; the term heretofore shall mean before the date of adoption of this Resolution; and the term "hereafter" shall mean after the date of adoption of this Resolution.

Words importing the masculine gender include every other gender.

Words importing the singular number include the plural number, and vice versa.

Section 1.02 Authority for Resolution. This Resolution is adopted pursuant to the provisions of the Act.

Section 1.03 Resolution to Constitute Contract. In consideration of the purchase and acceptance of any or all of the Bonds by those who shall hold the same from time to time, the provisions of this Resolution shall be a part of the contract of the Issuer with the Holders of the Bonds and shall be deemed to be and shall constitute a contract between the Issuer and the Holders from time to time of the Bonds. The pledge made in this Resolution and the provisions, covenants and agreements herein set forth to be performed by or on behalf of the Issuer shall be for the equal benefit, protection and security of the Holders of any and all of said Bonds and the

Insurer. All of the Bonds, regardless of the time or times of their issuance or maturity, shall be of equal rank without preference, priority or distinction of any of the Bonds over any other thereof except as expressly provided in or pursuant to this Resolution.

Section 1.04 Findings. It is hereby ascertained, determined and declared as follows:

(1) The Issuer has previously issued the Refunded Bonds, of which the aggregate principal amount of approximately $[14,000,000] will be outstanding and unpaid on the date of delivery of the Series 2025 Bonds.

(2) The Issuer deems it necessary and in its best interests of the City and its inhabitants to provide for the refunding of the Refunded Bonds. The refunding of the Refunded Bonds will be advantageous to the Issuer by providing a savings in debt service.

(3) The Issuer deems it necessary, desirable and in the best interests of the health, safety and welfare of the City and its inhabitants that the City undertake and finance or reimburse the 2025 Project. The Issuer is authorized pursuant to the provisions of the Act to undertake the 2025 Project. The 2025 Project services an essential governmental function of the City.

(4) The Issuer is without adequate, currently available funds to pay the costs of the 2025 Project, and it is necessary and desirable and in the best interests of the Issuer that it borrow the money necessary to accomplish the financing of the 2025 Project. The Issuer is authorized pursuant to the provisions of the Act to borrow moneys necessary to pay the cost of the 2025 Project.

(5) Other than the Series 2014 Bonds, the Issuer has not otherwise secured any other indebtedness of the Issuer with a covenant to budget and appropriate Non-Ad Valorem Revenues.

(6) After refunding the Refunded Bonds, satisfying any funding requirements for obligations having an express lien on or pledge thereof and after satisfying any funding requirements for essential governmental services of the Issuer which are not funded by ad valorem taxation, the estimated Non-Ad Valorem Revenues will be sufficient to pay the principal of and interest on the Bonds, as the same become due, and to make all other payments provided for in this Resolution.

(7) The principal of and interest on the Bonds and all other payments provided for in this Resolution will be paid solely from the Pledged Funds, and the ad valorem taxing power of the Issuer will never be necessary or authorized to pay the principal of and interest on the Bonds and, except as otherwise provided herein, the Bonds shall not constitute a lien upon any property of the Issuer.

(8) In consultation with the Issuer's Financial Advisor, the Issuer intends to appoint Hilltop Securities Inc. as underwriter for the Series 2025 Bonds pursuant to a Supplemental Resolution.

Section 1.05 Authorization of Refunding, Financing, and 2025 Project. The Issuer does hereby specifically authorize the refunding of the Refunded Bonds and undertaking the 2025 Project, and financing or reimbursing the costs of the 2025 Project.

ARTICLE II
AUTHORIZATION, TERMS, EXECUTION AND REGISTRATION OF BONDS

Section 2.01 Authorization of Bonds. This Resolution authorizes an issue of Bonds of the Issuer to be designated as "City of Port Orange, Florida Capital Improvement Refunding Revenue Bonds, Series 2025" in a total aggregate principal amount of not to exceed thirty-eight million dollars ($38,000,000) for the purposes of (i) financing and/or reimbursing the costs of the 2025 Project, and (ii) paying certain costs of issuance incurred with respect thereto, including the premium for a Municipal Bond Insurance Policy, if any. The Issuer may change such Series designation in the event that the Bonds are not issued in calendar year 2025.

The Bonds may, if and when authorized by the Issuer pursuant to this Resolution, be issued with such further appropriate particular designations added to or incorporated in such title for the Bonds as the Issuer may determine.

The Bonds shall bear interest at such rate or rates not exceeding the maximum rate permitted by law; and shall be payable in lawful money of the United States of America on such dates; all as determined hereunder and by Supplemental Resolution of the Issuer.

The Bonds shall be issued in denominations of $5,000 or integral multiples thereof, in such form, whether coupon or registered; shall be dated such date; shall bear such numbers; shall be payable at such place or places; shall contain such redemption provisions; shall have such Paying Agent and Registrar; and shall mature in such years and amounts; all as determined hereunder and by Supplemental Resolution of the Issuer.

Section 2.02 Description of Bonds. The Bonds shall be issued as fully registered Bonds; shall be numbered consecutively from one upward in order of maturity preceded by the letter "R"; shall bear interest at a rate or rates not exceeding the maximum rate allowed by Florida law, payable in such manner and on such dates; shall consist of such amounts of Serial Bonds and/or Term Bonds; maturing in such amounts or installments and in such years; shall be payable in such place or places; shall have such Paying Agent and Registrar; and shall contain such redemption provisions; all as the Issuer shall provide hereafter by Supplemental Resolution.

The principal of or Redemption Price, if applicable, on the Bonds are payable upon presentation and surrender of the Bonds at the designated office of the Paying Agent. Interest payable on any such Bond on any Interest Date will be paid by check or draft of the Paying Agent to the Holder in whose name such Bond shall be registered at the close of business on the date which shall be the fifteenth (15th) day (whether or not a business day) of the calendar month next preceding such Interest Date, or, unless otherwise provided by Supplemental Resolution, at the option of the Paying Agent, and at the request and expense of such Holder, by bank wire transfer for the account of such Holder. In the event the interest payable on any such Bond is not

punctually paid or duly provided for by the Issuer on such Interest Date, such defaulted interest will be paid to the Holder in whose name such Bond shall be registered at the close of business on a special record date for the payment of such defaulted interest as established by notice to such Holder, not less than ten days preceding such special record date. All payments of principal of or Redemption Price, if applicable, and interest on the Bonds shall be payable in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

Section 2.03 Application of Bond Proceeds. Except as otherwise provided by Supplemental Resolution, the proceeds derived from the sale of the Bonds, including accrued interest and premium, if any, together with legally available funds of the Issuer, if any, shall, simultaneously with the delivery of the Bonds to the purchaser or purchasers thereof, be applied by the Issuer as follows:

(1) Accrued interest, if any, shall be deposited in the Interest Account and shall be used only for the purpose of paying the interest which shall thereafter become due on the Bonds.

(2) Proceeds of the Bonds in the amount specified in the Escrow Deposit Agreement, which together with any the other funds described in the Escrow Deposit Agreement to be deposited in escrow and any investment income on the escrowed amounts, will be sufficient to pay the principal of, interest and redemption premiums, if applicable, and any other costs or obligations relating to the Refunded Bonds as the same shall become due or may be redeemed or prepaid, shall be deposited into the escrow account established by the Escrow Deposit Agreement. Such funds deposited pursuant to the Escrow Deposit Agreement shall be irrevocably committed and pledged to such purpose for the benefit of the holders of the Refunded Bonds.

(3) Proceeds of the Bond will then be applied to pay all expenses, costs, legal fees, fees of financial advisors, and all other similar costs incurred in connection with the issuance of the Series 2025 Bonds, including the premium for a Municipal Bond Insurance Policy, if any.

(4) The balance of such proceeds of the sale shall be deposited in the Series 2025 Project Fund described below, under the management and control of the City, to be used to pay cost of the 2025 Project.

The Issuer covenants and agrees to establish a special fund to be designated "City of Port Orange, Florida Capital Improvement Refunding Revenue Bonds, Series 2025 Project Fund." The designation and establishment of a Project Fund by this Resolution shall not be construed to require the establishment of a completely independent, self-balancing fund as such term is commonly defined and used in governmental accounting, but rather is intended solely to constitute an earmarking of certain assets of the Issuer for certain purposes and to establish certain priorities for application of such assets as herein provided. Amounts on deposit from time to time in the Project Fund, plus any earnings thereon, are pledged to the repayment of the Bonds.

Section 2.04 Execution of Bonds. The Bonds shall be executed in the name of the Issuer with the manual or facsimile signature of the Mayor and the official seal of the Issuer shall be imprinted thereon, attested with the manual or facsimile signature of the Clerk or City Manager. In case any one or more of the officers who shall have signed or sealed any of the Bonds, or whose facsimile signature shall appear thereon shall cease to be such officer of the Issuer before the Bonds so signed and sealed have been actually sold and delivered, such Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. Any Bond may be signed and sealed on behalf of the Issuer by such person who at the actual time of the execution of such Bond shall hold the proper office of the Issuer, although, at the date of such Bond, such person may not have held such office or may not have been so authorized. The Issuer may adopt and use for such purposes the facsimile signatures of any such persons who shall have held such offices at any time after the date of the adoption of this Resolution, notwithstanding that either or both shall have ceased to hold such office at the time the Bonds shall be actually sold and delivered.

Section 2.05 Authentication. No Bond shall be secured hereunder or be entitled to the benefit hereof or shall be valid or obligatory for any purpose unless there shall be manually endorsed on such Bond a certificate of authentication by the Registrar or such other entity as may be approved by the Issuer for such purpose. Such certificate on any Bond shall be conclusive evidence that such Bond has been duly authenticated and delivered under this Resolution. The form of such certificate shall be substantially in the form provided in Section 2.09 hereof.

Section 2.06 Bonds Mutilated, Destroyed, Stolen or Lost. In case any Bond shall become mutilated, or be destroyed, stolen or lost, the Issuer may, in its discretion, issue and deliver, and the Registrar shall authenticate, a new Bond of like tenor as the Bond so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond upon surrender and cancellation of such mutilated Bond or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the Holder furnishing the Issuer and the Registrar proof of such Holder's ownership thereof and satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer or the Registrar may prescribe and paying such expenses as the Issuer and the Registrar may incur. All Bonds so surrendered or otherwise substituted shall be canceled by the Registrar. If any of the Bonds shall have matured or be about to mature, instead of issuing a substitute Bond, the Issuer may pay the same or cause the Bond to be paid, upon being indemnified as aforesaid, and if such Bonds be lost, stolen or destroyed, without surrender thereof.

Any such duplicate Bonds issued pursuant to this Section 2.06 shall constitute original, additional contractual obligations on the part of the Issuer whether or not the lost, stolen or destroyed Bond be at any time found by anyone, and such duplicate Bond shall be entitled to equal and proportionate benefits and rights as to lien on the Pledged Funds to the same extent as all other Bonds issued hereunder.

Section 2.07 Transfer. Bonds, upon surrender thereof at the office of the Registrar with a written instrument of transfer satisfactory to the Registrar, duly executed by the Holder thereof

or such Holder's attorney duly authorized in writing, may, at the option of the Holder thereof, be exchanged for an equal aggregate principal amount of registered Bonds of the same maturity of any other authorized denominations.

The Bonds issued under this Resolution shall be and have all the qualities and incidents of negotiable instruments under the commercial laws and the Uniform Commercial Code of the State, subject to the provisions for registration and transfer contained in this Resolution and in the Bonds. So long as any of the Bonds shall remain Outstanding, the Issuer shall maintain and keep, at the office of the Registrar, books for the registration and transfer of the Bonds.

Each Bond shall be transferable only upon the books of the Issuer, at the office of the Registrar, under such reasonable regulations as the Issuer may prescribe, by the Holder thereof in person or by such Holder's attorney duly authorized in writing upon surrender thereof together with a written instrument of transfer satisfactory to the Registrar duly executed and guaranteed by the Holder or such Holder's duly authorized attorney. Upon the transfer of any such Bond, the Issuer shall issue, and cause to be authenticated, in the name of the transferee a new Bond or Bonds of the same aggregate principal amount and Series and maturity as the surrendered Bond. The Issuer, the Registrar and any Paying Agent or fiduciary of the Issuer may deem and treat the Person in whose name any Outstanding Bond shall be registered upon the books of the Issuer as the absolute holder of such Bond, whether such Bond shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal or Redemption Price, if applicable, and interest on such Bond and for all other purposes, and all such payments so made to any such Holder or upon such Holder's order shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid and neither the Issuer nor the Registrar nor any Paying Agent or other fiduciary of the Issuer shall be affected by any notice to the contrary.

The Registrar, in any case where it is not also the Paying Agent in respect to the Bonds, forthwith (A) following the fifteenth (15th) day prior to an Interest Date; (B) following the fifteenth (15th) day next preceding the date of first mailing of notice of redemption of any Bonds; and (C) at any other time as reasonably requested by the Paying Agent, shall certify and furnish to such Paying Agent the names, addresses and holdings of Bondholders and any other relevant information reflected in the registration books. Any Paying Agent of any fully registered Bond shall effect payment of interest on such Bonds by mailing a check or draft to the Holder entitled thereto or may, in lieu thereof, upon the request and at the expense of such Holder, transmit such payment by bank wire transfer for the account of such Holder.

In all cases in which the privilege of exchanging Bonds or transferring Bonds is exercised, the Issuer shall execute and the Registrar shall authenticate and deliver such Bonds in accordance with the provisions of this Resolution. Execution of Bonds in the same manner as is provided in Section 2.04 hereof for purposes of exchanging, replacing or transferring Bonds may occur at the time of the original delivery of the Bonds. All Bonds surrendered in any such exchanges or transfers shall be held by the Registrar in safekeeping until directed by the Issuer to be canceled by the Registrar. For every such exchange or transfer of Bonds, the Issuer or the Registrar may

make a charge sufficient to reimburse it for any tax, fee, expense or other governmental charge required to be paid with respect to such exchange or transfer. The Issuer and the Registrar shall not be obligated to make any such exchange or transfer of Bonds during the fifteen days next preceding an Interest Date on the Bonds, or, in the case of any proposed redemption of Bonds, then during the fifteen (15) days next preceding the date of the first mailing of notice of such redemption and continuing until such redemption date.

Section 2.08 Book Entry. A blanket issuer letter of representations (the "Blanket Letter") was entered into by the Issuer with The Depository Trust Company ("DTC"). It is intended that the Bonds be registered so as to participate in a global book-entry system with DTC as set forth herein and in such Blanket Letter. The terms and conditions of such Blanket Letter shall govern the registration of the Bonds. The Bonds shall be initially issued in the form of a single fully registered Bond for each maturity. Upon initial issuance, the ownership of such Bonds shall be registered by the Registrar in the name of Cede & Co. (DTC's partnership nominee) or such other name as may be requested by an authorized representative of DTC. So long as any Bond is registered in the name of DTC (or its nominee), the Issuer, the Registrar and the Paying Agent may treat DTC (or its nominee) as the sole and exclusive holder of such Bonds registered in its name, and all payments with respect to the principal or redemption price of, if any, and interest on such Bond ("Payments") and all notices with respect to such Bond ("Notices") shall be made or given, as the case may be, to DTC. Transfers of Payments and delivery of Notices to DTC Participants shall be the responsibility of DTC and not of the Issuer, subject to any statutory and regulatory requirements as may be in effect from time to time. Transfers of Payments and delivery of Notices to beneficial holders of the Bonds by DTC Participants shall be the responsibility of such participants, indirect participants and other nominees of such beneficial holders and not of the Issuer, subject to any statutory and regulatory requirements as may be in effect from time to time.

Upon (I) (a) receipt by the Issuer of written notice from DTC (i) to the effect that a continuation of the requirement that all of the Outstanding Bonds be registered in the registration books kept by the Registrar in the name of Cede & Co., as nominee of DTC, is not in the best interest of the beneficial holders of the Bonds or (ii) to the effect that DTC is unable or unwilling to discharge its responsibilities and no substitute depository willing to undertake the functions of DTC hereunder can be found which is willing and able to undertake such functions upon reasonable and customary terms, (b) termination, for any reason, of the agreement among the Issuer, the Registrar and Paying Agent and DTC evidenced by the Blanket Letter, or (c) determination by the Issuer that such book-entry only system should be discontinued by the Issuer, and (II) compliance with the requirements of any agreement between the Issuer and DTC with respect thereto, the Bonds shall no longer be restricted to being registered in the registration books kept by the Registrar in the name of Cede & Co., as nominee of DTC, but may be registered in whatever name or names Holders shall designate, in accordance with the provisions hereof. In such event, the Issuer shall issue and the Registrar shall authenticate, transfer and exchange Bonds consistent with the terms hereof, in denominations of $5,000 or any integral multiple thereof to the Holders thereof. The foregoing notwithstanding, until such time as participation in the book-entry only system is discontinued, the provisions set forth in the Blanket Letter shall apply to the registration and transfer of the Bonds and to Payments and Notices with respect thereto.

Section 2.09 Form of Bonds. The text of the Bonds shall be in substantially the following form with such omissions, insertions and variations as may be necessary and/or desirable and approved by the Mayor prior to the issuance thereof (which necessity and/or desirability and approval shall be presumed by the Issuer's delivery of the Bonds to the purchaser or purchasers thereof):

No. R-__ $_____

UNITED STATES OF AMERICA
STATE OF FLORIDA
COUNTY OF OSCEOLA
CITY OF PORT ORANGE, FLORIDA
CAPITAL IMPROVEMENT REFUNDING REVENUE BONDS, SERIES 2025

Interest Rate	Maturity Date	Date of Original Issue	CUSIP
____%	_____, ____	_____, ____	_____

Registered Holder: _____

Principal Amount: _____

The City of Port Orange, Florida, a municipality created and existing under the laws of the State of Florida (the "Issuer"), for value received, hereby promises to pay, solely from the Pledged Funds hereinafter described, to the Registered Holder identified above, or registered assigns as hereinafter provided, on the Maturity Date identified above, the Principal Amount identified above and interest on such Principal Amount from the Date of Original Issue identified above or from the most recent interest payment date to which interest has been paid at the Interest Rate per annum identified above on April 1 and October 1 of each year commencing [October 1, 2025], until such Principal Amount shall have been paid, except as the provisions hereinafter set forth with respect to redemption prior to maturity may be or become applicable hereto.

The principal of and redemption premium, if applicable, on this Bond is payable upon presentation and surrender of this Bond at the designated office of [The Bank of New York Mellon Trust Company, N.A.], as Paying Agent. Interest payable on this Bond on any interest date will be paid by check or draft of the Paying Agent to the Registered Holder in whose name this Bond shall be registered at the close of business on the date which shall be the fifteenth (15th) day (whether or not a business day) of the calendar month next preceding such interest payment date, or, at the option of the Paying Agent, and at the request and expense of such Registered Holder, by bank wire transfer for the account of such Registered Holder. In the event the interest payable

on this Bond is not punctually paid or duly provided for by the Issuer on such interest payment date, such defaulted interest will be paid to the Registered Holder in whose name this Bond shall be registered at the close of business on a special record date for the payment of such defaulted interest as established by notice to such Registered Holder, not less than ten (10) days preceding such special record date. All payments of principal of and redemption premium, if applicable, and interest on this Bond shall be payable in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

This Bond is one of an authorized issue of Bonds in the aggregate principal amount of $_____ (the "Series 2025 Bonds") of like date, tenor and effect, except as to maturity date, interest rate, denomination and number, issued for the purpose of financing and/or reimbursing the costs of the 2025 Project, under the authority of and in full compliance with the Constitution of the State of Florida, Chapter 166, Florida Statutes, the municipal charter of the Issuer, and other applicable provisions of law (collectively, the "Act"), and [Resolution No. 2025-[__] duly adopted by the City Council of the Issuer on [May ___], 2025], as amended and supplemented from time to time (collectively, the "Resolution"), and is subject to the terms and conditions of the Resolution. Capitalized undefined terms used herein shall have the meanings ascribed thereto in the Resolution.

The Series 2025 Bonds and the interest thereon are payable solely from and secured by an irrevocable pledge of the Pledged Funds. Pledged Funds consist of Non-Ad Valorem Revenues which are deposited into the Debt Service Fund and certain moneys on deposit in the accounts and funds established under the Resolution. The Issuer has covenanted and has agreed to appropriate in its annual budget for each fiscal year sufficient amount of Non-Ad Valorem Revenues for the payment of principal of and interest on the Series 2025 Bonds in each fiscal year, and to make certain other payments required by the Resolution, subject to the limitations described in the Resolution. Reference is made to the Resolution for more complete description of the security for the Series 2025 Bonds.

IT IS EXPRESSLY AGREED BY THE REGISTERED HOLDER OF THIS BOND THAT THE FULL FAITH AND CREDIT OF THE ISSUER, THE STATE OF FLORIDA, OR ANY POLITICAL SUBDIVISION THEREOF, ARE NOT PLEDGED TO THE PAYMENT OF THE PRINCIPAL, PREMIUM, IF ANY, AND INTEREST ON THIS BOND AND THAT SUCH HOLDER SHALL NEVER HAVE THE RIGHT TO REQUIRE OR COMPEL THE EXERCISE OF ANY TAXING POWER OF THE ISSUER, THE STATE OF FLORIDA, OR ANY POLITICAL SUBDIVISION THEREOF, TO THE PAYMENT OF SUCH PRINCIPAL, PREMIUM, IF ANY, AND INTEREST. THIS BOND AND THE OBLIGATION EVIDENCED HEREBY SHALL NOT CONSTITUTE A LIEN UPON ANY PROPERTY OF THE ISSUER, BUT SHALL CONSTITUTE A LIEN ONLY ON, AND SHALL BE PAYABLE SOLELY FROM, THE PLEDGED FUNDS.

This Bond is transferable in accordance with the terms of the Resolution only upon the books of the Issuer kept for that purpose at the designated corporate trust office of the Registrar by the Registered Holder hereof in person or by such Holder's attorney duly authorized in writing, upon the surrender of this Bond together with a written instrument of transfer

satisfactory to the Registrar duly executed by the Registered Holder or such Holder's attorney duly authorized in writing, and thereupon a new Bond or Bonds in the same aggregate principal amount shall be issued to the transferee in exchange therefor, and upon the payment of the charges, if any, therein prescribed. The Series 2025 Bonds are issuable in the form of fully registered Bonds in the denominations of $5,000 and integral multiples thereof, not exceeding the aggregate principal amount of the Series 2025 Bonds maturing on the same date. The Issuer, the Registrar and any Paying Agent may treat the Registered Holder of this Bond as the absolute owner hereof for all purposes, whether or not this Bond shall be overdue, and shall not be affected by any notice to the contrary. The Issuer and the Registrar shall not be obligated to make any exchange or transfer of the Series 2025 Bonds during the fifteen (15th) days next preceding an interest payment date, or in the case of any proposed redemption of the Series 2025 Bonds, then, during the fifteen (15th) days next preceding the date of the first mailing of notice of such redemption.

[INSERT REDEMPTION PROVISIONS]

Notice of redemption, unless waived, is to be given by the Registrar by mailing an official redemption notice by registered or certified mail at least thirty (30) days and not more than sixty (60) days prior to the date fixed for redemption to the Registered Holders of the Series 2025 Bonds to be redeemed at such Holders' addresses shown on the registration books maintained by the Registrar or at such other addresses as shall be furnished in writing by such Registered Holders to the Registrar; provided, however, that no defect in any such notice to any Registered Holder of Series 2025 Bonds to be redeemed nor failure to give such notice to any such Registered Holder nor failure of any such Registered Holder to receive such notice shall in any manner defeat the effectiveness of a call for redemption as to all other Registered Holders of Bonds to be redeemed. Notice of redemption having been given as aforesaid, the Series 2025 Bonds or portions of Series 2025 Bonds to be redeemed shall, on the redemption date, become due and payable at the redemption price therein specified, and from and after such date (unless the Issuer shall default in the payment of the redemption price), such Series 2025 Bonds or portions of Series 2025 Bonds shall cease to bear interest.

It is hereby certified and recited that all acts, conditions and things required to exist, to happen and to be performed precedent to and in the issuance of this Bond, exist, have happened and have been performed, in regular and due form and time as required by the laws and Constitution of the State of Florida applicable thereto, and that the issuance of the Series 2025 Bonds does not violate any constitutional or statutory limitations or provisions.

Neither the members of the City Council of the Issuer nor any person executing this Bond shall be liable personally hereon or be subject to any personal liability or accountability by reason of the issuance hereof.

This Bond shall not be valid or become obligatory for any purpose until the Certificate of Authentication hereon shall have been signed by the Registrar.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, said City of Port Orange, Florida, by resolution duly adopted by its City Council, has caused this Bond to bear the manual or facsimile signatures of its Mayor and its City Clerk, and its seal or a facsimile thereof to be affixed, impressed, imprinted, or otherwise reproduced hereon, all as of the _____ day of _____, 2025.

CITY OF PORT ORANGE, FLORIDA

_____
[_____], Mayor

ATTEST:

_____
[City Clerk]

CERTIFICATE OF AUTHENTICATION

This Bond is one of the Series 2025 Bonds of the issue described in the within-mentioned Resolution.

DATE OF AUTHENTICATION:

_____

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., as Registrar

By:_____
Authorized Officer

[STATEMENT OF INSURANCE, IF APPLICABLE]

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned sells, assigns and transfers unto

_____

[Insert Name, Address, Social Security or Other Identifying Number of Assignee]

the within bond and does hereby irrevocably constitute and appoint _____ as attorneys to register the transfer of the said bond on the books kept for registration thereof with full power of substitution in the premises.

Dated: _____

Signature Guaranteed:

_____

NOTICE: Signature(s) must be guaranteed by a member firm of the New York Stock Exchange or a commercial bank or trust company.

_____

NOTICE: The signature to this assignment must correspond with the name of the Registered Holder as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatever and the Social Security or other identifying number of such assignee must be supplied.

The following abbreviations, when used in the inscription on the face of the within bond, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM--as tenants in common

TEN ENT--as tenants by the entireties

JT TEN--as joint tenants with right of survivorship and not as tenants in common

UNIF TRANS MIN ACT -- _____
(Cust.)

Custodian for _____

under Uniform Transfer to Minors Act of _____
(State)

Additional abbreviations may also be used though not in the list above.

[Remainder of page intentionally left blank]

ARTICLE III
REDEMPTION OF BONDS

Section 3.01 Privilege of Redemption. The Bonds may be subject to optional, and/or mandatory redemption at the times and in the amounts provided by the Supplemental Resolution.

Section 3.02 Selection of Bonds to be Redeemed. The Bonds shall be redeemed only in the principal amount of $5,000 each and integral multiples thereof. The Issuer shall, at least forty (40) days prior to the redemption date (unless a shorter time period shall be satisfactory to the Registrar) notify the Registrar of such redemption date and of the principal amount of Bonds to be redeemed. For purposes of any redemption of less than all of the Outstanding Bonds of a single maturity, the particular Bonds or portions of Bonds to be redeemed shall be selected not more than thirty-five (35) days prior to the redemption date by the Registrar from the Outstanding Bonds of the maturity or maturities designated by the Issuer by such method as the Registrar shall deem fair and appropriate and which may provide for the selection for redemption of Bonds or portions of Bonds in principal amounts of $5,000 and integral multiples thereof.

If less than all of the Outstanding Bonds of a single maturity are to be redeemed, the Registrar shall promptly notify the Issuer and Paying Agent (if the Registrar is not the Paying Agent for such Bonds) in writing of the Bonds or portions of Bonds selected for redemption and, in the case of any Bond selected for partial redemption, the principal amount thereof to be redeemed.

Section 3.03 Notice of Redemption. Unless waived by any Holder of Bonds to be redeemed, notice of any redemption made pursuant to this section shall be given by the Registrar on behalf of the Issuer by mailing a copy of an official redemption notice by registered or certified mail at least thirty (30) days and not more than sixty (60) days prior to the date fixed for redemption to each Holder of Bonds to be redeemed at the address of such Holder shown on the registration books maintained by the Registrar or at such other address as shall be furnished in writing by such Holder to the Registrar; provided, however, that no defect in any notice given pursuant to this Section to any Holder of Bonds to be redeemed nor failure to give such notice shall in any manner defeat the effectiveness of a call for redemption as to all other Holders of Bonds to be redeemed.

Every official notice of redemption shall be dated and shall state:

(1) the redemption date,

(2) the Redemption Price,

(3) if less than all Outstanding Bonds are to be redeemed, the number (and, in the case of a partial redemption of any Bond, the principal amount) of each Bond to be redeemed,

(4) that, on the redemption date, the Redemption Price will become due and payable upon each such Bond or portion thereof called for redemption, and that interest thereon shall cease to accrue from and after said date, and

(5) that such Bonds to be redeemed, whether as a whole or in part, are to be surrendered for payment of the Redemption Price at the designated office of the Registrar.

Prior to any redemption date, the Issuer shall deposit with the Registrar an amount of money sufficient to pay the Redemption Price of all the Bonds or portions of Bonds which are to be redeemed on that date.

The Issuer may provide that a notice of redemption may be contingent upon the occurrence of condition(s) and that if such condition(s) do not occur, the notice will be rescinded; provided notice of such rescission shall be mailed in the manner described herein to all Bondholders as soon as practicable after the Issuer has determined to rescind the redemption.

Section 3.04 Redemption of Portions of Bonds. Any Bond which is to be redeemed only in part shall be surrendered at any place of payment specified in the notice of redemption (with due endorsement by, or written instrument of transfer in form satisfactory to, the Registrar duly executed by, the Holder thereof or such Holder's attorney duly authorized in writing) and the Issuer shall execute and the Registrar shall authenticate and deliver to the Holder of such Bond, without service charge, a new Bond or Bonds, of the same interest rate and maturity, and of any authorized denomination as requested by such Holder, in an aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Bonds so surrendered.

Section 3.05 Payment of Redeemed Bonds. Notice of redemption having been given substantially as aforesaid, the Bonds or portions of Bonds so to be redeemed shall, on the redemption date, become due and payable at the Redemption Price therein specified, and from and after such date (unless the Issuer shall default in the payment of the Redemption Price) such Bonds or portions of Bonds shall cease to bear interest. Upon surrender of such Bonds for redemption in accordance with said notice, such Bonds shall be paid by the Registrar and/or Paying Agent at the appropriate Redemption Price, plus accrued interest. All Bonds which have been redeemed shall be canceled by the Registrar and shall not be reissued.

ARTICLE IV
SECURITY, SPECIAL FUNDS AND APPLICATION THEREOF

Section 4.01 Bonds not to be general obligations of Issuer. THE BONDS SHALL NOT BE OR CONSTITUTE GENERAL OBLIGATIONS OR INDEBTEDNESS OF THE ISSUER AS "BONDS" WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION, BUT SHALL BE SPECIAL OBLIGATIONS OF THE ISSUER, PAYABLE SOLELY FROM AND SECURED BY A LIEN UPON AND PLEDGE OF THE PLEDGED FUNDS. NO HOLDER OF ANY BOND SHALL EVER HAVE THE RIGHT TO COMPEL THE EXERCISE OF ANY AD VALOREM TAXING POWER TO PAY SUCH BOND, FOR THE PAYMENT OF ANY

AMOUNTS PAYABLE HEREUNDER, OR IN ORDER TO MAINTAIN ANY SERVICES OR PROGRAMS THAT GENERATE NON-AD VALOREM REVENUES, OR BE ENTITLED TO PAYMENT OF SUCH BOND FROM ANY MONEYS OF THE ISSUER EXCEPT FROM THE PLEDGED FUNDS IN THE MANNER PROVIDED HEREIN.

Section 4.02 Bonds Secured by Covenant to Budget and Appropriate and Pledge of Pledged Funds. Subject to the next paragraph, the Issuer covenants and agrees and has a positive and affirmative duty to appropriate in its annual budget, by amendment, if necessary, from Non-Ad Valorem Revenues, and to deposit into the Debt Service Fund amounts sufficient to pay principal of and interest on the Bonds and all other payments due hereunder not being paid from other amounts as the same shall become due. The Issuer shall make each deposit no later than five (5) business days prior to the date such payment is due. Such covenant and agreement on the part of the Issuer to budget, appropriate and deposit such amounts of Non-Ad Valorem Revenues shall be cumulative to the extent not paid, and shall continue until such Non-Ad Valorem Revenues or other legally available funds in amounts sufficient to make all such required payments shall have been budgeted, appropriated, deposited and actually paid. No lien upon or pledge of such budgeted Non-Ad Valorem Revenues shall be in effect until such monies are budgeted, appropriated and deposited as provided herein. The Issuer further acknowledges and agrees that the obligations of the Issuer to include the amount of such amendments in each of its annual budgets and to pay such amounts from Non-Ad Valorem Revenues may be enforced in a court of competent jurisdiction in accordance with the remedies set forth herein.

Until such monies are budgeted, appropriated and deposited as provided herein, such covenant to budget and appropriate does not create any lien upon or pledge of such Non-Ad Valorem Revenues, nor does it preclude the Issuer from pledging in the future its Non-Ad Valorem Revenues, nor does it require the Issuer to levy and collect any particular Non-Ad Valorem Revenues, nor does it give the Holders of the Bonds a prior claim on the Non-Ad Valorem Revenues as opposed to claims of general creditors of the Issuer. Such covenant to budget and appropriate Non-Ad Valorem Revenues is subject in all respects to the prior payment of obligations secured by a pledge of such Non-Ad Valorem Revenues heretofore or hereafter entered into (including the payment of debt service on bonds and other debt instruments). Anything in this Resolution to the contrary notwithstanding, it is understood and agreed that all obligations of the Issuer hereunder shall be payable from the portion of Non-Ad Valorem Revenues budgeted, appropriated and deposited as provided for herein and nothing herein shall be deemed to pledge ad valorem taxing power or ad valorem tax revenues or to permit or constitute a mortgage or lien upon any assets owned by the Issuer and no Holders of the Bonds nor any other Person, may compel the levy of ad valorem taxes on real or personal property within the boundaries of the Issuer or the use or application of ad valorem tax revenues in order to satisfy any payment obligations hereunder. The obligation of the Issuer to budget, appropriate, deposit and make payments hereunder from its Non-Ad Valorem Revenues is subject to the availability of Non-Ad Valorem Revenues after the satisfaction of the funding requirements for obligations having an express lien on or pledge of such revenues and the funding requirements for essential governmental services of the Issuer. Notwithstanding any provisions of this Resolution or the Bonds to the contrary, the Issuer shall never be obligated to maintain or

continue any of the activities of the Issuer which generate user service charges, regulatory fees or any Non-Ad Valorem Revenues. Until such monies are budgeted, appropriated and deposited as provided herein, neither this Resolution nor the obligations of the Issuer hereunder shall be construed as a pledge of or a lien on all or any legally available Non-Ad Valorem Revenues of the Issuer, but shall be payable solely as provided herein and is subject to the payment of services and programs which are for essential public purposes affecting the health, welfare and safety of the inhabitants of the Issuer and is further subject to the provisions of Section 166.241, Florida Statutes insofar as there are not sufficient Non-Ad Valorem Revenues to comply with such covenant after the satisfaction of the funding requirements for obligations having an express lien on or pledge of such revenues and the funding requirements for essential governmental services of the Issuer.

There is hereby created and established the "City of Port Orange Capital Improvement Refunding Revenue Bonds, Series 2025 Debt Service Fund" (the "Debt Service Fund"), which fund shall be a trust fund held by the Issuer which shall be held solely for the benefit of the Holders as provided herein. The designation and establishment of the Debt Service Fund in and by this Resolution shall not be construed to require the establishment of a completely independent, self-balancing fund as such term is commonly defined and used in governmental accounting, but rather is intended solely to constitute an earmarking of certain revenues and assets of the Issuer for certain purposes and to establish certain priorities for application of such revenues and assets as herein provided.

The Issuer may at any time and from time to time appoint one or more depositaries to hold, for the benefit of the Holders of the Bonds, the Debt Service Fund established hereby. Such depository or depositaries shall perform at the direction of the Issuer the duties of the Issuer in depositing, transferring and disbursing moneys to and from such Debt Service Fund as herein set forth, and all records of such depository in performing such duties shall be open at all reasonable times to inspection by the Holders of the Bonds. Any such depository shall be a bank or trust company duly authorized to exercise corporate trust powers and subject to examination by federal or state authority, of good standing, and having a combined capital, surplus and undivided profits aggregating not less than one hundred million dollars ($100,000,000).

Until applied in accordance with this Resolution, the Non-Ad Valorem Revenues of the Issuer on deposit in the Debt Service Fund and other amounts on deposit from time to time in the funds and accounts established herein, plus any earnings thereon, shall be pledged to the repayment of the Bonds.

The payment of the debt service of all of the Bonds issued hereunder shall be secured forthwith equally and ratably by a pledge of and a lien upon the Pledged Funds, as now or hereafter constituted. The Issuer does hereby irrevocably pledge such Pledged Funds to the payment of the principal of and interest on the Bonds issued pursuant to this Resolution, and the Issuer does hereby irrevocably agree to the deposit of Non-Ad Valorem Revenues into the Debt Service Fund at the times provided of the sums required to secure to the Holders of the Bonds issued hereunder, and the payment of the principal of and interest thereon when due. The

Pledged Funds shall immediately be subject to the lien of this pledge without any physical delivery thereof or further act, and the lien of this pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Issuer.

Section 4.03 Separate Accounts in Debt Service Fund. The Issuer shall maintain in the Debt Service Fund three (3) accounts: the "Series 2025 Interest Account," the "Series 2025 Principal Account," and the "Series 2025 Bond Amortization Account." Moneys in the aforementioned funds and accounts, until applied in accordance with the provisions hereof, shall be subject to a lien and charge in favor of the Holders and for the further security of the Holders.

Section 4.04 Flow of Funds.

(1) Pursuant to Section 4.02 hereof, Non-Ad Valorem Revenues shall be deposited or credited at least five (5) business days prior to the applicable due date, in the following manner:

(a) Interest Account. The Issuer shall deposit into or credit to the Interest Account the sum which, together with the balance in the Interest Account, shall be equal to the interest on all Outstanding Bonds accrued and unpaid and to accrue on such Interest Date. Moneys in the Interest Account shall be used to pay interest on the Bonds as and when the same become due, whether by redemption or otherwise, and for no other purpose.

(b) Principal Account. The Issuer shall deposit into or credit to the Principal Account the sum which, together with the balance in the Principal Account, shall equal the portion of the principal on the Outstanding Bonds next due. Moneys in the Principal Account shall be used to pay the principal of the Bonds as and when the same shall mature, and for no other purpose.

(c) Bond Amortization Account. The Issuer shall deposit into or credit to the Bond Amortization Account the sum which, together with the balance in the Bond Amortization Account, shall equal the portion of the Amortization Installments of all Outstanding Bonds next due. Moneys in the Bond Amortization Account shall be used to purchase or redeem Term Bonds in the manner herein provided, and for no other purpose. Payments to the Bond Amortization Account shall be on a parity with payments to the Principal Account.

(2) On the date established for payment of any principal of or Redemption Price, if applicable, or interest on the Outstanding Bonds, the Issuer shall withdraw from the appropriate account of the Debt Service Fund sufficient moneys to pay such principal or Redemption Price, if applicable, or interest and deposit such moneys with the Paying Agent for the Outstanding Bonds to be paid.

Section 4.05 Investments. The Project Fund and the Debt Service Fund shall be continuously secured in the manner by which the deposit of public funds are authorized to be secured by the laws of the State. Moneys on deposit in the Debt Service Fund and Project Fund may be invested and reinvested in Permitted Investments maturing not later than the date on which the moneys therein will be needed. Any and all income received by the Issuer from the

investment of moneys in the Debt Service Fund and Project Fund shall be retained in such respective Funds or Accounts.

Nothing contained in this Resolution shall prevent any Permitted Investments acquired as investments of or security for funds held under this Resolution from being issued or held in book-entry form on the books of the Department of the Treasury of the United States.

The value of Permitted Investments held hereunder shall be determined as follows:

(a) For the purpose of determining the amount in any Fund or Account hereunder, all Permitted Investments credited to such fund or account shall be valued at fair market value. The Issuer shall determine the fair market value based on accepted industry standards and from accepted industry providers. Accepted industry providers shall include but are not limited to pricing services provided by Financial Times Interactive Data Corporation and Citigroup Global Markets.

(b) As to certificates of deposit and bankers' acceptances: the face amount thereof, plus accrued interest thereon.

(c) As to any investment not specified above: the value thereof established by prior agreement between the Issuer and Insurer.

Section 4.06. Separate Accounts. The moneys required to be accounted for in each of the foregoing Funds and Accounts established herein may be deposited in a single account, and funds allocated to the various funds and accounts established herein may be invested in a common investment pool, provided that adequate accounting records are maintained to reflect and control the restricted allocation of the moneys on deposit therein and such investments for the various purposes of such Funds and Accounts as herein provided.

The designation and establishment of the various Funds and Accounts in and by this Resolution shall not be construed to require the establishment of any completely independent, self-balancing funds as such term is commonly defined and used in governmental accounting, but rather is intended solely to constitute an earmarking of certain revenues for certain purposes and to establish certain priorities for application of such revenues as herein provided.

ARTICLE V
OTHER OBLIGATIONS AND COVENANTS OF ISSUER

Section 5.01 [Reserved].

Section 5.02 Books and Records. The Issuer shall keep proper books, records and accounts of the receipt of the Non-Ad Valorem Revenues in accordance with generally accepted accounting principles, and any Holder or Holders of Bonds shall have the right at all reasonable times to inspect such books, records, accounts and data of the Issuer relating thereto.

Section 5.03 Annual Audit. The Issuer shall, within a reasonable amount of time after the close of each Fiscal Year, cause the financial statements of the Issuer to be properly audited by a recognized independent certified public accountant or recognized independent firm of certified public accountants, and shall require such accountants to complete their report on the annual financial statements in accordance with applicable law. Such annual financial statements shall contain, but not be limited to, a balance sheet, a statement of revenues, expenditures and changes in fund balance, and any other statements as required by law or accounting convention, and a report by such accountants disclosing any material default on the part of the Issuer of any covenant or agreement herein which is disclosed by the audit of the financial statements. The annual financial statements shall be prepared in conformity with generally accepted accounting principles. A copy of the audited financial statements for each Fiscal Year shall be furnished to any Holder of a Bond who shall have furnished such Holder's address to the Finance Director and/or the City Manager and requested in writing that the same be furnished to such Holder. The Issuer shall be permitted to make a reasonable charge for furnishing such audited financial statements.

Section 5.04 No Impairment. As long as there are Bonds Outstanding hereunder, the pledging of the Pledged Funds in the manner provided herein shall not be subject to repeal, modification or impairment by any subsequent ordinance, resolution or other proceedings of the City Council of the Issuer.

Section 5.05 Tax Covenants.

(A) The Issuer covenants with the Holders of the Series 2025 Bonds that it shall not use the proceeds of such the Series 2025 Bonds in any manner which would cause the interest on such the Series 2025 Bonds to be or become includable in the gross income of the Holder thereof for federal income tax purposes.

(B) The Issuer covenants with the Holders of the Series 2025 Bonds that neither the Issuer nor any Person under its control or direction will make any use of the proceeds of such the Series 2025 Bonds (or amounts deemed to be proceeds under the Code) in any manner which would cause such Series 2025 Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code and neither the Issuer nor any other Person shall do any act or fail to do any act which would cause the interest on such Series 2025 Bonds to become includable in the gross income of the Holder thereof for federal income tax purposes.

(C) The Issuer hereby covenants with the Holders of the Series 2025 Bonds that it will comply with all provisions of the Code necessary to maintain the exclusion of interest on such Series 2025 Bonds from the gross income of the Holder thereof for federal income tax purposes, including, in particular, the payment of any amount required to be rebated to the U.S. Treasury pursuant to the Code.

(D) There is hereby created and established a fund to be known as the "City of Port Orange Capital Improvement Refunding Revenue Bonds, Series 2025 Rebate Fund." The Issuer

shall deposit into the appropriate account in the Rebate Fund, from investment earnings on moneys deposited in the other funds and accounts created hereunder, or from any other legally available funds of the Issuer, an amount equal to the Rebate Amount for such Rebate Year. The Issuer shall use such moneys deposited in the appropriate account in the Rebate Fund only for the payment of the Rebate Amount to the United States as required by this Section 5.05. In complying with the foregoing, the Issuer may rely upon any instructions or opinions from Bond Counsel.

If any amount shall remain in the Rebate Fund after payment in full, the Series 2025 Bonds issued hereunder and after payment in full of the Rebate Amount to the United States in accordance with the terms hereof, such amounts shall be available to the Issuer for any lawful purpose.

The Rebate Fund shall be held separate and apart from all other funds and accounts of the Issuer, shall not be impressed with a lien in favor of the Series 2025 Bondholders and the moneys therein shall be available for use only as herein provided.

ARTICLE VI
DEFAULTS AND REMEDIES

Section 6.01 Events of Default. The following events shall each constitute an "Event of Default:"

(1) Default shall be made in the payment of the principal of, Amortization Installment, redemption premium or interest on any Bond when due.

(2) There shall occur the dissolution or liquidation of the Issuer, or the filing by the Issuer of a voluntary petition in bankruptcy, or the commission by the Issuer of any act of bankruptcy, or adjudication of the Issuer as a bankrupt, or assignment by the Issuer for the benefit of its creditors, or appointment of a receiver for the Issuer, or the entry by the Issuer into an agreement of composition with its creditors, or the approval by a court of competent jurisdiction of a petition applicable to the Issuer in any proceeding for its reorganization instituted under the provisions of the Federal Bankruptcy Act, as amended, or under any similar act in any jurisdiction which may now be in effect or hereafter enacted.

(3) The Issuer shall default in the due and punctual performance of any other of the covenants, conditions, agreements and provisions contained in the Bonds or in this Resolution on the part of the Issuer to be performed, and such default shall continue for a period of thirty (30) days after written notice of such default shall have been received from the Holders of not less than twenty-five percent (25%) of the aggregate principal amount of Bonds Outstanding or the Insurer of such amount of Bonds. Notwithstanding the foregoing, the Issuer shall not be deemed in default hereunder if such default can be cured within a reasonable period of time and if the Issuer in good faith institutes curative action and diligently pursues such action until the default has been corrected.

Section 6.02 Remedies. Any Holder of Bonds issued under the provisions of this Resolution or any trustee or receiver acting for such Bondholders may either at law or in equity, by suit, action, mandamus or other proceedings in any court of competent jurisdiction, protect and enforce any and all rights under the laws of the State, or granted and contained in this Resolution, and may enforce and compel the performance of all duties required by this Resolution or by any applicable statutes to be performed by the Issuer or by any officer thereof.

The Holder or Holders of Bonds in an aggregate principal amount of not less than twenty-five percent (25%) of the Bonds then Outstanding may by a duly executed certificate in writing appoint a trustee for Holders of Bonds issued pursuant to this Resolution with authority to represent such Bondholders in any legal proceedings for the enforcement and protection of the rights of such Bondholders and such certificate shall be executed by such Bondholders or their duly authorized attorneys or representatives, and shall be filed in the office of the City Clerk. Notice of such appointment, together with evidence of the requisite signatures of the Holders of not less than twenty-five percent (25%) in aggregate principal amount of Bonds Outstanding and the trust instrument under which the trustee shall have agreed to serve shall be filed with the Issuer and the trustee and notice of appointment shall be given to all Holders of Bonds in the same manner as notices of redemption are given hereunder. After the appointment of the first trust hereunder, no further trustees may be appointed; however, the Holders of a majority in aggregate principal amount of all the Bonds then Outstanding may remove the trustee initially appointed and appoint a successor and subsequent successors at any time.

Acceleration of principal amount of the Bonds is not a remedy upon the occurrence and continuance of an Event of Default.

Section 6.03 Directions to Trustee as to Remedial Proceedings. The Holders of a majority in principal amount of the Bonds then Outstanding or, if the Bonds are insured, the Insurer, shall have the right, by an instrument or concurrent instruments in writing executed and delivered to the trustee, to direct the method and place of conducting all remedial proceedings to be taken by the trustee hereunder, provided that such direction shall not be otherwise than in accordance with law or the provisions hereof, and that the trustee shall have the right to decline to follow any such direction which in the opinion of the trustee would be unjustly prejudicial to Holders of Bonds not parties to such direction.

Section 6.04 Remedies Cumulative. No remedy herein conferred upon or reserved to the Bondholders is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

Section 6.05 Waiver of Default. No delay or omission of any Bondholder to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default, or an acquiescence therein; and every power and remedy given by Section 6.02 of this Resolution to the Bondholders may be exercised from time to time, and as often as may be deemed expedient.

Section 6.06 Application of Moneys After Default. If an Event of Default shall happen and shall not have been remedied, the Issuer or a trustee or receiver appointed for the purpose shall apply all Pledged Funds as follows and in the following order:

(1) To the payment of the reasonable and proper charges, expenses and liabilities of the trustee or receiver, Registrar and Paying Agent hereunder; and

(2) To the payment of the interest and principal or Redemption Price, if applicable, then due on the Bonds as follows:

(A) Unless the principal of all the Bonds shall have become due and payable, all such moneys shall be applied:

FIRST: to the payment to the Persons entitled thereto of all installments of interest then due, in the order of the maturity of such installments, and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the Persons entitled thereto, without any discrimination or preference;

SECOND: to the payment to the Persons entitled thereto of the unpaid principal of any of the Bonds which shall have become due at maturity or upon mandatory redemption prior to maturity (other than Bonds called for redemption for the payment of which moneys are held pursuant to the provisions of Section 8.01 of this Resolution), in the order of their due dates, with interest upon such Bonds from the respective dates upon which they became due, and, if the amount available shall not be sufficient to pay in full Bonds due on any particular date, together with such interest, then to the payment first of such interest, ratably according to the amount of such interest due on such date, and then to the payment of such principal, ratably according to the amount of such principal due on such date, to the Persons entitled thereto without any discrimination or preference; and

THIRD: to the payment of the Redemption Price of any Bonds called for optional redemption pursuant to the provisions of this Resolution.

(B) If the principal of all the Bonds shall have become due and payable, all such moneys shall be applied to the payment of the principal and interest then due and unpaid upon the Bonds, with interest thereon as aforesaid, without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal and interest, to the Persons entitled thereto without any discrimination or preference.

ARTICLE VII
SUPPLEMENTAL RESOLUTIONS

Section 7.01 Supplemental Resolutions without Bondholders' Consent. The Issuer, from time to time and at any time, may adopt such Supplemental Resolutions without the consent of the Bondholders (which Supplemental Resolutions shall thereafter form a part hereof) for any of the following purposes:

(1) To cure any ambiguity or formal defect or omission or to correct any inconsistent provisions in this Resolution or to clarify any matters or questions arising hereunder.

(2) To grant to or confer upon the Bondholders any additional rights, remedies, powers, authority or security that may lawfully be granted to or conferred upon the Bondholders.

(3) To add to the conditions, limitations and restrictions on the issuance of Bonds under the provisions of this Resolution other conditions, limitations and restrictions thereafter to be observed.

(4) To add to the covenants and agreements of the Issuer in this Resolution other covenants and agreements thereafter to be observed by the Issuer or to surrender any right or power herein reserved to or conferred upon the Issuer.

(5) To specify and determine the matters and things referred to in Sections 2.01 or 2.02 hereof, and also any other matters and things relative to such Bonds which are not contrary to or inconsistent with this Resolution as theretofore in effect, or to amend, modify or rescind any such authorization, specification or determination at any time prior to the first delivery of such Bonds.

(6) To make any other change that, in the opinion of the Issuer, would not materially adversely affect the security for the Bonds including, without limitation, to modify the 2025 Project.

If the Insurer of the Bonds is not then in default in the performance of any of its obligations under its Municipal Bond Insurance Policy, it shall receive notice of all Supplemental Resolutions adopted pursuant to this Section 7.01.

Section 7.02 Supplemental Resolutions with Bondholders' Consent. Subject to the terms and provisions contained in this Section 7.02 and Section 7.01 hereof, the Holder or Holders of not less than a majority in aggregate principal amount of the Bonds then Outstanding shall have the right, from time to time, anything contained in this Resolution to the contrary notwithstanding, to consent to and approve the adoption of such Supplemental Resolution or resolutions hereto as shall be deemed necessary or desirable by the Issuer for the purpose of supplementing, modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Resolution. Any Supplemental Resolution which is adopted in accordance with the provisions of this Section 7.02 shall also require the written consent of the Insurer of any Bonds which are Outstanding at the time such Supplemental

Resolution shall take effect. No Supplemental Resolution may be approved or adopted which shall permit or require (A) an extension of the maturity of the principal of or the payment of the interest on any Bond issued hereunder, (B) reduction in the principal amount of any Bond or the Redemption Price or the rate of interest thereon, (C) the creation of a lien upon or a pledge of other than the lien and pledge created by this Resolution which adversely affects any Bondholders, (D) a preference or priority of any Bond or Bonds over any other Bond or Bonds, or (E) a reduction in the aggregate principal amount of the Bonds required for consent to such Supplemental Resolution, unless such Supplemental Resolution has the approval of 100% of the Bondholders and any Insurer of the Bonds. Nothing herein contained, however, shall be construed as making necessary the approval by Bondholders of the adoption of any Supplemental Resolution as authorized in Section 7.01 hereof.

If, at any time the Issuer shall determine that it is necessary or desirable to adopt any Supplemental Resolution pursuant to this Section 7.02, the City Clerk shall cause the Registrar to give notice of the proposed adoption of such Supplemental Resolution and the form of consent to such adoption to be mailed, postage prepaid, to all Bondholders at their addresses as they appear on the registration books. Such notice shall briefly set forth the nature of the proposed Supplemental Resolution and shall state that copies thereof are on file at the offices of the City Clerk and the Registrar for inspection by all Bondholders. The Issuer shall not, however, be subject to any liability to any Bondholder by reason of its failure to cause the notice required by this Section 7.02 to be mailed and any such failure shall not affect the validity of such Supplemental Resolution when consented to and approved as provided in this Section 7.02.

Whenever the Issuer shall deliver to the City Clerk an instrument or instruments in writing purporting to be executed by the Holders or Insurers, as the case may be, of not less than a majority in aggregate principal amount of the Bonds then Outstanding, which instrument or instruments shall refer to the proposed Supplemental Resolution described in such notice and shall specifically consent to and approve the adoption thereof in substantially the form of the copy thereof referred to in such notice, thereupon, but not otherwise, the Issuer may adopt such Supplemental Resolution in substantially such form, without liability or responsibility to any Holder of any Bond, whether or not such Holder shall have consented thereto.

If the Holders of not less than a majority in aggregate principal amount of the Bonds Outstanding at the time of the adoption of such Supplemental Resolution shall have consented to and approved the adoption thereof as herein provided, no Holder of any Bond shall have any right to object to the adoption of such Supplemental Resolution, or to object to any of the terms and provisions contained therein or the operation thereof, or in any manner to question the propriety of the adoption thereof, or to enjoin or restrain the Issuer from adopting the same or from taking any action pursuant to the provisions thereof.

Upon the adoption of any Supplemental Resolution pursuant to the provisions of this Section 7.02, this Resolution shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations under this Resolution of the Issuer

and all Holders of Bonds then Outstanding shall thereafter be determined, exercised and enforced in all respects under the provisions of this Resolution as so modified and amended.

Section 7.03 Supplemental Resolutions with Insurer's Consent in lieu of Bondholders' Consent. Notwithstanding any provisions of Section 7.02 above to the contrary, if the Insurer of the Bonds is not then in default in the performance of any of its obligations under its Municipal Bond Insurance Policy, the approvals, consents and notifications required by Section 7.02 above to be given by or to the Owners of the Bonds, as the case may be, may be given solely by or to the Insurer, as the case may be, and the instrument contemplated by Section 7.02 above shall be executed solely by the Insurer, and the Owners of the Bonds subject to such Municipal Bond Insurance Policy shall have no right to receive such notification or give such approvals and consents or to execute such certificate except that the adoption of Supplemental Resolutions that would have any of the effects described in (A) through (E) in Section 7.02 above shall require the approval and consent of all Owners of Bonds then Outstanding and the Insurer.

ARTICLE VIII
OPTIONAL MUNICIPAL BOND INSURANCE

Section 8.01 Optional Municipal Bond Insurance. The Mayor, the City Manager, the Financial Advisor, the City Attorney and Bond Counsel are hereby authorized to negotiate for a commitment to issue one or more Municipal Bond Insurance Policies for the Bonds, if economically feasible, and to execute and deliver a commitment or agreement with the Insurer to issue such policies upon such terms as the Issuer's Financial Advisor and the Mayor or the City Manager deem are in the Issuer's best interest.

ARTICLE IX
MISCELLANEOUS

Section 9.01 Defeasance. If the Issuer shall pay or cause to be paid, or there shall otherwise be paid to the Holders of all Bonds, the principal or Redemption Price, if applicable, and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Resolution, then the pledge of the Pledged Funds, and all covenants, agreements and other obligations of the Issuer to the Bondholders, shall thereupon cease, terminate and become void and be discharged and satisfied. In such event, the Paying Agents shall pay over or deliver to the Issuer all money or securities held by them pursuant to this Resolution which are not required for the payment or redemption of Bonds not theretofore surrendered for such payment or redemption.

Any Bonds or interest installments appertaining thereto, whether at or prior to the maturity or redemption date of such Bonds, shall be deemed to have been paid within the meaning of this Section 9.01 if (A) in case any such Bonds are to be redeemed prior to the maturity thereof, there shall have been taken all action necessary to call such Bonds for redemption and notice of such redemption shall have been duly given or provision shall have been made for the giving of such notice, and (B) there shall have been deposited in irrevocable trust with a banking

institution or trust company by or on behalf of the Issuer either moneys in an amount which shall be sufficient, or Federal Securities the principal of and the interest on which when due will provide moneys which, together with the moneys, if any, deposited with such bank or trust company at the same time shall be sufficient, to pay the principal of or Redemption Price, if applicable, and interest due and to become due on said Bonds on and prior to the redemption date or maturity date thereof, as the case may be. Except as hereafter provided, neither the Federal Securities nor any moneys so deposited with such bank or trust company nor any moneys received by such bank or trust company on account of principal of or Redemption Price, if applicable, or interest on said Federal Securities shall be withdrawn or used for any purpose other than, and all such moneys shall be held in trust for and be applied to, the payment, when due, of the principal of or Redemption Price, if applicable, of the Bonds for the payment or redemption of which they were deposited and the interest accruing thereon to the date of maturity or redemption; provided, however, the Issuer may substitute new Federal Securities and moneys for the deposited Federal Securities and moneys if the new Federal Securities and moneys are sufficient to pay the principal of or Redemption Price, if applicable, and interest on the refunded Bonds.

In the event the Bonds for which moneys are to be deposited for the payment thereof in accordance with this Section 9.01 are not by their terms subject to redemption within the next succeeding sixty (60) days, the Issuer shall cause the Registrar to mail a notice to the Holders of such Bonds that the deposit required by this Section 9.01 of moneys or Federal Securities has been made and said Bonds are deemed to be paid in accordance with the provisions of this Section 9.01 and stating such maturity or redemption date upon which moneys are to be available for the payment of the principal of or Redemption Price, if applicable, and interest on said Bonds.

Nothing herein shall be deemed to require the Issuer to call any of the Outstanding Bonds for redemption prior to maturity pursuant to any applicable optional redemption provisions, or to impair the discretion of the Issuer in determining whether to exercise any such option for early redemption.

Notwithstanding anything herein to the contrary, in the event that the principal and or interest due on the Bonds shall be paid by the Insurer pursuant to the Municipal Bond Insurance Policy, the Bonds shall remain Outstanding for all purposes, not be defeased or otherwise satisfied and not be considered paid by the Issuer and the pledge of the Pledged Funds and all covenants, agreements and other obligations of the Issuer to the registered owners, shall continue to exist and shall run to the benefit of the Insurer, and the Insurer shall be subrogated to the rights of such registered owners.

Section 9.02 Sale of Bonds. The Bonds shall be issued and sold at public or private sale at one time or in installments from time to time and at such price or prices as shall be consistent with the provisions of the Act, the requirements of this Resolution and other applicable provisions of law and as shall be approved by Supplemental Resolution of the Issuer.

Section 9.03 General Authority. The members of the City Council of the Issuer, the City Manager, the City Attorney, the Finance Director and all other of the Issuer's officers, attorneys and other agents and employees are hereby authorized to perform all acts and things required of them by this Resolution or any Supplemental Resolution or desirable or consistent with the requirements hereof for the full, punctual and complete performance of all of the terms, covenants and agreements contained in the Bonds, this Resolution, and any Supplemental Resolution, and they are hereby authorized to execute and deliver all documents which shall be required by Bond Counsel or the initial purchasers of the Bonds to effectuate the sale of the Bonds to said initial purchasers.

Section 9.04 Interested Parties. (i) To the extent that this Resolution confers upon or gives or grants to an Insurer any right, remedy or claim under or by reason of this Resolution, the Insurer is explicitly recognized as being a third-party beneficiary under this Resolution and may enforce any such right, remedy or claim conferred, given or granted under this Resolution.

(ii) Nothing in this Resolution expressed or implied is intended or shall be construed to confer upon, or to give to, any person or entity, other than the Issuer, the Insurer, the Paying Agent, and the registered owners of the Bonds, any right, remedy or claim under or by reason of this Resolution or any covenant, condition or stipulation thereof, and all covenants, stipulations, promises and agreements in this Resolution contained by and on behalf of the Issuer shall be for the sole and exclusive benefit of the Issuer, the Insurer, the Paying Agent, and the registered owners of the Bonds.

Section 9.05 No Personal Liability. Neither the members of the City Council of the Issuer nor any person executing the Bonds shall be personally liable therefor or be subject to any personal liability or accountability by reason of the issuance thereof.

Section 9.06 Severability of Invalid Provisions. If any one or more of the covenants, agreements or provisions of this Resolution shall be held contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed separable from the remaining covenants, agreements and provisions of this Resolution and shall in no way affect the validity of any of the other covenants, agreements or provisions hereof or of the Bonds issued hereunder.

Section 9.07 Superseding of Inconsistent Resolutions. This Resolution supersedes all prior actions of the City Council inconsistent herewith. All prior resolutions or parts thereof in conflict herewith are hereby superseded by this Resolution to the extent of such conflict.

Section 9.08 Effective Date. This Resolution shall take effect immediately upon its adoption.

ADOPTED by the City Council of the City of Port Orange, Florida, this _____ day of May, 2025.

_____
Scott Stiltner, Mayor

ATTEST:

_____
Robin L. Fenwick, MMC, City Clerk

Reviewed and Approved: _____
Matthew J. Jones, City Attorney

CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 5/20/2025

SUBJECT: (H17c) Resolution No. 25-29 – Supplementing Resolution No. 25-28 and authorizing and approving the negotiated sale of the City of Port Orange Capital Improvement Refunding Revenue Bonds, Series 2025 to Hilltop Securities Inc. and providing further details and authorization

DEPARTMENT: Finance

GOAL: 5 - Fiscal Sustainability

RECOMMENDED MOTION: Move to approve Resolution No. 25-29

SUMMARY: This resolution supplements Resolution No. 25-28 and authorizes the issuance of not-to-exceed $38,000,000 of Capital Improvement Refunding Revenue Bonds, Series 2025 and the negotiated sale of the Series 2025 bonds to the underwriter, Hilltop Securities Inc., subject to the satisfaction of the terms and conditions therein. The resolution delegates to the Finance Director, the City Manager, and the Mayor the authority to determine certain details of the bonds, to take such further action for carrying out the purposes of the resolution, and to execute the Bond Purchase Contract, subject to certain parameters included therein. The resolution appoints the paying agent and registrar (The Bank of New York Mellon Trust Company) and dissemination agent (Digital Assurance Certification LLC), authorizes the form of the Bond Purchase Contract, form of Preliminary Official Statement (and execution of the final Official Statement), form Continuing Disclosure Certificate, and form Escrow Deposit Agreement(s) in connection with the issuance and sale of the Series 2025 Bonds. The resolution authorizes certain City officers, attorneys, and others to perform all acts and things required by the Resolution.

PRESENTER: Mark Simpson

ATTACHMENTS:

1.	Resolution No. 25-29 with exhibits	Resolution No. 25-29 with exhibits .pdf

Amanda Bonin	Created/Initiated - 5/7/2025
Mark Simpson	Approved - 5/7/2025
Matthew Jones	Approved - 5/13/2025
Wayne Clark	Final Approval - 5/15/2025

RESOLUTION NO. 25-29

A RESOLUTION OF THE CITY OF PORT ORANGE, FLORIDA SUPPLEMENTING A RESOLUTION ADOPTED ON EVEN DATE HEREWITH; AUTHORIZING AND APPROVING THE NEGOTIATED SALE OF NOT TO EXCEED $38,000,000 CITY OF PORT ORANGE FLORIDA CAPITAL IMPROVEMENT REFUNDING REVENUE BONDS, SERIES 2025; AUTHORIZING THE SALE THEREOF TO HILLTOP SECURITIES INC., AS UNDERWRITER, SUBJECT TO THE TERMS AND CONDITIONS CONTAINED HEREIN; APPOINTING THE PAYING AGENT AND REGISTRAR; APPOINTING A DISSEMINATION AGENT; APPOINTING AN ESCROW HOLDER AND FORM OF ESCROW DEPOSIT AGREEMENT; PROVIDING CERTAIN OTHER MATTERS RELATING TO THE BONDS OR THE REFUNDED BONDS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City Council (the "City Council") of the City of Port Orange, Florida (the "Issuer") adopted Resolution 25-28 on May 20, 2025 (the "Authorizing Resolution"), as supplemented by this Supplemental Resolution (together, the "Resolution"); and

WHEREAS, all capitalized undefined terms used herein shall have the meanings ascribed thereto in the Authorizing Resolution; and

WHEREAS, by the Authorizing Resolution, the Issuer authorized the issuance of not to exceed thirty-eight million dollars ($38,000,000) in aggregate principal amount of the City of Port Orange Florida Capital Improvement Refunding Revenue Bonds, Series 2025 (the "Bonds") to (i) finance or reimburse the costs of the 2025 Project, and (ii) pay certain costs of issuance incurred with respect to the issuance of the Bonds; and

WHEREAS, the Issuer now desires to supplement the Authorizing Resolution to authorize the sale of the Bonds on a negotiated basis to Hilltop Securities Inc. (the "Underwriter") based on satisfaction of the terms and conditions contained herein; and

WHEREAS, due to the willingness of the Underwriter to purchase the Bonds at current market interest rates, the complicated nature of transactions of this type, and the critical importance of timing of the sale of the Bonds, it is hereby determined that it is in the best interest of the public and the Issuer to sell the Bonds at a negotiated sale upon meeting the terms and conditions contained herein and in the Purchase Contract attached hereto as Exhibit "A" (the "Bond Purchase Contract"); and

WHEREAS, the Issuer expects to receive an offer from the Underwriter to purchase the Bonds, subject to the terms and conditions contained in the Authorizing Resolution and herein, and set forth in the Bond Purchase Contract; and

WHEREAS, the Issuer desires to sell its Bonds subject to the terms and conditions contained in the Authorizing Resolution and herein, and set forth in the Bond Purchase Contract, and authorize execution and distribution of the Official Statement in connection with the issuance of the Bonds; and

WHEREAS, prior to the execution of the Bond Purchase Contract the Issuer will be provided all applicable disclosure information required by Section 218.385, Florida Statutes, a copy of which will be attached to or otherwise included as part of the Bond Purchase Contract and an affidavit as required by Section 787.06(13), Florida Statutes; and

WHEREAS, this resolution shall constitute a Supplemental Resolution under the terms of the Authorizing Resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PORT ORANGE, FLORIDA, THAT:

SECTION 1. NEGOTIATED SALE OF BONDS. Due to the willingness of the Underwriter to purchase not to exceed thirty-eight million dollars ($38,000,000) in aggregate principal amount of the Bonds at interest costs favorable to the Issuer, the complicated nature of transactions of this type, and the critical importance of timing of the sale of the Bonds, it is hereby determined that it is in the best interest of the public and the Issuer to sell the Bonds at a negotiated sale (rather than through a competitive bid) and such sale to the Underwriter (pursuant to the terms and conditions contained in the Authorizing Resolution and herein, and in the Bond Purchase Contract) is hereby authorized and approved.

SECTION 2. BOND PURCHASE CONTRACT. Subject to the terms and conditions of Section 3 hereof, the Bonds may be sold in a negotiated sale to the Underwriter upon the terms and conditions set forth in the Authorizing Resolution and herein, and in the Bond Purchase Contract, in substantially the form attached hereto as Exhibit "A" (with such changes and filling of blanks as shall be approved by the Finance Director, the City Manager or the Mayor) and incorporated by reference. The form of the Bond Purchase Contract is hereby approved by the Issuer (such approval indicating the recognition of the Issuer that the conditions precedent in the Bond Purchase Contract and Section 3 hereof will be met prior to the delivery of the Bonds). Upon satisfaction of the conditions contained in the Authorizing Resolution, Section 3 hereof and the Bond Purchase Contract, the Issuer hereby authorizes the Mayor, the Finance Director and the City Manager each to execute and deliver the Bond Purchase Contract in the name of and on behalf of the Issuer. All of the provisions of the Bond Purchase Contract, when executed and delivered by the Issuer as authorized herein shall be deemed to be part of this instrument as fully and to the same extent as if incorporated verbatim herein. The execution and delivery of the Bond

Purchase Contract shall constitute conclusive evidence of the approval thereof and of any changes and filling of blanks.

SECTION 3. DELEGATED AWARD. (I) The Issuer hereby delegates to the Finance Director, the City Manager and the Mayor the authority (a) to determine (i) the dated date, (ii) the maturity dates and amounts, (iii) the interest rates and payment dates, (iv) the redemption features, (v) the Amortization Installments for the Term Bonds, if any, (vi) the delivery date, and (vii) all other details of the Bonds; (b) to take such further action as shall be required for carrying out the purposes of the Resolution all with respect to the Bonds; and (c) to execute and deliver, on behalf of the Issuer, the Bond Purchase Contract as provided in Section 2 above; provided, however, that the Finance Director and the City Manager shall not take any action pursuant to this Section 3 unless the Finance Director or the City Manager shall have received from the Underwriter such information as the Finance Director and the City Manager shall deem necessary or appropriate in order to demonstrate that: (i) the par amount of the Bonds is not in excess of $38,000,000; (ii) the average net interest cost rate of the Bonds is not in excess of the maximum interest rate permitted under Section 215.84, Florida Statutes, as amended; (iii) the final maturity of the Bonds is not later than October 1, 2056; and (iv) the underwriting discount is not greater than 2.00% of the original principal amount of the Bonds.

(II) All actions of the Finance Director and the City Manager taken pursuant to the authority contained in Section 3(I) shall be evidenced by the Bond Purchase Contract. The execution of the Bond Purchase Contract shall constitute complete evidence of the actions of the Finance Director and the City Manager in accordance with this Section and shall constitute official action of the Issuer.

SECTION 4. SALE, EXECUTION AND DELIVERY OF BONDS. The Bonds shall be issued under and secured by the Resolution and shall be executed and delivered in the manner as set forth in the Resolution, with such additional changes and insertions therein as conform to the provisions of the Bond Purchase Contract, and such execution and delivery shall be conclusive evidence of the approval thereof by such officers.

SECTION 5. GENERAL AUTHORITY. The members of the City Council of the Issuer and the Issuer's officers, attorneys and other agents and employees, including but not limited to the City Manager, the Finance Director, the City Clerk, and the City Attorney, are hereby authorized to perform all acts and things required of them by the Resolution, the Bond Purchase Contract or any other instruments or documents desirable or consistent with the requirements hereof for the full, punctual and complete performance of all of the terms, covenants and agreements contained in the Bonds, the Resolution and the Bond Purchase Contract, and they are hereby authorized to execute and deliver all documents which shall be required by Bond Counsel or the initial purchasers of the Bonds to effectuate the sale of the Bonds to said initial purchasers.

SECTION 6. DESIGNATION OF PAYING AGENT AND REGISTRAR. The Bank of New York Mellon Trust Company, N.A., a national banking association is hereby appointed as Paying Agent and Registrar with respect to the Bonds. The Finance Director, the City Manager

and the Mayor are each hereby authorized to engage The Bank of New York Mellon Trust Company, N.A., a national banking association, to act as Paying Agent and Registrar, and enter into an agreement in substantially the form approved by the City Attorney.

SECTION 7. CONTINUING DISCLOSURE. The Issuer hereby covenants and agrees that, in order to assist the Underwriter in complying with the continuing disclosure requirements of Rule 15c2-12 of the Securities and Exchange Commission (the "Rule") with respect to the Bonds, it will comply with and carry out all of the provisions of the Continuing Disclosure Certificate to be executed by the Issuer prior to the time the Issuer delivers the Bonds to the Underwriter, as it may be amended from time to time in accordance with the terms thereof. The form of the Continuing Disclosure Certificate, attached as Appendix E to the Preliminary Official Statement attached hereto as Exhibit "B", is hereby approved and ratified, and the Issuer hereby authorizes the Mayor, the Finance Director and the City Manager to execute and deliver said Continuing Disclosure Certificate in the name of and on behalf of the Issuer with such changes and filling of blanks as shall be approved by the Finance Director, the City Manager or the Mayor. Notwithstanding any other provision of the Resolution, failure of the Issuer to comply with such Continuing Disclosure Certificate shall not be considered an Event of Default under the Resolution. However, the Continuing Disclosure Certificate shall be enforceable by the Bondholders in the event that the Issuer fails to cure a breach thereunder within a reasonable time after written notice from a Bondholder to the Issuer that a breach exists. Any rights of the Bondholders to enforce the provisions of the covenant shall be on behalf of all Bondholders and shall be limited to a right to obtain specific performance of the Issuer's obligations thereunder. The Issuer hereby appoints Digital Assurance Certification LLC, a Florida limited liability company, as dissemination agent with respect to the Series 2025 Bonds.

SECTION 8. OFFICIAL STATEMENT. The Issuer hereby ratifies and approves the form of the Preliminary Official Statement attached hereto as Exhibit "B" (with such changes and filling of blanks as shall be approved by the Finance Director, the City Manager or the Mayor). The distribution of the final Official Statement relating to the Bonds (as it may be amended and supplemented from time to time, the "Official Statement") is hereby authorized, and the execution of such Official Statement by the Mayor, the City Manager or the Finance Director is hereby authorized. The Mayor, the Finance Director and the City Manager of the Issuer are each hereby authorized to execute and deliver a certificate of the Issuer which deems such Preliminary Official Statement "final" within the contemplation of the Rule.

SECTION 9. ESCROW DEPOSIT AGREEMENT AND ESCROW HOLDER. The Issuer ratifies and approves the form of Escrow Deposit Agreement attached hereto as Exhibit "C", and authorizes the proper officers of the Issuer to execute a final Escrow Deposit Agreement between the City and the Escrow Holder (with such changes and filling of blanks as shall be approved by the Finance Director, the City Manager or the Mayor). The Bank of New York Mellon Trust Company, N.A. (the "Escrow Holder") is hereby designated Escrow Holder for the Refunded Bonds in accordance with the Resolution and the Escrow Deposit Agreement.

SECTION 10. REFUNDED BONDS. Subject only to issuance of the Series 2025 Bonds, the Refunded Bonds shall be irrevocably called for redemption prior to maturity at the earliest date subsequent to the issuance of the Series 2025 Bonds for which notice of redemption practicably can be given. The Escrow Holder for the Refunded Bonds is hereby instructed and directed to give notice of the call of the Refunded Bonds for redemption as provided in the Escrow Deposit Agreement. The City Manager and the Finance Director are authorized and directed to terminate any agreement relating to the investment of amounts in any debt service reserve fund established for the Refunded Bonds. Proceeds received in connection with such termination shall be applied to payment of the Refunded Bonds or deposited to the Project Fund, as necessary.

SECTION 11. REPEAL OF INCONSISTENT ORDINANCES AND RESOLUTIONS. This resolution supersedes all prior actions of the City Council inconsistent herewith. All prior resolutions or parts thereof in conflict herewith are hereby superseded by this Supplemental Resolution to the extent of such conflict.

SECTION 12. SEVERABILITY AND INVALID PROVISIONS. If any one or more of the covenants, agreements or provisions of this Supplemental Resolution shall be held contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed separable from the remaining covenants, agreements and provisions of this Supplemental Resolution and shall in no way affect the validity of any of the other covenants, agreements or provisions hereof or of the Bonds issued hereunder.

SECTION 13. NO THIRD-PARTY BENEFICIARIES. Except as may be expressly described herein or in the Authorizing Resolution, nothing in the Authorizing Resolution, this Supplemental Resolution or in the Bonds, expressed or implied, is intended or shall be construed to confer upon anyone of another entity other than the Issuer and the Bondholders any right, remedy or claim, legal or equitable, under and by reason of the Resolution or any provision thereof, or of the Bonds, all provisions hereof and thereof being intended to be and being for the sole and exclusive benefit of the Issuer and the Bondholders from time to time.

SECTION 14. NO RECOURSE. Neither the members of the City Council nor any person executing the Bonds shall be personally liable therefor or be subject to any personal liability or accountability by reason of the issuance thereof.

SECTION 15. EFFECTIVE DATE. This Supplemental Resolution shall take effect immediately upon its adoption.

DULY PASSED AND ADOPTED at a regular meeting of the Council of the City of Port Orange, Florida, this ____ day of May, 2025.

_____
Scott Stiltner, Mayor

ATTEST:

_____
Robin Fenwick, MMC, City Clerk

Reviewed and Approved: _____
Matthew J. Jones,City Attorney

EXHIBIT A

Form of
Bond Purchase Contract

BOND PURCHASE AGREEMENT

with respect to

CITY OF PORT ORANGE, FLORIDA
Capital Improvement Refunding Revenue Bonds, Series 2025

_____, 2025

City Commissioners of the
City of Port Orange, Florida
1000 City Center Circle
Port Orange, Florida 32129

Re: **$[PAR] City of Port Orange, Florida, Capital Improvement Refunding Revenue Bonds, Series 2025 (the "2025 Bonds")**

Ladies and Gentlemen:

The undersigned, Hilltop Securities Inc. (the "Underwriter"), acting on its own behalf and not as an agent or fiduciary to you, the City of Port Orange, Florida (the "City") does hereby offer to enter into this Bond Agreement (this "Agreement") which, upon the City's acceptance hereof will be binding upon the City and upon the Underwriter. This offer is made subject to the City's acceptance by execution of this Agreement and its delivery to the Underwriter on or before 2:00 P.M., New York City time, on the date hereof. Upon such acceptance, this Agreement shall remain in full force and effect in accordance with its terms and shall be binding upon the City and the Underwriter. Terms not otherwise defined herein shall have the same meanings ascribed to them in the Bond Ordinance (defined below) and the Official Statement (defined herein) with respect to the above-referenced 2025 Bonds.

1. Upon the terms and conditions and upon the basis of the representations, warranties and covenants herein, the Underwriter hereby agree to purchase from the City for offering to the public, and the City hereby agrees to sell to the Underwriter for such purpose, all (but not less than all) of the aggregate principal amount of the $[PAR] City of Port Orange, Florida, Capital Improvement Refunding Revenue Bonds, Series 2025 (the "2025 Bonds"). If any of the 2025 Bonds are purchased pursuant to this Agreement, the Underwriter is obligated to purchase all the 2025 Bonds. The aggregate purchase price of the 2025 Bonds (the "Purchase Price") shall be $_____ (calculated as $[PAR] face amount of the 2025 Bonds, plus [less] net original issue premium [discount] of $_____ and less Underwriter' discount of $_____. The Purchase Price shall be payable to the City on the Closing Date (as such term is hereinafter defined), by wire transfer of federal funds as provided in Paragraph 7 below.

2. The 2025 Bonds are Capital Improvement Refunding Revenues issued by the City pursuant to the Act, and Ordinance 2025-15 enacted by the City Council of the Issuer on May [__], 2025 (the "Ordinance"), as supplemented and amended by Resolution No. 2025-___ of the City adopted on May __, 2025 (the "Authorizing Resolution"), and Resolution No. 2025 - __ of

the City, adopted on _____, 2025 (the "Supplemental Resolution," and together with the Ordinance and the Authorizing Resolution, collectively, the "Bond Ordinance"). The 2025 Bonds are being issued for the purposes of (i) financing and/or reimbursing the costs of the acquisition, design, construction, improvement and equipping of a facility including one or more buildings for use primarily by the Public Utilities Department, (ii) refunding all or a portion of the City's outstanding Capital Improvement Refunding Revenue Bonds, Series 2014 and its Stormwater Utility Revenue Bonds, Series 2005, and (ii) paying certain costs of issuance incurred with respect thereto, including the premium for a Municipal Bond Insurance Policy, if any.

The 2025 Bonds are more fully described in the Preliminary Official Statement, dated _____, 2025, relating to the 2025 Bonds (the "Preliminary Official Statement"). Such Preliminary Official Statement, as amended to delete preliminary language and reflect the final terms of the 2025 Bonds, and with only such changes as shall be approved by the City and the Underwriter, is herein referred to as the "Official Statement." The 2025 Bonds shall mature, bear interest and be subject to redemption as set forth in **APPENDIX I** attached hereto, and have all such other terms and provisions, as set forth in the Bond Ordinance and as described in the Official Statement. The 2025 Bonds and the interest thereon will be payable from (1) Non-Ad Valorem Revenues budgeted and appropriated by the Issuer in accordance with the Bond Ordinance and deposited into the Debt Service Fund, and (2) until applied in accordance with the provisions of the Bond Ordinance, all moneys, including the investments thereof, in the funds and accounts established under the Bond Ordinance (with the exception of the Rebate Fund) (collectively, the "Pledged Funds").

3. (a) Prior to the date hereof, the City has provided to the Underwriter for its review the Preliminary Official Statement that the City "deemed final" as contemplated in Rule 15c2-12 of the Securities Exchange Act of 1934 (the "Rule") as of its date. The Underwriter has reviewed the Preliminary Official Statement prior to the execution of this Agreement. The City hereby confirms that the Preliminary Official Statement was deemed "final" (as defined in the Rule) as of its date.

(b) (i) The City shall deliver, or cause to be delivered, at its expense, to the Underwriter, within seven (7) business days after the date hereof, and in no event later than required to enable the Underwriter to comply with its responsibilities under applicable rules of the Municipal Securities Rulemaking Board ("MSRB"): (i) sufficient copies of the Official Statement to enable the Underwriter to fulfill their obligations pursuant to the securities laws of the State of Florida and the United States, in form and substance satisfactory to the Underwriter, and (ii) an executed original counterpart or certified copy of the Official Statement at Closing. In determining whether the number of copies to be delivered by the City are reasonably necessary, at a minimum, the number shall be sufficient to enable the Underwriter to comply with the requirements of the Rule, all applicable rules of the MSRB, and to fulfill their duties and responsibilities under Florida and federal securities laws generally. The Underwriter agrees to file the Official Statement with the Electronic Municipal Market Access system ("EMMA") (accompanied by a completed Form G32) by the date of Closing. The filing of the Official Statement with EMMA shall be in accordance with the terms and conditions applicable to EMMA.

(ii) The City authorizes, or ratifies as the case may be, the use and distribution of the Official Statement in connection with the public offering and sale of the 2025 Bonds. The Underwriter agrees that it will not confirm the sale of any 2025 Bonds unless the confirmation of sale requesting payment is accompanied or preceded by the delivery of a copy of the Official Statement. The Underwriter shall notify the City of the occurrence of the "end of the underwriting period," as such term is defined in the Rule, and of the passage of the date after which the Underwriter no longer remain obligated to deliver Official Statements pursuant to paragraph (b)(4) of the Rule. In the event the Underwriter fails to notify the City of the occurrence of the "end of the underwriting period" as required pursuant to the preceding sentence, then the Closing Date shall be deemed the "end of the underwriting period" for purposes of this Agreement.

(c) From the date hereof until the earlier of (i) ninety days from the "end of the underwriting period" (as defined in the Rule), or (ii) the time when the Official Statement is available to any person from the MSRB (but in no case less than twenty-five (25) days following the end of the underwriting period), if any event occurs or a condition or circumstance exists which may make it necessary to amend or supplement the Official Statement in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, the party discovering such event, condition or occurrence shall notify the other party and if, in the reasonable opinion of the City or the reasonable opinion of the Underwriter, such event requires the preparation and publication of an amendment or supplement to the Official Statement, the City, at its expense, promptly will prepare an appropriate amendment or supplement thereto, in a form and in a manner reasonably approved by the Underwriter (and file, or cause to be filed, the same with the MSRB, so that the statements in the Official Statement, as so amended or supplemented, will not, in light of the circumstances under which they were made, be misleading. Each party will promptly notify the other parties of the occurrence of any event of which it has knowledge or the discovery of such conditions or circumstance, which, in its reasonable opinion, is an event described in the preceding sentence. If subsequent to Closing the City determines that any event, condition or circumstance requires the publication of a supplement or amendment to the Official Statement, then the approval of the Underwriter shall not be required, although the City agrees to seek the approval of the Underwriter to such supplement or amendment, and the Underwriter shall use its reasonable best efforts to distribute the supplement or amendment with the Official Statement. The parties agree to cooperate in good faith with regard to the form and manner of the supplement or amendment to the Official Statement.

(d) (i) The Underwriter agrees to make a bona fide public offering of substantially all of the 2025 Bonds to the public at initial public offering prices not greater than (or yields not less than) the initial public offering prices (or yields) set forth in the Official Statement; provided, however, that the Underwriter reserves the right to make concessions to certain dealers, certain dealer banks and banks acting as agents and to change such initial public offering prices as the Underwriter shall deem necessary in connection with the marketing of the 2025 Bonds.

(ii) The Underwriter agrees to assist the City in establishing the issue price of the 2025 Bonds and shall execute and deliver to the City at Closing an "issue price" or similar certificate substantially in the form attached hereto as **APPENDIX II**, together with the

supporting pricing wires or equivalent communications, with modifications to such certificate as may be deemed appropriate or necessary, in the reasonable judgment of the Underwriter, the City and Akerman LLP, as bond counsel (the "Bond Counsel"), to accurately reflect, as applicable, the sales price or prices or the initial offering price or prices to the public of the 2025 Bonds.

(iii) The City will treat the first price at which 10% of each maturity of the 2025 Bonds (the "10% test") is sold to the public as the issue price of that maturity (if different interest rates apply within a maturity, each separate CUSIP number within that maturity will be subject to the 10% test).

(iv) The Underwriter has offered the 2025 Bonds to the public on or before the date of this Agreement at the offering price or prices (the "initial offering price"), or at the corresponding yield or yields, set forth in the final Official Statement.

(v) The Underwriter acknowledges that sales of any 2025 Bonds to any person that is a related party to the underwriter shall not constitute sales to the public for purposes of this subsection (d). Further, for purposes of this subsection (d):

(1) "public" means any person other than an underwriter or a related party;

(2) "underwriter" means (A) any person that agrees pursuant to a written contract with the City (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the 2025 Bonds to the public and (B) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (A) to participate in the initial sale of the 2025 Bonds to the public (including a member of a selling group or a party to a third-party distribution agreement participating in the initial sale of the 2025 Bonds to the public);

(3) a purchaser of any of the 2025 Bonds is a "related party" to an underwriter if the underwriter and the purchaser are subject, directly or indirectly, to (A) more than 50% common ownership of the voting power or the total value of their stock, if both entities are corporations (including direct ownership by one corporation of another), (B) more than 50% common ownership of their capital interests or profits interests, if both entities are partnerships (including direct ownership by one partnership of another), or (C) more than 50% common ownership of the value of the outstanding stock of the corporation or the capital interests or profit interests of the partnership, as applicable, if one entity is a corporation and the other entity is a partnership (including direct ownership of the applicable stock or interests by one entity of the other), and

(4) "sale date" means the date of execution of this Agreement by all parties.

(e) The City hereby authorizes the Underwriter to use the forms or copies of the Bond Ordinance and the Official Statement in connection with the public offering and sale of the 2025 Bonds and ratifies and confirms its authorization of the distribution and use by the Underwriter prior to the date hereof of the Official Statement in connection with such public offering and sale.

4. Delivered to the City herewith by the Underwriter is a disclosure statement of the Underwriter pursuant to Section 218.385, Florida Statutes, attached hereto as **APPENDIX III**. The City, by its acceptance hereof, accepts such disclosure.

5. The City represents and warrants to the Underwriter that:

(a) At the time of the City's acceptance hereof and as of the date of delivery of the 2025 Bonds, the Official Statement does not and will not contain an untrue statement of material fact or omit to state a material fact necessary to make the statements made therein, in the light of the circumstances under which they were made, not misleading; provided, however, that no representation is made with respect to the disclosure concerning The Depository Trust Company ("DTC") or any information provided by the Underwriter.

(b) The City has duly adopted the Bond Ordinance in accordance with the Act; and the City had at the time of execution, and will have at the time of the Closing, full legal right, power and authority to adopt the Bond Ordinance, to enter into this Agreement, to issue and deliver the 2025 Bonds to the Underwriter as provided herein, to finance the Project, to pledge the Pledged Funds of the City as provided in the Bond Ordinance, and to otherwise carry out the transactions contemplated by this Agreement, the 2025 Bonds and the Bond Ordinance.

(c) Concurrently with or prior to the acceptance hereof, the City has (i) duly authorized and approved the execution and delivery of the 2025 Bonds, the Bond Ordinance, this Agreement and the Continuing Disclosure Certificate related to the 2025 Bonds (the "Disclosure Certificate"), (ii) duly authorized and approved the Official Statement and the distribution thereof and has deemed the Preliminary Official Statement as of its date to be "final" for purposes of the Rule, (iii) pursuant to the Bond Ordinance duly authorized and approved the sale of the 2025 Bonds to the Underwriter, (iv) duly adopted the Bond Ordinance described in the Official Statement; (v) duly authorized and approved the consummation by the City of all other transactions contemplated by the Official Statement and this Agreement. This Agreement, the Bond Ordinance and the Disclosure Certificate are referred to herein collectively as the "City Documents."

(d) As of the time of acceptance hereof and as of the Closing Date, except as otherwise disclosed in the Official Statement, the City is not and will not be in breach of or in default under any applicable law or administrative regulation of the State of Florida or the United States relating to the City or any applicable judgment or decree or any trust agreement, loan agreement, resolution, bond, certificate, note, resolution, ordinance, certificate, agreement or other instrument to which the City is a party or to which the City or its assets is otherwise subject, the consequence of which or the correction of which would materially and adversely affect the operations or financial condition of the City, or the collection or application of the Pledged Funds as provided by the Bond Ordinance as of such dates; and, as of such times and except as disclosed in the Official Statement, the execution and delivery of the City Documents and the 2025 Bonds and the adoption of the Bond Ordinance and compliance with the provisions of each such document do not and will not conflict with or constitute a breach of or default under any applicable law or administrative regulation of the State of Florida or the United States or a breach of any applicable judgment, decree, trust agreement, loan agreement, resolution, bond, certificate, note, resolution, ordinance, agreement or other instrument to which the City is a party

or to which the City or its assets is otherwise subject. The City has not, as of the date hereof or as of the Closing Date, failed to pay principal (and premium, if any) or interest when due on any of its outstanding indebtedness.

(e) On the Closing Date, all approvals, consents and orders of any governmental authority, board, agency or City having jurisdiction which would constitute a condition precedent to the performance by the City of its obligations under the Bond Ordinance or the other City Documents, agreements and certificates with respect to the 2025 Bonds (together with the Bond Ordinance and the 2025 Bonds, collectively, the "City Documents") will have been duly obtained.

(f) To the best knowledge of the City, at the time of acceptance hereof and as of the Closing Date, the historical financial and operating data included in the Official Statement does and will present fairly results of operations of the City as of the dates and for the periods therein set forth, and there are no material liabilities, contingent or otherwise, of the City that have not been disclosed in the Official Statement.

(g) Except as described in the Official Statement, there is no action, suit, proceeding, inquiry, or investigation at law or in equity before or by any court, public board or body pending or, to the knowledge of the City, threatened, against or affecting the City or to which the City is a party wherein an unfavorable decision, ruling or finding would (i) adversely affect the transactions contemplated hereby or by the Official Statement or the validity of the 2025 Bonds, the City Documents or any other material agreement or instrument to which the City is a party and which is used or contemplated for use in the consummation of the transactions contemplated hereby or by the Official Statement and the Bond Ordinance, (ii) have a material adverse effect on the financial condition of the City or the City's right to collect and receive the Pledged Funds, or (iii) adversely affect the exclusion of interest on the 2025 Bonds from gross income for federal income tax purposes.

(h) Between the date of this Agreement and the date of Closing, the City will not, without the prior written consent of the Underwriter, offer or issue any bonds, certificates, notes or other obligations for borrowed money relating to the City, and the City will not incur any material liabilities, direct or contingent, nor will there be any adverse change of a material nature in the financial position, results of operations or condition, financial or otherwise, of the City relating to the City other than (i) as contemplated by the Official Statement, or (ii) in the ordinary course of business.

(i) The City is, and will be at the date of Closing, a duly organized and validly existing political subdivision duly organized and existing under the laws of the State of Florida, with the powers and authority set forth in the Act and the Bond Ordinance.

(j) The City has full legal right, power and authority to: (i) enter into the City Documents, (ii) adopt the Bond Ordinance, (iii) sell, issue and deliver the 2025 Bonds to the Underwriter as provided herein, and (iv) carry out and consummate the transactions contemplated by the City Documents and the Official Statement. The City has complied, and at the Closing will be in compliance, in all respects, with the terms of the Act and the Bond

Ordinance and with the obligations on its part in connection with the issuance of the 2025 Bonds contained in the 2025 Bonds and the City Documents.

(k) When delivered to and paid for by the Underwriter at the Closing in accordance with the provisions of this Agreement, the 2025 Bonds will have been duly authorized, executed, issued and delivered and will constitute valid and binding obligations of the City in conformity with the Act and the Bond Ordinance, and shall be entitled to the benefits of the Bond Ordinance, including a right to payment from the Pledged Funds in accordance with the provisions of the Bond Ordinance, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights generally and subject to general principles of equity as to enforceability.

(l) The adoption of the Bond Ordinance and the authorization, execution and delivery of the City Documents and the 2025 Bonds, and compliance with the provisions hereof and thereof, will not conflict with, or constitute a breach of or default under any law, administrative regulation, consent decree, ordinance, resolution or any agreement or other instrument to which the City was or is subject, as the case may be, nor will such enactment, adoption, execution, delivery, authorization or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the property or assets of the City, or under the terms of any law, administrative regulation, ordinance, resolution or instrument, except as expressly provided by the Bond Ordinance.

(m) At the time of Closing, the City will be in compliance in all respects with the covenants and agreements contained in the Bond Ordinance and no event of default, nor an event which, with the lapse of time or giving of notice, or both, would constitute an event of default under the Bond Ordinance will have occurred or be continuing.

(n) The City will not take or omit to take any action which action or omission will in any way cause the proceeds from the sale of the 2025 Bonds to be applied in a manner contrary to that provided for in the Bond Ordinance and as described in the Official Statement.

(o) The City is not and has not been in default on any bond issued since December 31, 1975 that would be considered material by a reasonable investor.

(p) The City has not been notified of any listing or proposed listing by the Internal Revenue Service to the effect that the City is a bond issuer whose arbitrage certifications may not be relied upon.

(q) Except as disclosed in the Official Statement, within the last five (5) years, the City has not failed to comply in all material respects with any continuing disclosure undertaking made by it pursuant to the Rule in connection with outstanding bond issues for which the City has agreed to undertake continuing disclosure obligations.

(r) No representation or warranty by the City in this Agreement, nor any statement, certificate, document or exhibit furnished to or to be furnished by the City pursuant to this Agreement or the Official Statement or in connection with the transactions contemplated hereby contains, or will contain on the Closing Date, any untrue statement of material fact or

omits or will omit to state a material fact necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading.

7. At or before 1:00 p.m., New York City time, on _____, 2025, or at such other time or on such earlier or later business day as shall have been agreed upon by the City and the Underwriter (the "Closing" or the "Closing Date"), the City shall deliver, or cause to be delivered, subject to the terms and conditions hereof: (i) the 2025 Bonds, bearing proper CUSIP numbers, to the Underwriter, in definitive form, duly executed and authenticated by the registrar, via the FAST system as described below, and (ii) the closing documents hereinafter mentioned. The Underwriter will accept such delivery and pay the Purchase Price as set forth in Paragraph 1 hereof by wire transfer of federal funds to the order of the City. The 2025 Bonds shall bear proper CUSIP numbers and shall be in typewritten form, with a single bond for each maturity and interest rate of the 2025 Bonds, each such bond to be in a principal amount equal to the principal amount thereof maturing on each such date. The 2025 Bonds shall be registered in the name of Cede & Co., as nominee of DTC, will be made available for inspection and checking by the Underwriter not later than 3:00 P.M., New York City time, on the business day prior to the Closing Date and will be delivered through the DTC FAST system.

The Underwriter's obligations hereunder to purchase and pay for the 2025 Bonds shall be subject to the performance by the City of its obligations to be performed hereunder at or prior to the Closing, and shall also be subject to the following conditions:

(a) The representations and warranties of the City contained herein shall be true, complete and correct in all material respects as of the date hereof and at the time of the Closing, as if made at the time of the Closing, the statements made in all certificates and other documents delivered to the Underwriter at the Closing shall be true, complete and correct as of the date of Closing and the City shall be in compliance with each of the agreements made by it in this Agreement as of the date of Closing.

(b) At the time of the Closing (i) the Bond Ordinance shall be in full force and effect and shall not have been amended, modified or supplemented after the date of this Agreement except with the prior approval of the Underwriter; (ii) the City Documents shall have been duly executed and delivered by the City and the other parties thereto and shall not have been amended, modified or supplemented after the date of this Agreement (other than to conform to the description contained in the Official Statement) except with the prior approval of the Underwriter; and (iii) the City shall perform or have performed all of its obligations required under or specified in this Agreement and the other City Documents to be performed at or before the Closing.

(c) The City shall not be in default in the payment of principal or interest on any of its bonds, notes, or other debt obligations or otherwise be in default under the Bond Ordinance.

(d) The Underwriter shall have the right to terminate its obligations under this Agreement by notification to the City if at any time after the date hereof and before the Closing:

(i) the marketability of the 2025 Bonds or the market price thereof, in the reasonable opinion of the Underwriter, has been adversely affected by any decision issued by

a court of the United States (including the United States Tax Court) or of the State of Florida, by any ruling or regulation (final, temporary or proposed) or official statement issued by or on behalf of the Department of the Treasury of the United States, the Internal Revenue Service, or any other governmental agency of the United States, or any governmental agency of the State of Florida, or by a decision with respect to legislation reached by a committee of the House of Representatives or the Senate of the Congress of the United States, or by legislation enacted by, or favorably proposed (whether by press release or otherwise) or reported to either the House of Representatives or the Senate of the Congress of the United States or either house of the Legislature of the State of Florida, or formally proposed to the Congress of the United States by the President of the United States or to the Legislature of the State of Florida by the Governor of the State of Florida in an executive communication, affecting directly or indirectly, prospectively or retroactively, the tax status of the City, its property or income, its bonds or obligations of a general character (including the 2025 Bonds) or the tax-exemption or the exclusion of interest on the 2025 Bonds from gross income for federal income tax purposes; or

(ii) there shall have occurred any new outbreak or escalation of hostilities, any declaration by the United States of war or any new or escalated national or international calamity or crisis, the effect of such outbreak, escalation, declaration, calamity or crisis being such as would cause a major disruption in the municipal bonds market and would materially adversely affect the market price or marketability of the 2025 Bonds or the ability of the Underwriter to enforce contracts for the sale of the 2025 Bonds; or

(iii) there shall have occurred a general suspension or cessation of trading on the New York Stock Exchange or in the market for obligations of Florida issuers or in identifiable segments of the market for bonds of the type proposed to be issued by the City; or minimum or maximum prices for trading shall have been fixed and be in force or maximum ranges for prices for securities shall have been required and be in force on the New York Stock Exchange or other national securities exchanges, or the establishment of any new restrictions in transactions involving securities materially affecting the free market for securities (including the imposition of any limitations on interest rates) or the extension of credit by, or the charge to the net capital requirements of, the Underwriter, whether established by the New York Stock Exchange or other national securities exchange, the Securities and Exchange City, any other federal or state agency or the United States Congress or Executive Order; or

(iv) a general banking moratorium shall have been declared by Federal, New York or Florida authorities having jurisdiction and be in force; or

(v) prior to Closing, any of the rating agencies which have rated the 2025 Bonds shall inform the City or the Underwriter that the 2025 Bonds will be rated lower than the respective rating published in the Preliminary Official Statement or there shall have occurred or any notice shall have been given of any intended review, downgrading, suspension, withdrawal, or negative change of credit watch status by any national rating service to any of the City's obligations; or

(vi) an order, decree or injunction of any court of competent jurisdiction, or order, ruling, regulation or official statement by the Securities and Exchange City, or any other governmental agency having jurisdiction of the subject matter, issued or made to the

effect that the issuance, offering or sale of obligations of the general character of the 2025 Bonds or the issuance, offering or sale of the 2025 Bonds, including any underlying obligations, as contemplated hereby or by the Official Statement, is or would be in violation of the federal securities laws as amended and then in effect; or

(vii) the President of the United States, the Office of Management and Budget, the Department of Treasury, the Internal Revenue Service or any other governmental body, department, agency or City of the United States or the State of Florida shall take or propose to take any action or implement or propose regulations, rules or legislation which would materially adversely affect the market price or marketability of the 2025 Bonds or the ability of the Underwriter to enforce contracts for the sale of the 2025 Bonds; or

(viii) there shall have occurred, after the signing hereof, either a financial crisis or a default with respect to the debt obligations of the City proceedings under the bankruptcy laws of the United States or the State of Florida shall have been instituted by the City, in either case the effect of which, in the reasonable judgment of the Underwriter, is such as would materially adversely affect the market price or marketability of the 2025 Bonds or the ability of the Underwriter to enforce contracts for the sale of the 2025 Bonds; or

(ix) any event shall have occurred or fact shall exist which makes untrue or incorrect, as of its date, in any material respect, any material statement or information contained in the Official Statement or which is not reflected in the Official Statement, as the Official Statement may have been revised from time to time pursuant to Paragraph 4(c) hereof, but should be reflected therein in order to make such material statements and information contained therein not misleading as of such time, unless the City timely and appropriately supplements or amends the Official Statement pursuant to Paragraph 4(c) above.

(e) At or before the Closing, the Underwriter shall receive the following documents:

(i) The Official Statement, executed on behalf of the City;

(ii) Certified copies of the Bond Ordinance;

(iii) Original counterparts of the other City Documents;

(iv) A copy of the Letter of Representations with DTC;

(v) The approving opinion of Bond Counsel, as to the 2025 Bonds, dated the Closing Date, substantially in the form attached to the Official Statement together with a letter of Bond Counsel addressed to the Underwriter, and dated the Closing Date, to the effect that such bond approving opinion may be relied upon by the Underwriter to the same extent as if such opinion were addressed to the Underwriter;

(vi) A supplemental opinion of Bond Counsel, dated the Closing Date, addressed to the Underwriter, and dated the Closing Date, to the effect that, (i) the statements contained in the Official Statement under the captions ["INTRODUCTION," "PURPOSES OF 2025 BONDS," "DESCRIPTION OF THE 2025 Bonds" (except for the information relating to DTC and its book-entry system of registration, as to which no view need be expressed),

"SECURITY AND SOURCES OF PAYMENT FOR THE 2025 BONDS," "TAX MATTERS" and "APPENDIX __ ORDINANCE"], insofar as such information purports to summarize portions of the Bond Ordinance, the 2025 Bonds, Federal law and laws of the State of Florida, constitutes a fair summary of the information purported to be summarized therein, (ii) the 2025 Bonds are exempt from registration under the Securities Act of 1933, as amended, (iii) the Bond Ordinance is exempt from qualification under the Trust Indenture Act of 1939, as amended;

(vii) An opinion of counsel to the City, dated the date of Closing and addressed to the Underwriter, to the effect that:

(A) the City is a political subdivision of the State and public body of the State of Florida, duly organized and validly existing pursuant to the Act, and has full legal right, power and authority to adopt the Bond Ordinance and to authorize, execute and deliver and to perform its obligations under the City Documents,

(B) the City has duly adopted the Bond Ordinance, and has duly authorized, executed and delivered each of the City Documents, and assuming the due authorization, execution and delivery of the City Documents by the other parties thereto, the Bond Ordinance and the City Documents constitute legal, binding and valid obligations of the City, enforceable in accordance with their respective terms; provided, however, the enforceability thereof may be subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights and subject, as to enforceability, to general principles of equity,

(C) the information in the Official Statement under the captions ["THE CITY" and "LITIGATION"] is true and complete in all material respects, and with respect to the other information in the Official Statement, based upon their review of the Official Statement as counsel to the City and without having undertaken to determine independently the accuracy or completeness of the contents of such other portions of the Official Statement, they have no reason to believe that such other portions of the Official Statement (except for the financial and statistical data contained therein and the information relating to the Insurer and DTC and its book-entry system of registration, as to which no view need be expressed) contains an untrue statement of a material factor omits to state a material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading,

(D) the use of the Preliminary Official Statement by the Underwriter for the purpose of offering the 2025 Bonds for sale has been duly authorized and ratified by the City,

(E) the Official Statement has been duly authorized, executed and delivered by the City and the City has consented to the use thereof by the Underwriter,

(F) the adoption of the Bond Ordinance and the authorization, execution and delivery of the City Documents and the 2025 Bonds and compliance with the provisions hereof and thereof, will not conflict with, or constitute a breach of or default under, any law or administrative regulation, or to the best of their knowledge, any consent decree, ordinance, resolution or any agreement or other instrument to which the City was or is subject, as

the case may be, nor will such adoption, execution, delivery, authorization or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the property or assets of the City, or under the terms of any law, administrative regulation, ordinance, resolution or instrument, except as expressly provided by the Bond Ordinance,

(G) to the best of their knowledge, all approvals, consents, authorizations and orders of any governmental authority or agency having jurisdiction in any matter which would constitute a condition precedent to the performance by the City of its obligations hereunder and under the City Documents have been obtained and are in full force and effect,

(H) the City is lawfully empowered to pledge, and grant a prior lien upon the Pledged Funds for payment of the principal of, redemption premium, if any, and interest on the 2025 Bonds as the same becomes due and payable, and

(I) to the best of their knowledge, except as disclosed in the Official Statement, there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, government agency, public board or body, pending or, threatened, against the City, affecting or seeking to prohibit, restrain or enjoin the sale, issuance or delivery of the 2025 Bonds or the pledge of and lien on the Pledged Funds, or contesting or affecting the validity or enforceability in any respect of the 2025 Bonds, the Rate Instrument, or the City Documents, or contesting the exclusion from gross income of interest on the 2025 Bonds or contesting the completeness or accuracy of the Official Statement or any supplement or amendment thereto, or contesting the powers of the City or any authority for the issuance of the 2025 Bonds, the adoption of the Rate Instrument, the refunding of the Refunded Certificates or the execution and delivery by the City of the City Documents;

(viii) A certificate of the City dated the Closing Date signed by its Mayor or Vice Mayor and Finance Director, in form and substance satisfactory to the Underwriter, to the effect that (i) the City has complied or is presently in compliance with all agreements related to the 2025 Bonds and has satisfied all conditions on its part to be observed or satisfied under the Bond Ordinance, the Bond Ordinance and this Agreement as of the date of Closing; (ii) except as disclosed in the Official Statement, no litigation or other proceedings are pending or threatened against the City or any of its affiliates or any property of the City or any such affiliate in any court or other tribunal, state or federal (A) restraining or enjoining, or seeking to restrain or enjoin, the issuance, sale, execution or delivery of the 2025 Bonds, the Bond Ordinance or the City Documents, or (B) in any way questioning or affecting any authority for the issuance of the 2025 Bonds or the validity of any provisions of the City Documents, or (C) in any way questioning or affecting the validity of any of the proceedings or authority for the authorization, sale, execution or delivery of the 2025 Bonds, of any provision, program or transactions made or authorized for its payment, or (D) the questioning or affecting the organization or existence of the City or the authority of any of its officers to perform all required actions in connection with the issuance and sale of the 2025 Bonds as contemplated by the City Documents, or (E) seeking to restrain or enjoin the collection of the Pledged Funds, or (F) which may result in any material adverse change in the business, properties assets or financial condition of the City, or (G) asserting that the Official Statement contains any untrue statement of a

material fact or omits to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; (iii) the City Documents have been duly authorized, executed and delivered by one or more duly authorized officers of the City and each of the City Documents is a legal, valid and binding obligation of the City enforceable in accordance with its terms, except as such enforceability may be limited by (a) the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar law affecting creditors' rights generally, and (b) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law); (iv) the City represents and warrants that it has complied and further covenants and agrees that it will comply with all applicable licensing, regulatory, and utility requirements of the State, Federal, and/or local governments to which it is now or may in the future be subject that are consistent with the operation, maintenance and improving of the City; (v) the 2025 Bonds are entitled to the benefits and security of the Bond Ordinance and the Act and are payable from the Pledged Funds in the manner and to the extent provided in the Bond Ordinance; and (vi) the Official Statement did not as of its date, and does not as of the date of Closing, contain any untrue statement of a material fact or omit to state a material fact which should be included therein for the purposes for which the Official Statement is to be used, or which is necessary in order to make the statements contained therein, in light of the circumstances in which they were made, not misleading (provided, that no opinion is expressed regarding the information contained therein relating to DTC and its book-entry system of registration or information provided by the Underwriter);

(ix) Evidence that the rating agencies who have rated the 2025 Bonds have issued ratings of not lower than the respective ratings on the 2025 Bonds which are published in the Preliminary Official Statement and that such ratings are in full force and effect as of the date of Closing;

(x) A certificate executed by the appropriate officer of the City, dated the date of Closing, satisfactory to Bond Counsel setting forth the facts, estimates and circumstances which establish that it is not expected that the proceeds of the 2025 Bonds will be used in a manner that would cause the 2025 Bonds to be "arbitrage bonds" within the meaning of the Internal Revenue Code of 1986, as amended (the "Code"), and to the best of the knowledge and belief of such officer, such expectations are reasonable;

(xi) A copy of IRS form 8038-G completed and prepared for filing, in a form acceptable to Bond Counsel;

(xii) A certificate of an authorized representative of the paying agent to the effect that (i) the paying agent is a national banking association duly organized, validly existing and in good standing under the laws of the United States of America and is duly authorized to exercise trust powers in the State of Florida, (ii) the paying agent has all requisite authority, power, licenses, permits and franchises, and has full corporate power and legal authority to execute and perform its functions under the Bond Ordinance (iii) the performance by the paying agent of its functions under the Bond Ordinance will not result in any violation of the Articles of Incorporation or Bylaws of the paying agent, any court order to which the paying agent is subject or any agreement, resolution or other obligation or instrument to which the paying agent is a party or by which the paying agent is bound, and no approval or other action by any governmental authority or agency having supervisory authority over the paying agent is

required to be obtained by the paying agent in order to perform its functions under the Bond Ordinance (iv) to the best of such authorized representative's knowledge, there is no action, suit, proceeding or investigation at law or in equity before any court, public board or body pending or, to his or her knowledge, threatened against or affecting the paying agent wherein an unfavorable decision, ruling or finding on an issue raised by any party thereto is likely to materially and adversely affect the ability of the paying agent to perform its obligations under the Bond Ordinance and (v) the 2025 Bonds have been authenticated in accordance with the terms of the Bond Ordinance;

(xiii) An opinion of Disclosure Counsel, dated the Closing Date and addressed to the City, together with a letter addressed to the Underwriter authorizing the Underwriter to rely upon the letter addressed to the City, to the effect that (i) in accordance with their understanding with the City, as Disclosure Counsel such firm has rendered legal advice and assistance to the City in the course of the preparation of the Official Statement; that assistance involved, among other things, inquiries concerning various legal and related matters, their review of certain records, documents and proceedings, participation in discussions with representatives of the City, the City's Financial Advisor, and others concerning the contents of the Official Statement and related matters; that in accordance with their understanding with the City, they are not passing upon, and do not assume responsibility for, the accuracy, completeness or fairness of the contents of the Official Statement; that, however, they can advise that, in their capacity as Disclosure Counsel and on the basis of the information that has come to their attention, and in reliance on the certificates, opinions and documents they have reviewed in the course of their performance of the services referred to above, and without having undertaken to verify independently the accuracy, completeness or fairness of the contents of the Official Statement, nothing has come to their attention which leads them to believe that the Official Statement (excluding the financial and statistical data included in the Official Statement and the appendices thereto, and the information relating to the Insurer and The Depository Trust Company or its book-entry only system), as of its date and as of the date hereof, contains any untrue statement of a material fact or omits to state any material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading; and (ii) the Disclosure Certificate satisfies the requirements of the Rule; and

(xiv) Such additional certificates, legal opinions, instruments, proceedings and other documents as the Underwriter or its counsel may reasonably deem necessary to evidence the truth and accuracy as of the time of the Closing of the representations of the City, the compliance of the City with legal requirements and the due performance or satisfaction by the City on or prior to such time of all agreements then to be performed and all conditions then to be satisfied by the City.

By its execution of this Agreement, the City consents to the use by the Underwriter of the documents listed above, including specifically the Official Statement, the Bond Ordinance and the information contained therein, in connection with the public sale of the 2025 Bonds.

If the City shall be unable to satisfy the conditions contained in this Agreement, or if the obligations of the Underwriter shall be terminated for any reason permitted by this Agreement, this Agreement shall terminate and neither the Underwriter nor the City shall be under further obligation hereunder except as expressly set forth in Paragraphs 9(a) and (b) hereof.

8. The City covenants with the Underwriter to cooperate with the Underwriter in qualifying the 2025 Bonds for offer and sale under the securities or "Blue Sky" laws of such states as the Underwriter may request; provided that in no event shall the City be obligated to take any action which would subject it to general service of process in any state where it is not now so subject or qualify to do business in connection with any such qualification or determination in any jurisdiction. It is understood that the City is not responsible for compliance with or the consequences of failure to comply with applicable "Blue Sky" laws, or for any expenses incurred in such compliance.

9. (a) The City shall pay or cause to be paid, from the proceeds of the 2025 Bonds or other funds available to it, and the Underwriter shall be under no obligation to pay, the expenses incident to the performance of the City's obligations hereunder including but not limited to (i) the cost of the preparation and printing or other reproduction (for distribution on or prior to the date hereof) of the Official Statement; (ii) the fees and expenses of Bond Counsel, Disclosure Counsel, the paying agent and the City's Financial Advisor, and any other experts or consultants retained by the City; (iii) the costs and fees of the rating agencies; and (iv) out-of-pocket expenses of the City. The provisions of this paragraph shall not obligate the City to pay any fees or expenses that are contingent upon the occurrence of the Closing, unless a successful Closing occurs. Expenses incurred by the Underwriter on behalf of the City and its staff related to food, lodging, or entertainment are to be reimbursed by the City through the proceeds of the 2025 Bonds or the City's available funds; the City's obligations in regard to these expenses survive even if the underlying transaction fails to close or consummate.

(b) The Underwriter shall pay (i) the cost of printing or other reproduction of this Agreement and the cost of preparation and printing of the Blue Sky, if any, report to be used by the Underwriter; (ii) all advertising expense in connection with the public offering of the 2025 Bonds; and (iii) all other expense incurred by the Underwriter in connection with the public offering and distribution of the 2025 Bonds, including the fees and expenses of counsel retained by them.

10. Any notice or other communication to be given to the City under this Agreement shall be given by delivering the same in writing to the City at the address first indicated above, Attention: Mayor. Any notice or other communication to be given to the Underwriter under this Agreement shall be given by delivering the same in writing to Hilltop Securities Inc. 450 S. Orange Avenue, Suite 460, Orlando, FL 32801, Attention: Joel Tindal.

11. This Agreement shall constitute the entire agreement between the City and the Underwriter and is made solely for the benefit of the City and the Underwriter (including their respective successors or assigns). No other person shall acquire or have any rights hereunder or by virtue hereof. All representations, warranties and agreements of the City in this Agreement shall remain operative and in full force and effect, regardless of (a) any investigation made by or on behalf of any of the Underwriter, and (b) the delivery of and payment for the 2025 Bonds hereunder.

12. This Agreement may not be amended without the written consent of the City and the Underwriter.

13. The following statements are made in satisfaction of the requirements of Section 218.385(2) and (3), Florida Statutes.

(a) The City is proposing to issue $[PAR] of 2025 Bonds for the purpose of (i) financing and/or reimbursing the costs of the acquisition, design, construction, improvement and equipping of a facility including one or more buildings for use primarily by the Public Utilities Department, and (ii) paying certain costs of issuance incurred with respect thereto, including the premium for a Municipal Bond Insurance Policy, if any. This debt or obligation is expected to be repaid over a period of approximately __ years. At an all in true interest cost rate of _____%, total interest paid over the life of the debt or obligation will be $_____.

(b) The 2025 Bonds shall be secured forthwith equally and ratably by a pledge of and lien upon the Non-Ad Valorem Revenues budgeted and appropriated by the City for such purpose. Authorizing the 2025 Bonds will result in up to $_____ of the City's funds not being available to finance the other services of the City for __ years following the delivery date of the 2025 Bonds.

14. The City acknowledges and agrees that: (i) the transactions contemplated by this Agreement are arm's length, commercial transactions between the City and the Underwriter in which the Underwriter is acting solely as a principal and is not acting as a municipal advisor, financial advisor or fiduciary to the City; (ii) the Underwriter has not assumed any advisory or fiduciary responsibility to the City with respect to the transactions contemplated hereby and the discussions, undertakings and procedures leading thereto (irrespective of whether the Underwriter or its affiliates have provided other services or is currently providing other services to the City on other matters); (iii) the only obligations the Underwriter has to the City with respect to the transaction contemplated hereby expressly are set forth in this Agreement; (iv) the City has consulted its own financial and/or municipal, legal, accounting, tax, and other advisors, as applicable, to the extent it has deemed appropriate; and (v) the Underwriter has financial and other interests that differ from those of the City.

15. The validity, interpretation and performance of this Agreement shall be governed by the internal laws of the State of Florida, without regard to conflict of law principles.

16. If any portion of this Agreement shall be held invalid or inoperative, then so far as is reasonable and possible (a) the remainder of this Agreement shall be considered valid and operative, and (b) effect shall be given to the intent manifested by the portion held invalid or inoperative.

17. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed to be an original, but all of which constitute, collectively, one and the same agreement; but in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

18. The parties hereto covenant and agree that they will execute such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their duly authorized officers as of the day and year first above written.

[Remainder of page intentionally left blank]

[Counterpart Signature Page to Bond Purchase Agreement]

HILLTOP SECURITIES INC.

By:_____
Name: Joel Tindal
Its: Managing Director

[Counterpart Signature Page to Bond Purchase Agreement]

(SEAL)

CITY OF PORT ORANGE, FLORIDA

By: _____
Name: _____
Its: [Vice] Mayor

ATTEST:

By: _____
Name:_____
[Deputy] City Clerk

APPENDIX I

TERMS OF THE 2025 BONDS

(Maturities, Principal Amounts, Interest Rates, Yields and Prices)

DATED:	[Closing Date], 2025
INTEREST PAYABLE:	_____ 1, 2025 and each _____ 1 and _____ 1 thereafter
DENOMINATIONS:	$5,000 AND INTEGRAL MULTIPLES THEREOF
PAR AMOUNT:	$[PAR]
PURCHASE PRICE:	$ [PAR] par amount Plus [Minus] $_____ Net Original Issue Premium [Discount] Less $_____ Underwriter's Discount Total $_____

Maturity (October 1)	Principal Amount	Interest Rate	Yield	Price

[INSERT CHART HERE]

Redemption Provisions

The redemption provisions for the 2025 Bonds shall read as follows:

Optional Redemption. The 2025 Bonds maturing on or after _____1, 20__, are subject to redemption prior to maturity, at the option of the City, on or after _____1, 20__, in whole or in part on any date, as designated by the City, and by lot within a maturity at the Redemption Price of 100% of the principal amount of the 2025 Bonds to be redeemed, plus accrued interest to the redemption date.

Mandatory Redemption. The 2025 Term Bonds maturing on _____1, 20__, are subject to mandatory redemption in part by the City on _____ 1 in the years and in the Amortization Installments, plus accrued interest to the redemption date, as set forth below.

Year	Amortization Installments
20__	$
20__	
20__	
20__	
20__*	

* Maturity

The 2025 Term Bonds maturing on _____1, 20__, are subject to mandatory redemption in part by the City on _____ 1 in the years and in the Amortization Installments, plus accrued interest to the redemption date, as set forth below.

Year	Amortization Installments
20__	$
20__	
20__	
20__	
20__*	

* Maturity

APPENDIX II

FORM OF ISSUE PRICE CERTIFICATE

The undersigned, Hilltop Securities Inc. (the "Underwriter") hereby certifies as set forth below with respect to the sale and issuance by the City of Port Orange, Florida (the "City") of its $[PAR] City of Port Orange, Florida, Capital Improvement Refunding Revenue Bonds, Series 2025 (the "Bonds").

1. ***Sale of the General Rule Maturities***. As of the date of this certificate, for each Maturity of the General Rule Maturities, the first price at which at least 10% of such Maturity of the Bonds was sold to the Public is the respective price listed in Schedule A.

2. ***Initial Offering Price of the Hold-the-Offering-Price Maturities***.

(a) The Underwriter offered the Hold-the-Offering-Price Maturities to the Public for purchase at the respective initial offering prices listed in Schedule A (the "Initial Offering Prices") on or before the Sale Date. A copy of the pricing wire or equivalent communication for the Bonds is attached to this certificate as Schedule B.

(b) As set forth in the Purchase Contract, the Underwriter has agreed in writing that, (i) for each Maturity of the Hold-the-Offering-Price Maturities, the Underwriter will neither offer nor sell any of the Bonds of such Maturity to any person at a price that is higher than the Initial Offering Price for such Maturity during the Holding Period for such Maturity (the "hold-the-offering-price rule"), and (ii) any selling group agreement shall contain the agreement of each dealer who is a member of the selling group, and any retail distribution agreement shall contain the agreement of each broker-dealer who is a party to the retail distribution agreement, to comply with the hold-the-offering-price rule. The Underwriter has not offered or sold any unsold Bonds of any Maturity of the Hold-the-Offering-Price Maturities at a price that is higher than the respective Initial Offering Price for that Maturity of the Bonds.

3. Defined Terms.

(a) *General Rule Maturities* means those Maturities of the Bonds listed in Schedule A hereto as the "General Rule Maturities."

(b) *Hold-the-Offering-Price Maturities* means those Maturities of the Bonds listed in Schedule A hereto as the "Hold-the-Offering-Price Maturities."

(c) *Holding Period* means, with respect to a Maturity of the Bonds, the period starting on the Sale Date and ending on the earlier of (i) the close of the fifth business day after the Sale Date (_____, 2025) or (ii) the date on which the Underwriter has sold at least 10% of such Maturity to the Public at prices that are no higher than the Initial Offering Price for such Maturity.

(d) *Issuer* means the City of Port Orange, Florida.

(e) *Maturity* means Bonds with the same credit and payment terms. Bonds with different maturity dates, or Bonds with the same maturity date but different stated interest rates, are treated as separate maturities.

(f) *Public* means any person (including an individual, trust, estate, partnership, association, company, or corporation) other than an Underwriter or a related party to an Underwriter. The term "related party" for purposes of this certificate means any two or more persons who have greater than 50 percent common ownership, directly or indirectly.

(g) *Sale Date* means the first day on which there is a binding contract in writing for the sale of a Maturity of the Bonds. The Sale Date of the Bonds is _____, 2025.

(h) *Underwriter* means (i) any person that agrees pursuant to a written contract with the Issuer (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Bonds to the Public, and (ii) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (i) of this paragraph to participate in the initial sale of the Bonds to the Public (including a member of a selling group or a party to a retail distribution agreement participating in the initial sale of the Bonds to the Public).

The representations set forth in this certificate are limited to factual matters only. Nothing in this certificate represents the Underwriter's interpretation of any laws, including specifically Sections 103 and 148 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations thereunder. The undersigned understands that the foregoing information will be relied upon by the Issuer with respect to certain of the representations set forth in the Tax Certificate and with respect to compliance with the federal income tax rules affecting the Bonds, and by Akerman, LLP in connection with rendering its opinion that the interest on the Bonds is excluded from gross income for federal income tax purposes, the preparation of Internal Revenue Service Form 8038-G, and other federal income tax advice it may give to the Issuer from time to time relating to the Bonds. The representations set forth herein are not necessarily based on personal knowledge and, in certain cases, the undersigned is relying on representations made by the other members of the Underwriting Group.

HILLTOP SECURITIES INC.

By:_____
Name: Joel Tindal
Title: Managing Director

Dated: [Closing Date], 2025

APPENDIX III

DISCLOSURE STATEMENT REQUIRED BY FLORIDA STATUTES, SECTION 218.385

The undersigned, Hilltop Securities Inc. (the "Underwriter"), as Underwriter in connection with those certain $[PAR] City of Port Orange, Florida, Capital Improvement Refunding Revenue Bonds, Series 2025 (the "2025 Bonds"), hereby furnishes the following information to Port Orange, Florida (the "Issuer"):

(a) Attached hereto as Exhibit A is an itemized list of the nature and estimated amounts of expenses to be incurred for services rendered by the Underwriter in connection with the issuance and delivery of the 2025 Bonds (such fees and expenses to be paid from the proceeds of the 2025 Bonds as part of the underwriting spread provided below).

(b) No other fee, bonus or other compensation is estimated to be paid by the Underwriter in connection with the issuance of the 2025 Bonds to any person not regularly employed or retained by the Underwriter (including any "finder," within the meaning of Section 218.386, Florida Statutes, as amended), in connection with the delivery of the 2025 Bonds to it by the Issuer.

(c) No person has entered into an understanding with the Underwriter, or to the knowledge of the Underwriter, with the Issuer, for any paid or promised compensation or valuable consideration, directly or indirectly, express or implied, to act solely as an intermediary between the Issuer and the Underwriter or to exercise or attempt to exercise any influence to effect any transaction in the purchase and sale of the 2025 Bonds.

The total amount of the underwriting spread expected to be realized by the Underwriter is $_____ /1,000 of bonds issued.

The management fee, as part of the underwriting spread, to be charged by the Underwriter is $_____/1,000 of bonds issued.

Dated: _____, 2025

HILLTOP SECURITIES INC.

By: _____
Name: Joel Tindal
Title: Managing Director

EXHIBIT A

ITEMIZED EXPENSES

Item	Per $1,000	Total
Underwriter's Counsel		
Day Loan		
IPreo		
Gameday Monitor		
CUSIP Fee		
DTC Fee		
Disclosure Fee		
Closing		
Miscellaneous		
TOTAL		

EXHIBIT B

Form of
Preliminary Official Statement

Preliminary Official Statement dated May [__], 2025

FULL BOOK ENTRY
NEW ISSUE

Ratings: Moody's: ___ (____ outlook)
(See "RATINGS" herein)

In the opinion of Akerman LLP, Bond Counsel, under existing law assuming compliance with certain covenants, interest on the Series 2025 Bonds is excludable from gross income of the holders thereof for federal income tax purposes and is not an item of tax preference for purposes of the federal alternative minimum tax; however, interest on the Series 2025 Bonds may be included in the "adjusted financial statement income" of certain corporations that are subject to the alternative minimum tax under the Internal Revenue Code of 1986, as amended (the "Code"). See "TAX MATTERS" herein for a description of certain other tax consequences to holders of the Series 2025 Bonds.

[CITY SEAL] **CITY OF PORT ORANGE, FLORIDA**

$38,000,000*
CAPITAL IMPROVEMENT REFUNDING REVENUE BONDS, SERIES 2025

Dated: Date of Delivery

Due: October 1, as shown on the inside cover

The City of Port Orange, Florida (the "City") is issuing its Capital Improvement Refunding Revenue Bonds, Series 2025 (the "Series 2025 Bonds") as fully registered bonds without coupons and initially will be registered in the name of Cede & Co., as nominee for The Depository Trust Company, New York, New York ("DTC"). Individual purchases of the Series 2025 Bonds will be made in book-entry form only in denominations of $5,000 or any integral multiple thereof. Purchasers of the Series 2025 Bonds will not receive physical delivery of bond certificates. Payments of principal of and interest on the Series 2025 Bonds will be made to Cede & Co., as nominee of DTC as registered owner of the Series 2025 Bonds, by The Bank of New York Mellon Trust Company, N.A., as Registrar and Paying Agent, to be subsequently disbursed to the Beneficial Owners (as defined herein) of the Series 2025 Bonds. Interest on the Series 2025 Bonds will accrue from the date of delivery and will be payable on April 1, 2025, and semiannually thereafter on April 1 and October 1 of each year.

The Series 2025 Bonds are being issued pursuant to Ordinance No. 2025-15 enacted by the City Council of the City on May 6, 2025, as supplemented by Resolution No. 2025-28 adopted by the City Council of the City on May [22], 2025, and as further supplemented by Resolution No. 2025-29 adopted by the City Council of the City on May [22], 2025 (collectively, the "Bond Resolution"). The Series 2025 Bonds are being issued in order to (i) refund the City's outstanding Stormwater Utility Revenue Bonds, Series 2005, and Capital Improvement Refunding Revenue Bonds, Series 2014, (ii) finance or reimburse all or a portion of the costs of the 2025 Project (as defined in the Bond Resolution), and (iii) pay certain costs related to the issuance and sale of the Series 2025 Bonds. See the discussion under the heading "PURPOSE OF ISSUE" herein. All terms used herein in capitalized form and not otherwise defined shall have the meanings ascribed thereto in the Bond Resolution.

The Series 2025 Bonds and interest thereon are limited, special obligations of the City payable from and secured solely by a pledge of and lien on certain Pledged Funds, consisting of (1) Non-Ad Valorem Revenues budgeted and appropriated by the City and deposited into the Debt Service Fund, and (2) until applied in accordance with the provisions of the Bond Resolution, all moneys, including the investments thereof, in the funds and accounts established in the Bond Resolution, with the exception of the Rebate Fund. Pursuant to the Bond Resolution, the City covenants and agrees to appropriate in its annual budget, by amendment, if necessary, for each Fiscal Year in which the Series 2025 Bonds remain Outstanding, sufficient amounts of Non-Ad Valorem Revenues into the Debt Service Fund for the payment of principal of, redemption premium, if applicable, and interest on the Series 2025 Bonds and to make certain other payments required under the Bond Resolution in each such Fiscal Year. The obligation of the City to budget, appropriate, deposit and make payments pursuant to the Bond Resolution from its Non-Ad Valorem Revenues is subject to the availability of Non-Ad Valorem Revenues after the satisfaction of the funding requirements for obligations having an express lien on or pledge of such revenues and the funding requirements for essential governmental services of the City, as more fully described herein and in the Bond Resolution. THE SERIES 2025 BONDS ARE NOT SECURED BY A RESERVE FUND OR ACCOUNT TO SECURE THE SERIES 2025 BONDS. For a discussion of the security for the Series 2025 Bonds, see the information under the heading "SECURITY FOR THE SERIES 2025 BONDS" and "DEBT SERVICE REQUIREMENTS" herein.

THE SERIES 2025 BONDS SHALL NOT BE OR CONSTITUTE GENERAL OBLIGATIONS OR INDEBTEDNESS OF THE CITY AS "BONDS" WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION, BUT SHALL BE SPECIAL OBLIGATIONS OF THE CITY, PAYABLE SOLELY FROM AND SECURED BY A LIEN UPON AND PLEDGE OF THE PLEDGED FUNDS. NO HOLDER OF ANY SERIES 2025 BOND SHALL EVER HAVE THE RIGHT TO COMPEL THE EXERCISE OF ANY AD VALOREM TAXING POWER TO PAY SUCH SERIES 2025 BOND, FOR THE PAYMENT OF ANY AMOUNTS PAYABLE UNDER THE BOND RESOLUTION OR IN ORDER TO MAINTAIN ANY SERVICES OR PROGRAMS THAT GENERATE NON-AD VALOREM REVENUES, OR BE ENTITLED TO PAYMENT OF SUCH SERIES 2025 BOND FROM ANY MONEYS OF THE CITY EXCEPT FROM THE PLEDGED FUNDS, IN THE MANNER PROVIDED IN THE BOND RESOLUTION.

See the inside cover page hereof for maturities, principal amounts, interest rates, prices and yields.

The Series 2025 Bonds are offered when, as and if issued, subject to receipt of the legal opinion of Akerman LLP, Jacksonville, Florida, Bond Counsel. Akerman LLP is also acting as disclosure counsel to the City with respect to the Series 2025 Bonds. Certain legal matters will be passed on for the City by Matthew J. Jones, Esq., City Attorney. The Underwriter is represented with respect to the issuance of the Series 2025 Bonds by Nelson Mullins Riley & Scarborough LLP, Orlando, Florida. Southeastern Investment Securities, L.L.C. has served as Financial Advisor to the City. It is expected that settlement for the Series 2025 Bonds will occur through the facilities of DTC on or about _____, 2025.

This cover page contains certain information for quick reference only. It is <u>not</u> a summary of this issue. Investors must read this entire Official Statement, including, without limitation, the cover page and appendices hereto, to obtain information essential to making an informed investment decision.

HilltopSecurities

Dated: May [__], 2025

_____

* Preliminary, subject to change

RED HERRING LEGEND:

This Preliminary Official Statement and the information contained herein are subject to completion or amendment. Under no circumstances shall this Preliminary Official Statement constitute an offer to sell or the solicitation of an offer to buy, nor shall there be any sale of the Bonds in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration, qualification or exemption under the securities laws of such jurisdiction. The City has deemed this Preliminary Official Statement "final," except for certain permitted omissions, within the contemplation of Rule 15c2-12 promulgated by the Securities and Exchange Commission.

MATURITIES, AMOUNTS, INTEREST RATES,
PRICES, YIELDS AND CUSIP NUMBERS

$38,000,000*
CAPITAL IMPROVEMENT REFUNDING REVENUE BONDS, SERIES 2025

Maturity (October 1)	Principal Amount	Interest Rate	Price	Yield*	CUSIP†
	$	%		%	

$_____ __% Term Bonds due October 1, 20__, Price ___ Yield ___% CUSIP _____

$_____ __% Term Bonds due October 1, 20__, Price ___ Yield ___% CUSIP _____

* Preliminary, subject to change.

† CUSIP® is a registered trademark of the American Bankers Association. CUSIP Global Services (CGS) is managed on behalf of the American Bankers Association by FactSet Research System, Inc. Copyright © 2024 CUSIP Global Services. All rights reserved. CUSIP® data herein is provided by CUSIP Global Services. This data is not intended to create a database and does not serve in any way as a substitute for the CGS database. CUSIP® numbers are provided for convenience of reference only. None of the City, the Underwriter or its agents or counsel assume responsibility for the accuracy of such numbers.

CITY OF PORT ORANGE, FLORIDA
1000 City Center Circle
Port Orange, Florida 32129
(386) 506-5501

CITY COUNCIL
Scott Stiltner (Mayor)
Tracy Grubbs (Vice Mayor)
Jonathan Foley
Shawn Goepfert
Lance Green

CITY MANAGER
Wayne Clark

CITY CLERK
Robin Fenwick, MMC

FINANCE DIRECTOR
Mark E. Simpson, CPA

CITY ATTORNEY
Matthew J. Jones, Esq.

FINANCIAL ADVISOR
Southeastern Investment Securities, L.L.C.
Orlando, Florida

BOND AND DISCLOSURE COUNSEL
Akerman LLP
Jacksonville, Florida

No dealer, broker, salesman or other person has been authorized by the City of Port Orange, Florida or the underwriter listed on the cover page hereof (the "Underwriter") to give any information or to make any representations, other than those contained in this Official Statement, and if given or made, such other information or representations must not be relied upon as having been authorized by the City or the Underwriter. This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy, nor shall there be any sale of the Series 2025 Bonds by any person in any jurisdiction in which it is unlawful for such person to make such offer, solicitation or sale.

The Underwriter has reviewed the information in this Official Statement in accordance with, and as part of their responsibilities to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriter does not guarantee the accuracy or completeness of such information. The information set forth herein has been furnished by the City, DTC and other sources which are believed to be reliable, but is not guaranteed as to accuracy or completeness by, and is not to be construed as a representation of, the Underwriter. The information and expressions of opinion herein are subject to change without notice, and neither the delivery of this Official Statement nor any sale made hereunder shall, under any circumstances, create the implication that there has been no change in the affairs of the City since the date hereof.

CERTAIN STATEMENTS INCLUDED OR INCORPORATED BY REFERENCE IN THIS OFFICIAL STATEMENT CONSTITUTE "FORWARD LOOKING STATEMENTS." SUCH STATEMENTS GENERALLY ARE IDENTIFIABLE BY THE TERMINOLOGY USED, SUCH AS "PLAN," "EXPECT," "ESTIMATE," "BUDGET" OR OTHER SIMILAR WORDS. SUCH FORWARD-LOOKING STATEMENTS INCLUDE BUT ARE NOT LIMITED TO CERTAIN STATEMENTS CONTAINED IN THE INFORMATION UNDER THE CAPTIONS "ESTIMATED SOURCES AND USES OF FUNDS."

THE ACHIEVEMENT OF CERTAIN RESULTS OR OTHER EXPECTATIONS CONTAINED IN SUCH FORWARD LOOKING STATEMENTS INVOLVE KNOWN AND UNKNOWN RISKS, UNCERTAINTIES AND OTHER FACTORS THAT MAY CAUSE ACTUAL RESULTS, PERFORMANCE OR ACHIEVEMENTS DESCRIBED TO BE MATERIALLY DIFFERENT FROM ANY FUTURE RESULTS, PERFORMANCE OR ACHIEVEMENTS EXPRESSED OR IMPLIED BY SUCH FORWARD LOOKING STATEMENTS. THE CITY DOES NOT PLAN TO ISSUE ANY UPDATES OR REVISIONS TO THOSE FORWARD LOOKING STATEMENTS IF OR WHEN ITS EXPECTATIONS OR EVENTS, CONDITIONS OR CIRCUMSTANCES ON WHICH SUCH STATEMENTS ARE BASED OCCUR, SUBJECT TO ANY CONTRACTUAL OR LEGAL RESPONSIBILITIES TO THE CONTRARY.

IN CONNECTION WITH THE OFFERING OF THE SERIES 2025 BONDS, THE UNDERWRITER MAY OVER-ALLOT OR EFFECT TRANSACTIONS THAT STABILIZE OR MAINTAIN THE MARKET PRICE OF SUCH SERIES 2025 BONDS AT A LEVEL ABOVE THAT WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.

NO REGISTRATION STATEMENT RELATING TO THE SERIES 2025 BONDS HAS BEEN FILED WITH THE SECURITIES AND EXCHANGE COMMISSION (THE "SEC") OR WITH ANY STATE SECURITIES COMMISSION. IN MAKING ANY INVESTMENT DECISION, INVESTORS MUST RELY ON THEIR OWN EXAMINATIONS OF THE CITY AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THE SERIES 2025 BONDS HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SEC OR ANY STATE SECURITIES COMMISSION OR REGULATORY AUTHORITY. THE FOREGOING AUTHORITIES HAVE NOT

PASSED UPON THE ACCURACY OR ADEQUACY OF THIS OFFICIAL STATEMENT. ANY REPRESENTATION TO THE CONTRARY MAY BE A CRIMINAL OFFENSE.

THE SERIES 2025 BONDS HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, NOR HAS THE BOND RESOLUTION OR ANY SUPPLEMENTAL RESOLUTION BEEN QUALIFIED UNDER THE TRUST INDENTURE ACT OF 1939, IN RELIANCE UPON EXEMPTIONS CONTAINED IN SUCH ACTS. THE REGISTRATION OR QUALIFICATION OF THE SERIES 2025 BONDS IN ACCORDANCE WITH APPLICABLE PROVISIONS OF THE SECURITIES LAWS OF THE STATE, IF ANY, IN WHICH THE SERIES 2025 BONDS HAVE BEEN REGISTERED OR QUALIFIED AND THE EXEMPTION FROM REGISTRATION OR QUALIFICATION IN CERTAIN OTHER STATES CANNOT BE REGARDED AS A RECOMMENDATION THEREOF. NEITHER THESE STATES NOR ANY OF THEIR AGENCIES HAVE PASSED UPON THE MERITS OF THE SERIES 2025 BONDS OR THE ACCURACY OR COMPLETENESS OF THIS OFFICIAL STATEMENT. ANY REPRESENTATION TO THE CONTRARY MAY BE A CRIMINAL OFFENSE.

References herein to laws, rules, regulations, resolutions, agreements, reports and other documents do not purport to be comprehensive or definitive. All references to such documents are qualified in their entirety by reference to the particular document, the full text of which may contain qualifications of and exceptions to statements made herein. Where full texts have not been included as appendices to this Official Statement they will be furnished on request. References to website addresses presented in this Official Statement are for informational purposes only and may be in the form of a hyperlink solely for the reader's convenience. Unless specified otherwise, such websites and the information or links contained therein are not incorporated into, and are not part of, this Official Statement.

This Official Statement is being provided to prospective purchasers in either bound or printed format ("Original Bound Format"), or in electronic format on the following website: www.munios.com. Prospective purchasers may rely on the information contained in this Official Statement in either the Original Bound Format or the electronic format, provided, however, that prospective purchasers must read the entire Official Statement (including the cover page and all appendices attached hereto) to obtain all of the information essential to the making of an informed investment decision.

THIS OFFICIAL STATEMENT WILL NOT CONSTITUTE A CONTRACT BETWEEN THE CITY OR THE UNDERWRITERS AND ANY ONE OR MORE HOLDERS OF THE SERIES 2025 BONDS.

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OFFICIAL STATEMENT
relating to

CITY OF PORT ORANGE, FLORIDA

$38,000,000*
CAPITAL IMPROVEMENT REFUNDING
REVENUE BONDS, SERIES 2025

INTRODUCTION

The purpose of this Official Statement, including the cover page and all appendices, is to furnish information in connection with the sale by the City of Port Orange, Florida (the "City") of its $38,000,000* aggregate principal amount of Capital Improvement Refunding Revenue Bonds, Series 2025 (the "Series 2025 Bonds"). The Series 2025 Bonds are being issued pursuant to the Constitution and Statutes of the State of Florida (the "State"), including particularly Chapter 166, Parts I and II, and Chapter 159, Part I, Florida Statutes, Ordinance No. 2025-15 enacted by the City Council of the City on May 6, 2025, as supplemented by Resolution No. 2025-28 adopted by the City Council of the City on May [22], 2025, and as further supplemented by Resolution No. 2025-29 adopted by the City Council of the City on May [22], 2025 (collectively, the "Bond Resolution").

The Series 2025 Bonds are limited, special obligations of the City payable from and secured solely by a pledge of and lien on certain Pledged Funds, consisting of (1) Non-Ad Valorem Revenues budgeted and appropriated, and deposited into the Debt Service Fund, and (2) until applied in accordance with the provisions of the Bond Resolution, all moneys, including the investments thereof, in the funds and accounts established in the Bond Resolution, with the exception of the Rebate Fund. Pursuant to the Bond Resolution, the City covenants and agrees to appropriate in its annual budget, by amendment, if necessary, for each Fiscal Year in which the Series 2025 Bonds remain Outstanding, and to deposit into the Debt Service Fund sufficient amounts of Non-Ad Valorem Revenues into the Debt Service Fund for the payment of principal of, redemption premium, if applicable, and interest on the Series 2025 Bonds and to make certain other payments required under the Bond Resolution in each such Fiscal Year. The obligation of the City to budget, appropriate, deposit and make payments pursuant to the Bond Resolution from its Non-Ad Valorem Revenues is subject to the availability of Non-Ad Valorem Revenues after the satisfaction of the funding requirements for obligations having an express lien on or pledge of such revenues and the funding requirements for essential governmental services of the City, as more fully described herein and in the Bond Resolution. THE SERIES 2025 BONDS ARE NOT SECURED BY A RESERVE FUND OR ACCOUNT. For a discussion of the security for the Series 2025 Bonds, see the information under the heading "SECURITY FOR THE SERIES 2025 BONDS" and "DEBT SERVICE REQUIREMENTS" herein.

Capitalized terms used herein shall have the same meanings as given to them in the Bond Resolution unless otherwise defined herein or where the context would clearly indicate otherwise. The references, excerpts and summaries of all documents referred to herein do not purport to be complete statements of the provisions of such documents, and reference is made to the originals of all such documents for full and complete statements of all matters of fact relating to the Series 2025 Bonds, the security for the payment of the Series 2025 Bonds, and the rights and obligations of Registered Owners thereof. The form of the Bond Resolution is attached hereto as Appendix C. Copies of the other documents that are not included in their entirety in this Official Statement may be obtained from Mark E. Simpson, Finance Director, 1000 City Center Circle, Port Orange, Florida 32129, (386) 506-5700, upon payment of reproduction costs and postage and handling expenses.

The assumptions, estimates, projections and matters of opinion contained in this Official Statement, whether or not so expressly stated, are set forth as such and not as matters of fact, and no representation is

made that any of the assumptions or matters of opinion herein are valid or that any projections or estimates contained herein will be realized. Neither this Official Statement nor any other statement which may have been made verbally or in writing in connection with the Series 2025 Bonds, other than the Bond Resolution, is to be construed as a contract with the Registered Owners of the Series 2025 Bonds.

PURPOSE OF ISSUE

The Series 2025 Bonds are being issued in order to (i) refund the City's outstanding Stormwater Utility Revenue Bonds, Series 2005, and Capital Improvement Refunding Revenue Bonds, Series 2014, (ii) finance or reimburse all or a portion of the costs of the 2025 Project, and (iii) pay certain costs related to the issuance and sale of the Series 2025 Bonds.

The Project

2025 Project. The 2025 Project includes the [acquisition, design, construction, improvement and equipping of a facility including one or more buildings for use primarily by the Public Utilities Department.]

DESCRIPTION OF THE SERIES 2025 BONDS

General

The Series 2025 Bonds will be dated the date of their delivery, are issuable in fully registered, book-entry-only form, in the denomination of $5,000 or any integral multiple thereof, and will mature on the dates, in the amounts and bear interest at the rates set forth on the inside cover page of this Official Statement.

Interest on the Series 2025 Bonds will be payable semiannually on April 1 and October 1, commencing April 1, 2025. Principal of and premium, if any, and interest on the Series 2025 Bonds will be payable in the manner described in APPENDIX E — "BOOK-ENTRY PROVISIONS" hereto.

Redemption Provisions

Optional Redemption. The Series 2025 Bonds maturing on or after October 1, 20__, are subject to redemption prior to maturity, at the option of the City, on or after _____ 1, 20__, in whole or in part on any date, as designated by the City, and by lot within a maturity at the Redemption Price of 10[_]% of the principal amount of the Series 2025 Bonds to be redeemed, plus accrued interest to the redemption date.

Mandatory Redemption. The Series 2025 Bonds maturing on October 1, 20__ are subject to mandatory redemption in part by the City on October 1 in the years and in the Amortization Installments, plus accrued interest to the redemption date, as set forth below.

Year	Amortization Installments
	$
*	

*Maturity

The Series 2025 Bonds maturing on October 1, 20__ are subject to mandatory redemption in part by the City on October 1 in the years and in the Amortization Installments, plus accrued interest to the redemption date, as set forth below.

Year	Amortization Installments
	$
*	

*Maturity

Notice and Effect of Redemption

Unless waived by any Holder of Bonds to be redeemed, notice of any redemption made pursuant to the Bond Resolution shall be given by the Registrar on behalf of the City by mailing a copy of an official redemption notice by registered or certified mail at least thirty days and not more than sixty days prior to the date fixed for redemption to each Holder of Bonds to be redeemed at the address of such Holder shown on the registration books maintained by the Registrar or at such other address as shall be furnished in writing by such Holder to the Registrar; provided, however, that no defect in any notice given pursuant to this Section to any Holder of Bonds to be redeemed nor failure to give such notice shall in any manner defeat the effectiveness of a call for redemption as to all other Holders of Bonds to be redeemed.

The privilege of transfer or exchange of any of the Series 2025 Bonds so called for redemption is suspended for a period commencing 15 days preceding the mailing of the notice of redemption and ending on the date fixed for redemption.

Every official notice of redemption shall be dated and shall state: (i) the redemption date, (ii) the Redemption Price, (iii) if less than all Outstanding Bonds are to be redeemed, the number (and, in the case of a partial redemption of any Bond, the principal amount) of each Bond to be redeemed, (iv) that, on the redemption date, the Redemption Price will become due and payable upon each such Bond or portion thereof called for redemption, and that interest thereon shall cease to accrue from and after said date, and (v) that such Bonds to be redeemed, whether as a whole or in part, are to be surrendered for payment of the Redemption Price at the designated office of the Registrar.

Notwithstanding the foregoing or any other provision of the Bond Resolution, notice of optional redemption may be conditioned upon the occurrence or non-occurrence of such event or events as shall be specified in such notice of optional redemption and may also be subject to rescission by the City if expressly set forth in such notice.

Notice of redemption having been given substantially as provided in the Bond Resolution, the Bonds or portions of Bonds to be redeemed shall, on the redemption date, become due and payable at the Redemption Price therein specified, and from and after such date (unless the City shall default in the payment of the Redemption Price) such Bonds or portions of Bonds shall cease to bear interest. Upon surrender of such Bonds for redemption in accordance with said notice, such Bonds shall be paid by the Registrar and/or Paying Agent at the appropriate Redemption Price, plus accrued interest. Installments of interest due on or prior to the redemption date shall be payable as herein provided for payment of interest. Upon surrender for any partial redemption of any Bond, there shall be prepared for the Holder a new Bond or Bonds of the same maturity in the amount of the unpaid principal of such partially redeemed Bond. All Bonds which have been redeemed shall be canceled and destroyed by the Registrar and shall not be reissued.

SECURITY FOR THE SERIES 2025 BONDS

General

The Series 2025 Bonds are limited, special obligations of the City payable from and secured solely by a pledge of and lien on certain Pledged Funds, consisting of (1) Non-Ad Valorem Revenues budgeted and appropriated, and deposited into the Debt Service Fund, and (2) until applied in accordance with the provisions of the Bond Resolution, all moneys, including the investments thereof, in the funds and accounts established in the Bond Resolution, with the exception of the Rebate Fund. Pursuant to the Bond Resolution, the City covenants and agrees to appropriate in its annual budget, by amendment, if necessary, for each Fiscal Year in which the Series 2025 Bonds remain Outstanding, and deposit into the Debt Service Fund, sufficient amounts of Non-Ad Valorem Revenues for the payment of principal of, redemption premium, if applicable, and interest on the Series 2025 Bonds and to make certain other payments required under the Bond Resolution in each such Fiscal Year. The obligation of the City to budget, appropriate, deposit and make payments pursuant to the Bond Resolution from its Non-Ad Valorem Revenues is subject to the availability of Non-Ad Valorem Revenues after the satisfaction of the funding requirements for obligations having an express lien on or pledge of such revenues and the funding requirements for essential governmental services of the City, as more fully described herein and in the Bond Resolution. THE SERIES 2025 BONDS ARE NOT SECURED BY A RESERVE FUND OR ACCOUNT. For a discussion of the security for the Series 2025 Bonds, see the information under the heading "SECURITY FOR THE SERIES 2025 BONDS" and "DEBT SERVICE REQUIREMENTS" herein.

THE SERIES 2025 BONDS SHALL NOT BE OR CONSTITUTE GENERAL OBLIGATIONS OR INDEBTEDNESS OF THE CITY AS "BONDS" WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION, BUT SHALL BE SPECIAL OBLIGATIONS OF THE CITY, PAYABLE SOLELY FROM AND SECURED BY A LIEN UPON AND PLEDGE OF THE PLEDGED FUNDS. THE FULL FAITH AND CREDIT OF THE CITY, THE STATE OF FLORIDA, OR ANY POLITICAL SUBDIVISION THEREOF, ARE NOT PLEDGED TO THE PAYMENT OF THE PRINCIPAL, REDEMPTION PREMIUM, IF ANY, AND INTEREST ON THE SERIES 2025 BONDS. NO HOLDER OF ANY BOND SHALL EVER HAVE THE RIGHT TO REQUIRE OR COMPEL THE EXERCISE OF ANY TAXING POWER OF THE CITY, THE STATE OF FLORIDA, OR ANY POLITICAL SUBDIVISION THEREOF TO THE PAYMENT OF SUCH PRINCIPAL, REDEMPTION PREMIUM, IF ANY, OR INTEREST ON THE SERIES 2025 BONDS AND THE OBLIGATION EVIDENCED THEREBY SHALL NOT CONSTITUTE A LIEN UPON ANY PROPERTY OF THE CITY OTHER THAN THE PLEDGED FUNDS, AND SHALL CONSTITUTE A LIEN ONLY ON, AND SHALL BE PAYABLE SOLELY FROM, THE PLEDGED FUNDS IN THE MANNER AND TO THE EXTENT DESCRIBED IN THE BOND RESOLUTION.

Funds and Accounts

The City has covenanted and agreed to establish a special fund to be designated the "City of Port Orange, Florida Capital Improvement Refunding Revenue Bonds, Series 2025 Project Fund." Amounts on deposit from time to time in the Series 2025 Project Fund, plus any earnings thereon, are pledged to the repayment of the Series 2025 Bonds. Costs of the 2025 Project will be paid from the Series 2025 Project Fund.

The City has created and established the "City of Port Orange Capital Improvement Refunding Revenue Bonds, Series 2025 Debt Service Fund", which fund shall be a trust fund held by the City, which shall be held solely for the benefit of the Holders as provided in the Bond Resolution. The City shall maintain in the Debt Service Fund three (3) accounts: the "Series 2025 Interest Account," the "Series 2025 Principal Account," and the "Series 2025 Bond Amortization Account."

With the exception of amounts on deposit in the Rebate Fund, all moneys (including earnings from the investment thereof) in the funds and accounts established in the Bond Resolution shall be subject to a lien and charge in favor of the Holders and for the further security of the Holders until applied in accordance with the provisions of the Bond Resolution.

Separate Accounts

The moneys required to be accounted for in each of the funds and accounts established in the Bond Resolution may be deposited in a single account, and funds allocated to the various funds and accounts may be invested in a common investment pool, provided that adequate accounting records are maintained to reflect and control the restricted allocation of the moneys on deposit therein and such investments for the various purposes of such funds and accounts as provided in the Bond Resolution.

The designation and establishment of the various funds and accounts by the Bond Resolution shall not be construed to require the establishment of any completely independent, self-balancing funds as such term is commonly defined and used in governmental accounting, but rather is intended solely to constitute an earmarking of certain revenues for certain purposes and to establish certain priorities for application of such revenues as provided in the Bond Resolution.

Flow of Funds

Pursuant to the Resolution, the Non-Ad Valorem Revenues shall be deposited or credited at least five (5) business days prior to the applicable due date, in the following manner:

Interest Account. The City shall deposit into or credit to the Interest Account the sum which, together with the balance in the Interest Account, shall be equal to the interest on all Outstanding Series 2025 Bonds accrued and unpaid and to accrue on such Interest Date. Moneys in the Interest Account will be used to pay interest on the Bonds as and when the same become due, whether by redemption or otherwise, and for no other purpose.

Principal Accounts. The City shall deposit into or credit to the Principal Account the sum which, together with the balance in the Principal Account, is equal the portion of the principal on the Outstanding Series 2025 Bonds next due. Moneys in the Principal Account will be used to pay the principal of the Series 2025 Bonds as and when the same mature, and for no other purpose.

Bond Amortization Accounts. The City shall deposit into or credit to the Bond Amortization Account the sum which, together with the balance in the Bond Amortization Account, shall equal the portion of the Amortization Installment of all Outstanding Series 2025 Bonds next due. Moneys in the Bond Amortization Account will be used to purchase or redeem Term Bonds in the manner provided in the Bond Resolution, and for no other purpose. Payments to the Bond Amortization Account will be on a parity with payments to the Principal Account.

On the date established for payment of any principal of or Redemption Price, if applicable, or interest on the Outstanding Series 2025 Bonds, the City will withdraw from the appropriate account of the Debt Service Fund sufficient moneys to pay such principal or Redemption Price, if applicable, or interest and deposit such moneys with the Paying Agent for the Outstanding Series 2025 Bonds to be paid.

No Debt Service Reserve Fund

The City has not established a reserve fund or account to secure the Series 2025 Bonds.

No Impairment

The City has covenanted in the Bond Resolution that the pledging of the Pledged Funds in the manner provided in the Bond Resolution shall not be subject to repeal, modification, or impairment by any subsequent ordinance, resolution, or other proceedings of the City Council.

Books and Records

The City shall keep proper books, records and accounts of the receipt of the Non-Ad Valorem Revenues in accordance with generally accepted accounting principles, and any Holder or Holders of Series 2025 Bonds shall have the right at all reasonable times to inspect such books, records, accounts and data of the City relating thereto. The City shall, by April 30th following the close of the prior Fiscal Year of the City, cause an audit of such books, records and accounts to be made by an independent firm of certified public accountants.

Copies of each such audit report shall be placed on file with the City and be made available at reasonable times for inspection by Holders of the Series 2025 Bonds.

Annual Audit

The City shall, immediately after the close of each Fiscal Year, cause the financial statements of the City to be properly audited by a recognized independent certified public accountant or recognized independent firm of certified public accountants, and shall require such accountants to complete their report on the annual financial statements in accordance with applicable law. Such annual financial statements shall contain, but not be limited to, a balance sheet, a statement of revenues, expenditures and changes in fund balance, and any other statements as required by law or accounting convention, and a report by such accountants disclosing any material default on the part of the City of any covenant or agreement provided in the Resolution which is disclosed by the audit of the financial statements. The annual financial statements shall be prepared in conformity with generally accepted accounting principles. A copy of the audited financial statements for each Fiscal Year shall be furnished to any Holder of a Series 2025 Bond who shall have furnished such Holder's address to the Finance Director or the City Manager and requested in writing that the same be furnished to such Holder. The City shall be permitted to make a reasonable charge for furnishing such audited financial statements.

Reference is hereby made to APPENDIX C for a more complete description of the flow of funds.

COVENANT TO BUDGET AND APPROPRIATE NON-AD VALOREM REVENUES; LIMITATIONS

General

The City has covenanted and agreed in the Bond Resolution, and has a positive and affirmative duty to appropriate in its annual budget (by amendment, if necessary) from Non-Ad Valorem Revenues, and to deposit into the Debt Service Fund amounts sufficient to pay principal of and interest on the Series 2025 Bonds and all other payments due under the Bond Resolution not being paid from other amounts as the same shall become due. The City shall make each deposit no later than five (5) Business Days prior to the date such payment is due. Such covenant and agreement on the part of the City to budget, appropriate and deposit such amounts of Non-Ad Valorem Revenues shall be cumulative to the extent not paid, and shall continue until such Non-Ad Valorem Revenues or other legally available funds in amounts sufficient to make all such required payments shall have been budgeted, appropriated, deposited and actually paid. No lien upon or pledge of such budgeted Non-Ad Valorem Revenues shall be in effect until such monies are budgeted, appropriated and deposited as provided in the Bond Resolution. The City further acknowledged and agreed in the Bond Resolution that the obligations of the City to include the amount of such amendments in each of its annual budgets and to pay such amounts from Non-Ad Valorem Revenues

may be enforced in a court of competent jurisdiction in accordance with the remedies set forth in the Bond Resolution.

Until such monies are budgeted, appropriated and deposited as provided in the Bond Resolution, such covenant to budget and appropriate does not create any lien upon or pledge of such Non-Ad Valorem Revenues, nor does it preclude the City from pledging in the future its Non-Ad Valorem Revenues, nor does it require the City to levy and collect any particular Non-Ad Valorem Revenues, nor does it give the Holders of the Series 2025 Bonds a prior claim on the Non-Ad Valorem Revenues as opposed to claims of general creditors of the City. Such covenant to budget and appropriate Non-Ad Valorem Revenues is subject in all respects to the prior payment of obligations secured by a pledge of such Non-Ad Valorem Revenues heretofore or hereafter entered into (including the payment of debt service on bonds and other debt instruments). Anything in the Bond Resolution to the contrary notwithstanding, it is understood and agreed that all obligations of the City pursuant to the Bond Resolution shall be payable from the portion of Non-Ad Valorem Revenues budgeted, appropriated and deposited as provided for in the Bond Resolution and nothing in the Bond Resolution shall be deemed to pledge ad valorem taxing power or ad valorem tax revenues or to permit or constitute a mortgage or lien upon any assets owned by the City and no Holders of the Series 2025 Bonds nor any other Person, may compel the levy of ad valorem taxes on real or personal property within the boundaries of the City or the use or application of ad valorem tax revenues in order to satisfy any payment obligations under the Bond Resolution. The obligation of the City to budget, appropriate, deposit and make payments pursuant to the Bond Resolution from its Non-Ad Valorem Revenues is subject to the availability of Non-Ad Valorem Revenues after the satisfaction of the funding requirements for obligations having an express lien on or pledge of such revenues and the funding requirements for essential governmental services of the City. Notwithstanding any provisions of the Bond Resolution or the Series 2025 Bonds to the contrary, the City shall never be obligated to maintain or continue any of the activities of the City which generate user service charges, regulatory fees or any Non-Ad Valorem Revenues. Until such monies are budgeted, appropriated and deposited as provided in the Bond Resolution, neither the Bond Resolution nor the obligations of the City pursuant to the Bond Resolution shall be construed as a pledge of or a lien on all or any legally available Non-Ad Valorem Revenues of the City, but shall be payable solely as provided in the Bond Resolution and is subject to the payment of services and programs which are for essential public purposes affecting the health, welfare and safety of the inhabitants of the City and is further subject to the provisions of Section 166.241, Florida Statutes insofar as there are not sufficient Non-Ad Valorem Revenues to comply with such covenant after the satisfaction of the funding requirements for obligations having an express lien on or pledge of such revenues and the funding requirements for essential governmental services of the City.

Until applied in accordance with the Bond Resolution, the Non-Ad Valorem Revenues of the City on deposit in the Debt Service Fund and other amounts on deposit from time to time in the funds and accounts established in the Bond Resolution, plus any earnings thereon, shall be pledged to the repayment of the Series 2025 Bonds.

Notwithstanding any provisions of the Bond Resolution or the Series 2025 Bonds to the contrary, the City shall never be obligated to maintain or continue any of the activities of the City which generate user service charges, regulatory fees or any Non-Ad Valorem Revenues. Until such monies are budgeted, appropriated and deposited into the Non-Ad Valorem Revenue Fund, neither Resolution nor the obligations of the City thereunder shall be construed as a pledge of or a lien on all or any legally available Non-Ad Valorem Revenues of the City other than Pledged Funds, but shall be payable solely as provided in the Bond Resolution.

Information Regarding Covenant Revenues

The City generally receives two primary sources of revenue: ad valorem taxes and non-ad valorem revenues. Ad valorem taxes may not be pledged for the payment of debt obligations of the City maturing more than twelve months from the date of issuance thereof without approval of the electorate of the City. **The ad valorem tax revenues of the City are not pledged as security for the payment of the Series**

2025 Bonds, and the City is not obligated to budget and appropriate ad valorem tax revenues for the payment of the Series 2025 Bonds.

The Bonds are payable from Pledged Funds which includes Non-Ad Valorem Revenues budgeted, appropriated and deposited by the City for such purpose as described herein, and are not payable from ad valorem taxation. Such non-ad valorem revenues include a broad category of revenues, including but not limited to revenues received from the State, investment income and income produced from certain facilities of the City, as described below. However, the ability of the City to budget and appropriate non-ad valorem revenues is subject to a variety of factors, including the City's obligation to provide for essential governmental services and the provisions of State law that require the City to have a balanced budget.

Although the Series 2025 Bonds are not payable from ad valorem taxation, a large proportion of the City's general fund revenues come from ad valorem taxes. To the extent that the future collection of ad valorem tax revenues is adversely affected, a larger portion of Non-Ad Valorem Revenues would be required to balance the budget and provide essential governmental services.

The City is permitted by the Florida Constitution to levy ad valorem taxes at a rate of up to $10 per $1,000 of assessed valuation for general governmental expenditures. The general fund ad valorem tax millage rate for the fiscal year ending September 30, 2023 was $4.6253 per $1,000. Florida Statutes governing the process for levy of ad valorem taxes for general government expenditures require a supermajority of the members of the City Council to approve increases in the tax millage rate over 110 percent of the rate which would produce the same revenues as the prior year (adjusted for new construction, increase in average per capital income and certain other factors). The City is also permitted by the Florida Constitution to levy ad valorem taxes, above the $10 per $1,000 cap, to pay debt service on general obligation long-term debt, following a voter referendum; however, the City currently has no outstanding general obligation long-term debt and does not levy any millage for debt service. Ad valorem taxes are <u>not</u> considered legally available to pay debt service on the Series 2025 Bonds for purposes of the City's covenant.

The term "Non-Ad Valorem Revenues" does not include all non-ad valorem revenues of the City, but instead includes only those which are legally available to pay debt service on the Series 2025 Bonds. For example, municipal fuel tax revenues are only includable in Non-Ad Valorem Revenues in order to pay debt service on the Series 2025 Bonds that finance the Transportation Project, as municipal fuel tax revenues are a restricted revenue source which is only legally available to pay debt service on the Series 2025 Bonds. See "APPENDIX C — FORM OF BOND RESOLUTION" attached hereto for the definition of "Non-Ad Valorem Revenues."

The Florida Department of Banking and Finance has developed, as part of the Uniform Accounting System Manual's Chart of Accounts, six major categories of local government revenue classification; taxes, intergovernmental revenues, licenses and permits, charges for services, fines and forfeitures, and miscellaneous revenues. Using that organization, the following describes the sources of the City's Non-Ad Valorem Revenues.

Description of Non-Ad Valorem Revenues

<u>*Excise Taxes*</u>. The City receives the following excise taxes:

Public Service Tax

The Public Service Tax is levied and collected by the City pursuant to Section 166.231, Florida Statutes (the "Public Service Tax Statute"), and Ordinance No. 2196 enacted by the City on November 11, 1997, as amended. The tax is levied, with certain exceptions, on each and every purchase of electricity, metered or bottled gas (natural liquefied petroleum or manufactured), and water services within the corporate limits of the City, in the amount of 8% of each payment received by the seller for

such utility service or commodity, which tax is paid by the purchaser to the seller at the time of paying the charge therefor, and remitted to the City. Failure by the seller to charge the tax is a misdemeanor, and the seller is required to pay the amount of the tax to the City; however, the seller is not liable for the payment of the tax on uncollected bills.

Pursuant to the Public Service Tax Statute, the Public Service Tax is not imposed on any fuel adjustment charge, which includes any increase in the cost of utility services to the ultimate consumer resulting from an increase in the cost of fuel to the utility subsequent to October 1, 1973. Fuel adjustment charges are required to be separately stated on bills for utility services. Also pursuant to the Public Service Tax Statute, purchases of natural gas, manufactured gas or fuel oil by a public or private utility, either for resale or for use as fuel in the generation of electricity, are exempt from taxation, as are purchases or fuel oil or kerosene for use as an aircraft engine fuel or propellant or for use in internal combustion engines.

Purchases by the United States, the State of Florida, the City and all counties, school districts and municipalities of the State, and purchases by recognized churches for exclusively church purposes, are also exempted from the Public Service Taxes.

The amount of Public Service Tax collected by the City may fluctuate as the price of electricity, gas and the other services subject to the Public Services Tax fluctuates. A sustained increase in the cost of electricity, gas or any other of such services may have an adverse effect on the amount of Public Service Tax collected.

The amount of Public Service Tax collected by the City may also be affected by changes in the electric utility industry. The electric utility industry in general has been, and in the future may be, affected by a number of factors which could have a materially adverse impact upon the financial condition of an electric utility providing service to the City. Such factors include, among others: (i) effects of inflation on the operating and maintenance costs of an electric utility and its facilities, (ii) changes from projected future load requirements, (iii) increases in costs and uncertain availability of capital, (iv) shifts in the availability and relative costs of different fuels, (v) effects of compliance with rapidly changing environmental, safety, licensing and regulatory requirements, (vi) changes resulting from conservation and demand side management programs on the timing and use of electric energy, (vii) changes that might result from a national energy policy and (viii) effects of open retail competition from other suppliers of electricity through de-regulation of the electric industry. Any of these factors could have a material adverse effect on the financial condition of any electric utility and likely would affect individual utilities in different ways. In turn these factors could reduce the amount of Public Service Tax collected based upon a reduction in the use of electric energy and/or a reduction in electric energy charges.

Communications Services Tax

The Communications Services Tax Simplification Law, codified in part as Chapter 202, Florida Statutes (the "CSTA"), established, effective October 1, 2001, a communications services tax on the sale of "communications services" as defined in the CSTA ("Communications Services"). Section 202.19, Florida Statutes, authorizes municipalities to levy a discretionary communications services tax (the "Communications Services Tax") on Communications Services that originate or terminate in the State and are charged to a service address in the municipality, the revenues from which may be pledged for the repayment of current or future bonded indebtedness. Municipalities that have not chosen to levy permit fees may levy Communications Services Tax at a rate of up to 5.1%. Municipalities that have chosen to levy permit fees may levy Communications Services Tax at a rate of up to 4.98%. The maximum rate does not include permitted add-ons of up to 0.12%, nor does it supersede conversion or emergency rates authorized by Section 202.20, Florida Statutes, which are in excess of the maximum rate. Prior to the adoption of the CSTA, the City levied a similar tax pursuant to its Code of Ordinances. Although the prior provisions remain in the Code of Ordinances, the statutory changes supersede the

Code of Ordinance provisions to the extent inconsistent, and the City will update these provisions in future modifications to the Code of Ordinances. As provided in the CSTA, in 2001 the City approved the levy of the Communications Services Tax. The City levies a 5.1% Local Communications Services Tax.

Communications Services are defined in the CSTA to include the transmission, conveyance or routing of voice, data, audio, video or any other information or signals, including video services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance. The term includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice-over-Internet-protocol services or is classified by the Federal Communications Council as enhanced or value-added. The term does not include: (a) Information services; (b) Installation or maintenance of wiring or equipment on a customer's premises; (c) The sale or rental of tangible personal property; (d) The sale of advertising, including, but not limited to, directory advertising; (e) Bad check charges; (f) Late payment charges; (g) Billing and collection services; and (h) Internet access service, electronic mail service, electronic bulletin board service or similar on-line computer services.

The sale of Communications Services to (i) the federal government, or any instrumentality or agency thereof, or any entity that is exempt from state taxes under federal law, (ii) the State or any county, municipality or political subdivision of the State when payment is made directly to the dealer by the governmental entity, and (iii) any home for the aged, educational institution or any religious institution having an established physical place for worship at which nonprofit religious services are regularly conducted, that is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, is exempt from the Communications Services Tax. In addition, the Communications Services Tax does not apply to any direct to home satellite service.

The CSTA provides that, to the extent that a provider of Communications Services is required to pay a tax, charge or other fee under any franchise agreement or ordinance with respect to the services or revenues that are also subject to the Communications Services Tax, such provider is entitled to a credit against the amount of such Communications Services Tax payable to the State in the amount of such tax, charge or fee with respect to such service or revenue. The amount of such credit is deducted from the amount that the local taxing jurisdiction is entitled to receive.

Providers of Communications Services collect the local Communications Services Tax revenues and may deduct 0.75% of the tax due and accounted for and remitted to the Florida Department of Revenue (the "FDOR") as a collection fee (or 0.25% in the case of providers who do not employ an enhanced ZIP code database or a database that is either supplied or certified by the FDOR). The communications services providers remit the remaining proceeds to the FDOR for deposit into the Local Communications Tax Clearing Trust Fund (the "Communications Trust Fund"). The FDOR then makes monthly contributions from the Communications Trust Fund to local governments after deducting an administrative fee. The amount deducted for the costs of administration may not exceed 1 percent of the total revenue generated for all municipalities, counties, and school boards levying the Communications Services Tax.

In 2012, pursuant to Chapter 2012-70, Laws of Florida ("Chapter 2012-70"), a number of provisions regarding the Communications Services Tax were modified, including, but not limited to, provisions regarding the manner in which the communications services tax is levied, definitional changes, including the addition of a definition of "internet access service" and the amendment of the definition of "sales price" to expand the existing provisions relating to what charges a Communications Services dealer may exclude from the taxable sales price of communications services (certain charges may now be excluded if they are separately itemized on a customer's bill, or can be reasonably identified in the seller's books and records), and revision of statutory provisions that govern the liability

of a Communications Services Tax dealer regarding underpayment resulting from the dealers assignment of customers to local taxing jurisdictions for the purpose of imposing the Communications Services Tax. There can be no assurance that similar or additional legislative or other proposals will not be introduced or enacted in the future that would, or might apply to, or have a material adverse effect upon, the collection of the Communications Services Tax revenues.

Also impacting the collection of Communications Services Tax revenues are federal laws prohibiting the imposition of taxes on internet access by states and political subdivisions. Pursuant to the Internet Tax Nondiscrimination Act ("ITNA") which was enacted in 1988, "Internet access" includes telecommunications services (unregulated non-utility telecommunications, such as cable services) purchased, used or sold by a provider of internet access to provide Internet access, including related communication services, such as email and instant messaging. The ITNA, after being extended several times, sunset on December 11, 2015. The U.S. House of Representatives introduced and passed H.R. 235, known as the Permanent Internet Tax Freedom Act (the "Permanent ITFA") to permanently ban the imposition of taxes on state and local Internet access. The U.S. Senate passed the bill and it became permanent law when President Obama signed the Trade Facilitation and Trade Enforcement Act of 2015 (Public Law 114-125) in 2016.

The collection of Communications Services Tax revenues has been negatively impacted by increased use of communication services through non-taxed services such as email, use of prepaid cell phones which are not subject to the Communications Services Tax and reductions in the use of landlines phones and long distance telephone plans. The amount of Communications Services Tax revenues received by the City is also subject to increase or decrease, the impact of which cannot be predicted, due to (i) increases or decreases in the dollar volume of taxable sales within the City, (ii) legislative changes, and/or (iii) technological advances which could further affect consumer preferences.

Local Business Taxes

Local business taxes are levied annually on certain persons doing business in the City. Such taxes are a minor portion of the City's Non-Ad Valorem Revenues and amounted to $[_____] in the fiscal year ended September 30, 2024.

Intergovernmental Revenues. All revenues received by a local unit from federal, state, and other local government sources in the form of grants, shared revenues, and payments in lieu of taxes would be included in the intergovernmental revenues category. The category is further classified into eight subcategories: federal grants, federal payments in lieu of taxes (PILOT), state grants, state shared revenues, state PILOT, local grants, local shared revenues, and local PILOT. If a particular grant is funded from separate intergovernmental sources, then the revenue is recorded proportionately. The largest component is the Local Government Half-Cent Sales Tax.

Half-Cent Sales Tax Revenues

Pursuant to Chapter 212, Florida Statutes, the State of Florida levies and collects a sales tax of six percent (6%) on, among other things, the sales price of each item or article of tangible personal property sold at retail in the State of Florida, subject to certain exceptions and dealer allowances as set forth therein. Section 212.20, Florida Statutes, provides that 8.8744% of the proceeds remitted to the State of Florida by a sales tax dealer located within a participating county, after certain required deposits to the State's General Revenue Funds and Ecosystem Management and Restoration Trust Fund, is required to be deposited in the Local Government Half-cent Sales Tax Clearing Trust Fund in the State Treasury (the "Half-Cent Trust Fund") and earmarked for distribution to the governing body of such county and of each municipality within that county pursuant to the statutory created distribution formula. Such funds have been designated by law as the "local government half cent sales tax" (the "Half Cent Sales Tax"). The Half Cent Sales Tax is distributed from the Half-Cent Trust Fund on a

monthly basis to participating units of local government in accordance with Chapter 218, Part VI, Florida Statutes.

Chapter 218, Part VI, Florida Statutes, permits the local governments to pledge their shares of the Half Cent Sales Tax for the payment of principal and interest on indebtedness incurred to finance any municipality-wide capital project.

The Half Cent Sales Tax collected within a county is distributed to the cities therein in accordance with the following formula:

$$\text{City's Share} = \frac{\text{city population}}{\text{total county population} + \text{2/3 incorporated area population}}$$

For purposes of the foregoing formula, "population" is based upon the latest official State estimate of population certified prior to the beginning of the local government fiscal year. Should any unincorporated area of Volusia County become incorporated as a municipality, the share of the Half-Cent Sales Tax received by Volusia County and the City would be reduced. Should the City annex any area or should any area of the City de-annex from the City, the share of the Half-Cent Sales Tax received by the City would be respectively increased or decreased according to the foregoing formula.

To be eligible to participate in distributions from the Half-Cent Trust Fund, the City must comply with certain requirements set forth in Section 218.23, Florida Statutes, as required by Section 218.63, Florida Statutes. Otherwise, the City will not be entitled to any Half-Cent Trust Fund distribution for twelve (12) months following a "determination of noncompliance" by the State Department of Revenue. These requirements include requirements concerning the reporting and auditing of its finances, the levying of ad valorem taxes or receipt of other revenue sources, certifying certain requirements pertaining to employment and compensation of law enforcement officers, the employment of firefighters, the auditing of certain dependent special districts of the City, and the method of fixing millage rates for the levying of ad valorem taxes. The City has continuously maintained eligibility to receive the Half-Cent Sales Tax since the enactment of the Half-Cent Sales Tax Act in 1982.

Although Chapter 218, Part VI, does not impose any limitation on the number of years during which the City can receive distributions of the Half Cent Sales Tax from the Half-Cent Trust Fund, there may be amendments to Chapter 218, Part VI, in subsequent years imposing additional requirements of eligibility for cities and counties participating in the Half-Cent Trust Fund.

As of October 1, 2001, the Half-Cent Trust Fund began receiving a portion of certain taxes imposed by the State on the sales of communication services (the "State CST Revenues") pursuant to Chapter 202, Florida Statutes (the "CSTA"). Pursuant to the CSTA, the State is authorized to levy and collect a sales tax on every person who engages in the business of selling communications services at retail in the State, subject to certain exceptions and dealer allowances as set forth in Chapter 202, Florida Statutes. Accordingly, moneys distributed from the Half-Cent Trust Fund now consist of funds derived from both Half-Cent Sales Tax proceeds and State CST Revenues required to be deposited into the Half-Cent Trust Fund. The amount of State CST Revenues deposited into the Half-Cent Trust Fund is subject to change based on changes to the CSTA and changes in population, and it is not unusual for the distribution formulas in Sections 212.20(6)(d) or 218.62, Florida Statutes, to be revised from time to time.

The State Legislature passed HB 7061 and SB 50 ("HB 7061") during its 2021 session that went into effect on July 1, 2021. Among other things, HB 7061 implemented new, extended, or expanded sales tax exemptions including for: sales tax credits for contributions to certain eligible charitable organizations, a ten-day "back to school" holiday in late July and early August for clothing,

footwear, school supplies and computers; a ten-day "disaster preparedness" holiday in late May and early June for sales of specified items related to disaster preparedness, a seven-day "Freedom Week" holiday in the beginning of July for sales of certain admissions and recreational items and supplies, changes that allow businesses to pay sales tax on behalf of their customers in certain circumstances, a five year extension of the deadline for new data center tax-exemption applications and a sales tax exemption for certain items used in independent living. Additionally, HB 7061 requires out-of-state online retailers with no presence within the State who expect to make over $100,000 in remote/online sales to collect and remit the State's 6% sales tax on such online sales of taxable items. The City has not seen a material decrease in its sales tax revenues as a result of HB 7061 since it went into effect, and the City does not expect HB 7061 will have a material adverse impact on its ability to pay debt service on the Series 2025 Bonds.

The amount of Local Government Half-Cent Sales Tax received by the City is subject to increase or decrease due to (i) increases or decreases in the dollar volume of taxable sales within the County, (ii) legislative changes relating to the overall sales tax, which may include changes in the scope of taxable sales, changes in the tax rate and changed in the amount of sales tax revenue deposited into the Half-Cent Trust Fund, (iii) changes in the relative population of the City, which affect the percentage of Local Government Half-Cent Sales Tax received by the City, and (iv) other factors which may be beyond the control of the City or the Holders of the Series 2025 Bonds, including but not limited to the potential for increased use of electronic commerce and other internet-related sales activity that could have a material adverse impact upon the amount of sales tax collected by the State of Florida and then distributed to the City.

State Revenue Sharing

A portion of certain taxes levied and collected by the State is shared with local governments under provisions of Chapter 218.215, Florida Statutes, from amounts deposited by the State into a fund held by the State referred to as the Revenue Sharing Trust Fund for Municipalities ("State Revenue Sharing Trust Fund for Municipalities"). The amount deposited by the FDOR into the State Revenue Sharing Trust Fund for Municipalities is [1.3653]% of available sales and use tax collections after certain required distributions, and the net collections from the one-cent municipal fuel tax.

The amount of the State Revenue Sharing Trust Fund for Municipalities distributed to any one municipality is based on an apportionment factor using a formula consisting of three equally weighted factors: (i) adjusted municipal population; (ii) derived municipal sales tax collections; and (iii) a municipality's relative ability to raise revenue, all as more fully described in Section 218.245, Florida Statutes.

The following are sources of revenues that are deposited into the State Revenue Sharing Trust Fund for Municipalities:

Sales Tax Revenues. Prior to July 1, 2000, a state tax was levied on cigarette packages at varying rates, depending upon the length and number of cigarettes in a package and, pursuant to Section 210.20(2)(a), Florida Statutes, certain amounts derived from such cigarette taxes were deposited to the Revenue Sharing Trust Fund for Municipalities after deducting therefrom certain charges for administration and collection. Effective July 1, 2000, the cigarette tax revenues were eliminated from distribution to the Revenue Sharing Trust Fund for Municipalities and replaced with sales and use tax proceeds. As of January 1, 2014, alternative fuel fees are no longer deposited into the Revenue Sharing Trust Fund for Municipalities. Currently, [_____]% of the available proceeds of the sales and use tax imposed pursuant to Chapter 212, Florida Statutes, is transferred

monthly to the Revenue Sharing Trust Fund for Municipalities after certain other transfers have been made and certain charges for administration and collection have been deducted therefrom.

Municipal Fuel Tax. Funds derived from the municipal fuel tax on motor fuel that comprise a portion of the moneys deposited into the Revenue Sharing Trust Fund for Municipalities may only be used to pay debt service allocable to transportation-related expenditures, including transportation facilities and road and street rights-of-way; construction, reconstruction, and maintenance of roads, streets, bicycle paths, and pedestrian pathways; adjustment of city-owned utilities as required by road and street construction; and construction, reconstruction, transportation-related public safety activities, maintenance, and operation of transportation facilities. **The municipal fuel tax portion of the distribution is only available to pay debt service on the portion of the Series 2025 Bonds allocable to eligible portions, if any, of the 2025 Project.** The portion attributable to the municipal fuel tax varies annually but over the past several years has not exceeded 23% of the total State Revenue Sharing.

To be eligible for State Revenue Sharing funds beyond the minimum entitlement (defined as the amount necessary to meet obligations to which the City has pledged amounts received from the State Revenue Sharing Trust Fund for Municipalities), a local government must have satisfied the Eligibility Requirements. If the City fails to comply with the Eligibility Requirements, the FDOR may utilize the best information available to it, if such information is available, or take any necessary action including disqualification, either partial or entire, and the City shall further waive any right to challenge the determination of the FDOR as to its distribution, if any. No unit of local government which was eligible to participate in revenue sharing in the 3 years prior to initially participating in the Half-Cent Sales Tax shall be ineligible to participate in revenue sharing solely due to a millage or utility tax reduction afforded by the Half-Cent Sales Tax.

The City has complied with all requirements to be eligible to receive State Revenue Sharing funds beyond the minimum entitlement during the Fiscal Year ended September 30, 2024 and plans to take all actions to remain eligible to receive State Revenue Sharing funds beyond the minimum entitlement during the Fiscal Year ended September 30, 2024 and thereafter.

Licenses and Permits. These are revenues derived from the issuance of local professional, occupational, and other licenses, including amounts received under a franchise fee agreement relating to natural gas services provided within the City.

Charges for Services. All revenues resulting from a local unit's charges for services are reflected in this category and include those charges received from private individuals or other governmental units. The following functional areas classify such charges:

- General government — document reproduction fees, sales of maps & publications
- Public safety — fees for police and fire protection services
- Physical environment — charges including cemetery fees
- Planning and zoning — fees for zoning changes and planning reviews
- Indirect services — fees associated with services provided to City Proprietary Funds
- Transportation and parking — including parking fees
- Recreation and culture — fees for special events, and parks and recreation activities such as athletics programs and swimming pool usage
- Other — fees for services not specifically mentioned above

Fines and Forfeitures. Fines and forfeitures reflect those penalties and fines imposed for the Council of statutory offenses, violation of lawful administrative rules and regulations, and for neglect of official duty. Forfeitures include revenues resulting from parking and court fines as well as proceeds from the sale of contraband property seized by law enforcement agencies.

Miscellaneous Non-Ad Valorem Revenues. This category includes a variety of revenues and transfers from other funds, including:

- Interest earnings
- Gains (or losses) on sale of investments
- Rents and royalties
- Disposition of fixed assets
- Sales of surplus materials and scrap
- Contributions from private sources

Interfund Transfers. The City owns and operates a water and sewer system (the "Water and Sewer System"). The Water and Sewer System is treated as an enterprise fund of the City.

The City makes an annual transfer from the water and sewer enterprise fund to the general fund based on the mileage rate times the last audited value of the Water and Sewer fund capital assets excluding equipment and construction in progress. For FY2024, the Water and Sewer Fund transferred $[_____] to the General Fund.

The transfer to the General Fund from the Water and Sewer System may be made only to the extent such monies are not necessary to pay debt service on the outstanding bonds and subordinated debt or to make other necessary transfers under the bond resolution of the Water and Sewer System, including but not limited to the cost of operation and maintenance of the Water and Sewer System. The Council can modify the transfer formula from time to time.

Historical Non-Ad Valorem Revenues

The following table shows the historical receipt by the City of significant sources of certain Non-Ad Valorem Revenues accounted for in the City's General Fund for the five Fiscal Years ended September 30, 2020 to September 30, 2024. Except as described above, the foregoing categories of Non-Ad Valorem Revenues are legally available to pay debt service on the Series 2025 Bonds. The City receives other non-ad valorem revenues which are not legally available to pay debt service on the Bonds:

CITY OF PORT ORANGE, FLORIDA
HISTORICAL LEGALLY AVAILABLE NON-AD VALOREM REVENUES

	Fiscal Year Ended September 30,				
Revenues	**2020**	**2021**	**2022**	**2023**	**2024**
Taxes:					
Local Business Tax					
Public Service Taxes					
Communications Services Tax					
Licenses and Permits:					
Intergovernmental:					
State Revenue Sharing					
Half-Cent Sales Tax					
County 8% Utility Tax					
Other Intergovernmental Revenue					
Local Option Sales Tax					
Charges for Services:					
General Government					
Public Safety					
Physical Environment					
Transportation					
Recreation					
Court Ordered Fines and Forfeitures					
Investments					
Miscellaneous					
Operating Transfers					
Total Sources of Legally Available Non-Ad Valorem Revenues	**$66,029,000**	**$65,647,000**	**$69,577,000**	**$74,099,000**	**$83,895,000**

Source: Finance Department, City of Port Orange, Florida (amounts rounded to thousands)

While the table above is not intended to represent that revenues of the City will necessarily be available to pay debt service on the Series 2025 Bonds, it is an indication of the relative amounts of legally available Non-Ad Valorem Revenues of the City which may be available for the payment of principal of and interest on the Series 2025 Bonds. The ability of the City to appropriate Non-Ad Valorem Revenues in sufficient amounts to pay the principal of and the interest on the Series 2025 Bonds is subject to a variety of factors, including the City's satisfaction of funding requirements for obligations having an express lien on or pledge of such revenues and after satisfaction of funding requirements for essential governmental services of the City. No representation is being made by the City that any particular non-ad valorem revenue source will be available in future years, or if available, will be budgeted to pay debt service on the Series 2025 Bonds.

Continued consistent receipt of non-ad valorem revenues is dependent upon a variety of factors. The amounts and availability of any of the non-ad valorem revenues to the City are also subject to change, including reduction or elimination by change of State law or changes in the facts or circumstances according to which certain of the non-ad valorem revenues are allocated. In addition, the amount of certain of the non-ad valorem revenues collected by the City is directly related to the general economy of the City. Accordingly, adverse economic conditions could have a material adverse effect on the amount of non-ad valorem revenues collected by the City. The City may also specifically pledge certain of the non-ad valorem revenues or covenant to budget and appropriate legally available non-ad valorem revenues of the City to future obligations that it issues. In the case of a specific pledge, such non-ad valorem revenues would be required to be applied to such obligations prior to paying the principal of and interest on the Series 2025 Bonds. **Municipal fuel tax revenues distributed to the City are only available to pay debt service on the Series 2025 Bonds allocable to eligible portions, if any, of the 2025 Project.**

The following table sets forth the General Fund revenues and expenditures of the City for the five fiscal years ended September 30, 2020 to September 30, 2024. Many of these expenditures are required to provide essential governmental services.

CITY OF PORT ORANGE, FLORIDA

STATEMENT OF REVENUES, EXPENDITURES, AND CHANGES IN FUND BALANCES

(Amounts shown in thousands)

	Fiscal Years Ended September 30,				
	2020	**2021**	**2022**	**2023**	**2024**
REVENUES					
Taxes					
Permits, Fees and Special Assessments					
Intergovernmental Revenues					
Charges for Services					
Fines and Forfeitures					
Investment Income					
Miscellaneous Revenues					
Total Revenues					
EXPENDITURES					
Current:					
General Government					
Public Safety					
Transportation					
Economic Environment					
Culture/Recreation					
Debt Service:					
Principal Retirement					
Professional Fees					
Interest and Fiscal Charges					
Capital Outlay					
Excess (Deficiency) of Revenues Over (Under) Expenditures					
OTHER FINANCING SOURCES, (USES)					
Transfers In					
Transfers (Out)					
Proceeds from Sale of Capital Assets					
Issuance of Capital Lease					

Total Other Financing Sources (Uses)

Net Change in Fund Balances

Fund Balances (Deficits) - Beginning, Restated

Fund Balances (Deficits) - Ending

Source: Finance Department, City of Port Orange, Florida (amounts rounded to thousands).

Outstanding Debt Payable from Non-Ad Valorem Revenues

The City has previously issued its Stormwater Utility Revenue Bonds, Series 2005 and its Capital Improvement Refunding Revenue Bonds, Series 2014 (collectively, the "Refunded Bonds") payable from portions of its non-ad valorem revenues. As of September 30, 2024, the aggregate principal amount of such debt outstanding was $[_____]. Upon the issuance of the Series 2025 Bonds, the City shall apply $[_____] of the proceeds of the Series 2025 Bonds to redeem the Refunded Bonds.

The following table represents current debt service on debt payable from or secured by portions of the Non-Ad Valorem Revenues ("Non-Self-Supporting Revenue Debt") of the City:

PENSION PLANS AND OTHER POST-EMPLOYMENT BENEFITS [UPDATE]

The City maintains three separate single-employer, defined benefit pension plans. The City of Port Orange Fire and Rescue Pension Fund (the "Fire Plan") covers all of the City's fire and rescue personnel; the City of Port Orange Police Pension Fund (the "Police Plan") covers all of the City's police officers; and the City of Port Orange General Employees' Defined Benefit Pension Fund (the "General Employees Plan") covers other general employees of the City. These plans contain the assets, liabilities and net assets of each respective plan. The City also has a single employer post-employment benefits plan for retired employees (the "OPEB Plan").

Stand-alone financial reports exist for the General Employees Plan and the Police Plan, but the Fire Plan and the OPEB do not issue stand-alone financial reports and are not included in any other retirement system's or entity's financial report.

Eligible employees of the Fire Plan, Police Plan and General Employee Plan consist of full time state certified firefighters and/or paramedics, full-time sworn police officers, and other general employees, respectively, of the City.

All specifics of various funding methods and determination of benefits are outlined in Chapters 175, 185 and 112 of the Florida Statutes. These statutes provide, in general, that funds are to be accumulated from employee contributions, City contributions, State appropriations (Police Plan and Fire Plan only), and investment earnings from accumulated funds. The statutes also provide that should the accumulated funds at any time be insufficient to meet and pay the benefits due, the City shall supplement the funds by an appropriation from current funds or from any revenues which may be lawfully used for said purposes in an amount sufficient to make up the deficiency.

The following chart summarizes the City's unfunded actuarial accrued liability and funded ratio of the Fire Plan, Police Plan and General Employee Plan as of fiscal year end 2021 through 2023. For an explanation of such terms and the calculation thereof, see Note 8 to the City's Financial Statements attached as APPENDIX B.

	Police Plan		Fire Plan		General Employees Plan	
Valuation Date (October 1)	Unfunded Accrued Actuarial Liability	Funded Percent	Unfunded Accrued Actuarial Liability	Funded Percent	Unfunded Accrued Actuarial Liability	Funded Percent
2024	$8,636,162	88.64%	$15,145,891	76.05%	$4,831,723	88.93%
2023						
2022						

Source: City of Port Orange, Florida, Annual Comprehensive Financial Reports for Fiscal Years ending September 30, 2022, 2023 and 2024.

Additional information relating to the City's pension and post-employment benefits plans, including the funding status thereof, is presented in APPENDIX B, the Annual Comprehensive Financial Report of the City for the Fiscal Year ended September 30, 2024, in Notes 13 and 14 thereof.

ADDITIONAL RISK FACTORS

Prospective investors should be aware of the following additional risk factors, which, if realized to a sufficient degree, could delay or prevent complete payment of the principal of and interest on the Series

2025 Bonds. The information appearing under this caption does not purport to summarize all of the risks that may be associated with purchasing or owning the Series 2025 Bonds and prospective purchasers are advised to read this Official Statement in its entirety for a more complete description of investment considerations relating to the Series 2025 Bonds.

Natural Disasters and Climate Change

The State is naturally susceptible to the effects of extreme weather events and natural disasters including floods, droughts and hurricanes which could result in negative economic impacts on communities such as the City. Such effects can be exacerbated by change in climate. The occurrence of such extreme weather events could damage the local infrastructure that provides essential services to the City. The economic impacts resulting from such extreme weather events could include a loss of property values, a decline in revenue base, and escalated recovery costs. No assurance can be given as to whether future extreme weather events will occur that could materially impair the financial condition of the City.

[The City leverages resources through a hybrid approach to emergency management with an integrated emergency management plan where the City supports the Count, and the County supports the City during times of crisis. Through continuous monitoring and improvements, and thanks to support from millions in grant dollars, the City is investing in stormwater infrastructure to reduce flood risks for property owners from storm events.] [UPDATE]

Cyber Security

The City, like many other governmental entities, relies on a technology environment to conduct its operations. As such, it may face multiple cyber security threats including but not limited to hacking, viruses, malware and other attacks on computers, other sensitive digital systems, and networks. Increasingly, entities in every sector are being targeted by cyberattacks seeking to obtain confidential data or disrupt critical services. A rapidly changing cyber risk landscape may introduce new vulnerabilities that attackers/hackers can exploit in attempts to effect breaches or service disruptions. Employee error and/or malfeasance may also contribute to data loss or other system disruptions. Any such breach could compromise networks and the confidentiality, integrity and availability of systems and the information stored there.

[The City utilizes cutting edge tools to detect, prevent, monitor and secure technology infrastructure. In addition, the City follows best practices in implementing a comprehensive disaster recovery plan to reduce or eliminate impact from adverse events. The City has contracted with third-party experts to provide a security assessment and participates in independent testing annually. The City has [developed and fully implemented multi-factor authentication] and has developed policies to address: [patch management, acceptable use, anti-virus, user credentials and system access, critical Systems vulnerability assessments, physical access control, remote Access & incident response]. [UPDATE]

[The City has cyber security insurance which covers a range of services necessary if the City experienced a breach ($[_____] coverage per incident). To date, the City has never had a breach. In addition, the City provides extensive training to employees and customizes targeted testing based on user performance. IT employees have relevant security training and certifications. However, there can be no assurance that any security and operational control measures implemented by the City will be completely successful to guard against and prevent cyber threats and attacks. The result of any such attack could impact

operations and/or digital networks and the costs of remedying any such damage could be significant.] [UPDATE]

[Pandemic or Other Disease Outbreak

The City's financial results could be harmed by a national or localized outbreak of a highly contagious, epidemic or pandemic disease. Specifically, the outbreak of the highly contagious COVID-19 pandemic in the United States in March 2020 generally had a negative financial impact on local, state and national economies around the globe, including initially significantly increased unemployment in certain sectors including especially travel, hospitality and restaurants. This led to quarantine, remote work and other "social distancing" measures throughout the United States. While many of the effects of COVID-19 were temporary, it has altered the behavior of businesses and people in a manner resulting in changes in migratory trends and negative impacts on global and local economies, including supply chain issues and inflation. There can be no assurances that another outbreak of a highly contagious disease will not have negative impacts on the City and its finances, or on the collection of ad valorem revenues in the future. See "AD VALOREM TAXATION" herein.] [UPDATE]

ADDITIONAL NON-AD VALOREM DEBT

The City may issue bonds or other debt obligations payable from or secured by a covenant to budget and appropriate in each year from its legally available Non-Ad Valorem Revenues or secured by a lien on or payable from specific revenues, including components of the City's legally available Non-Ad Valorem Revenues (other than the Pledged Funds). The Bond Resolution does not impose limitations on the City with respect to the issuance of such other debt. Certain of the agreements relating to outstanding debt of the City secured by a covenant to budget and appropriate contain limitations on the City with respect to the issuance of additional debt, but such agreements are not for the benefit of the holders of the Series 2025 Bonds and may be revised or terminated by agreement between the City and the holders of such outstanding debt.

CITY OF PORT ORANGE, FLORIDA

Background

The City is one of 16 incorporated municipalities in Volusia County, Florida. The City is located in eastern Volusia County on the Atlantic Coast, immediately south of the City of Daytona Beach, 100 miles south of the City of Jacksonville, 50 miles northeast of the City of Orlando, and approximately 45 miles north of Cape Canaveral and the City of Titusville. The 2024 population of the City was approximately [_____] according to the Bureau of Economic and Business Research at the University of Florida. For additional information regarding the City, see APPENDIX A – "GENERAL INFORMATION PERTAINING TO THE CITY OF PORT ORANGE, FLORIDA AND VOLUSIA COUNTY, FLORIDA" hereto.

Municipal Government

The City is served by a Council-Manager form of government with an elected Mayor and four Council Members. The City Council is the principal legislative and governing body of the City, as provided by the Florida Constitution. The Mayor and Council Members are elected by the voters for staggered terms of four years each. The present Council Members and the dates on which their terms expire are as follows:

Council Members	Term Expires
Scott Stiltner, Mayor	December 2028
Tracy Grubbs, Vice Mayor	December 2026
Jonathan Foley	December 2026
Lance Green	December 2026
Shawn Goepfert	December 2028

No action of the City Council is binding unless adopted by the affirmative vote of three or more Council Members. Certain actions, such as authorizing the incurrence of debt, require an affirmative vote of four or more Council Members.

Administration

The City Manager is employed by the City Council and serves as the chief administrative officer of the City. The City Manager oversees the day-to-day operations of those departments and activities under the City Council, makes policy recommendations to the City Council and performs other duties assigned to him by the City Council.

The Finance Director serves as the chief financial officer of the City. The Finance Director prepares the annual budget for approval by the City Council, and recommends debt issuance or other borrowing plans when necessary. She prepares the five-year capital improvement program as outlined in the City's adopted Comprehensive Plan, and recommends funding resources necessary to implement such program.

The City Manager is assisted by an Assistant City Manager. The Finance Director also serves as the chief financial officer of the City.

Biographies of the key City administrative personnel are as follows:

Wayne Clark has held the position of City Manager of Port Orange, Florida, since [_____]. As the Chief Executive Officer of the city, he is responsible for day-to-day operations of the city, preparation and execution of the city budget, and working with city council to ensure the needs of the citizens are met with excellent service. Prior to joining the city he was

[_____]. He holds a [_____] from [_____] and a [_____] from [_____].

Robin Fenwick, MMC has served as the Assistant City Manager since [_____] and also has served as the City Clerk since [_____]. She holds a [_____] from [_____] and a [_____] from [_____] and has over [__] years of experience in local government administration.

Mark E. Simpson, CPA. has served as the Finance Director of the City since March 31, 2025. Mr. Simpson has more than thirty years of experience in public and government finance, having also served as the Financial Services Director for the City of St. Augustine Florida and the Chief Financial Officer for the St. John's County Sherriff's Office. He is licensed as a Certified Public Accountant in Florida and holds the designation of Certified Public Finance Officer from the Government Finance Officers Association. The Finance Director earned a Bachelor's of Science in Accounting from the University of Florida and a Masters of Business Administration from University of North Florida.

Budgetary Process

The City is required by law to formulate and annually adopt a budget for all departments and activities and to hold required public hearings. On or before the first day of August each year, the City Manager submits the proposed budget to the Mayor and City Council. The budget shall provide a complete financial plan of all City funds and activities for the ensuing fiscal year. One or more public hearings are then held, and the proposed budget is adopted not later than September 30.

Florida laws require a balanced budget for municipalities and prohibits the governing body of any municipality from making appropriations in any one fiscal year which exceed the revenues available in such fiscal year.

Description of Financial Practices and Financial Statements

The financial statements of the City are prepared in conformity with Generally Accepted Accounting Principles. The City uses funds and accounts groups to report on its financial position and the results of its operations. A summary of significant accounting policies of the City is contained in the notes to the City's financial statements, which are included in APPENDIX B hereto.

The City has implemented GASB Statement No. 68, *Accounting and Financial Reporting for Pensions* ("GASB 68") for its FY2024 financial statements. GASB 68 requires local governmental employers with defined benefit pension plans to report the employers' proportionate share of the net pension liabilities and related pension amounts of the defined benefit pension plans. Implementing GASB 68 resulted in a decrease in the beginning net position/fund balance of the City due to the inclusion of City's combined proportionate share of the net pension liabilities. See Footnote ([___]) to the Annual Comprehensive Financial Report of the City for the Fiscal Year ended September 30, 2024, included herein as APPENDIX B.

ESTIMATED SOURCES AND USES OF FUNDS

The following table sets forth the estimated sources and uses of funds for the Series 2025 Bonds.

SOURCES:	Series 2025
Par Amount of Bonds	$
Plus/Less Net Original Issuer Premium/Discount	$
TOTAL SOURCES	$
USES:	
Escrow Deposit to redeem Refunded Bonds	$
Deposit to the Series 2025 Project Fund	$
Costs of Issuance[(1)]	$
TOTAL USES	$

(1) Includes, without limitation, Underwriter's discount, legal, accounting and financial advisory fees, printing costs and other costs associated with the issuance of the Series 2025 Bonds.

DEBT SERVICE REQUIREMENTS

The following table shows the scheduled annual principal, interest, and debt service requirements for the Series 2025 Bonds:

	Series 2025 Bonds		
Bond Year Ending October 1	Principal	Interest	Annual Debt Service
2025			
2026			
2027			
2028			
2029			
2030			
2031			
2032			
2033			
2034			
2035			
2036			
2037			
2038			
2039			
2040			
2041			
2042			
2043			
2044			
2045			
2046			
2047			
2048			
2049			
2050			
2051			
2052			
2053			
2054			
TOTAL			

_____

Totals may not add due to rounding.

FINANCIAL STATEMENTS

Included in APPENDIX B is the Annual Comprehensive Financial Report of the City for the Fiscal Year ended September 30, 2024. The financial statements of the City as of September 30, 2024 have been audited by James Moore & Co. P.L. as stated in their report also appearing in APPENDIX B. James Moore & Co. P.L. has not participated in the preparation of this Official Statement and has not performed any additional procedures relating to the information herein. The audited financial statements of the City have been included herein as a publicly available document. Consent of the Auditor was not requested, and the Auditor was not requested nor did it perform any procedures with respect to the preparation of the Official Statement or the information presented herein.

The Series 2025 Bonds are payable solely from the Pledged Funds as described herein. The general purpose financial statements included in APPENDIX B are presented for general information purposes only.

INVESTMENT POLICY

The City's current investment policy was revised by the City Council in [2016] and applies to all cash and investments held or controlled by the City with the exception of pension funds, funds held by state agencies, funds related to the issuance of debt where there are existing policies or indentures in effect, and future revenues subject to other conflicting statutory investment requirements. The foremost objective of the investment policy is safety of principal; additional objectives are the maintenance of liquidity and the rate of return.

The City Manager is charged with providing oversight and direction in regard to the management of the investment program while daily management responsibility rests with the Financial Director. The Finance Director is to provide the City Manager with quarterly investment reports and the City Council with an annual report on all invested funds and performance. The City has established an Investment Committee for the purpose of formulating alternative investment strategies and short-range guidance within the guidelines set forth in the investment policy and monitoring performance. The Investment Committee consists of the City Manager, Finance Director, Accounting and Budget Manager and a City Council member and other members designated from time to time.

Investments of current operating funds are to have maturities of no longer than twenty four (24) months. Investments of bond reserves, construction funds and other non-operating funds are to have maturities of no longer than ten (10) years, except to meet specific construction draw schedules or other predetermined operating, capital needs or to satisfy debt obligations, but in no event longer than 30 years. Investment in any derivative products or the use of reverse repurchase agreements requires specific City Council approval prior to their use.

The investment policy was adopted by a resolution of the City Council. The Finance Director, Accounting and Budget Manager and the Investment Committee review the investment policy annually and the City Council is required to approve any modification.

Additional information relating to the City's investment policy and the investment of its funds is set forth in APPENDIX B, the Annual Comprehensive Financial Report of the City for the Fiscal Year ended September 30, 2024, under footnotes (4) and (14).]

LITIGATION

The City is a defendant from time to time in various lawsuits. It is the opinion of the City Attorney that none of the actions presently pending will have a material effect upon the finances of the City or its levy and collect ad valorem taxes for payment of the Series 2025 Bonds. There is no pending or, to the knowledge of the City, threatened, litigation against the City which in any way questions or affects the validity of the Series 2025 Bonds, or any proceedings or transactions relating to their issuance, sale, delivery or payment.

TAX MATTERS

In the opinion of Akerman LLP, Bond Counsel, under existing laws, regulations, published rulings and judicial decisions, interest on the Series 2025 Bonds is excludable from gross income of the holders thereof for federal income tax purposes under Section 103(a) of the Internal Revenue Code of 1986, as amended (the "Code") and is not an item of tax preference for purposes of the federal alternative minimum tax; however, such interest may be included in the "adjusted financial statement income" of certain corporations that are subject to the alternative minimum tax under Section 55 of the Code. An opinion to those effects will be included in the legal opinion of Bond Counsel.

The Code prescribes a number of qualifications and conditions for the interest on state and local government obligations to be and remain excluded from gross income for federal income tax purposes, some of which, including provisions for potential payments by the City to the federal government, require future or continued compliance after issuance of the Series 2025 Bonds in order for the interest to be and to continue to be so excluded from the date of issuance of the Series 2025 Bonds. The City has made certain representations and certifications, and has covenanted to comply with the applicable provisions of the Code including those which require the City to take or omit to take certain actions after issuance of the Series 2025 Bonds. The opinion of Bond Counsel described above will assume the accuracy of the City's representations and certifications and will assume the compliance by the City with the provisions of the Code described above. Bond Counsel will not independently verify the accuracy of the certifications and representations made by the City. No opinion is expressed by Bond Counsel with respect to the tax-exempt status of the interest on the Series 2025 Bonds in the event of noncompliance with provisions of the Code which require the City to take or omit to take certain actions after the issuance of the Series 2025 Bonds. The failure of the City to comply with such provisions may cause the interest on the Series 2025 Bonds to become taxable retroactive to the date of issuance of the Series 2025 Bonds. The City has covenanted to comply with such requirements.

Except as described above, Bond Counsel has not, and will not, express an opinion regarding the federal income tax consequences resulting from the ownership of, receipt or accrual of interest on, or disposition of the Series 2025 Bonds. Prospective purchasers should be aware that ownership of the Series 2025 Bonds may result in other collateral federal tax consequences. The applicability and extent of these or other tax consequences will depend upon the tax status or other tax attributes of the owners of the Series 2025 Bonds. Prospective purchasers of the Series 2025 Bonds, particularly purchasers that are corporations (including S corporations and foreign corporations operating branches in the United States of America), property or casualty insurance companies, banks, thrifts or other financial institutions, certain recipients of social security or railroad retirement benefits, taxpayers entitled to claim the earned income credit, taxpayers entitled to claim the refundable credit in Section 36B of the Code for coverage under a qualified health plan or taxpayers who may be deemed to have incurred or continued indebtedness to purchase or carry tax-exempt obligations, should consult their own tax advisors with respect to such tax consequences. In addition, prospective purchasers of the Series 2025 Bonds at other than their original issue or the respective prices indicated on the front cover should consult their on tax advisors as to other tax consequences.

The opinion of Bond Counsel does not cover the treatment for federal income tax purposes of any monies received in payment of or in respect to the Series 2025 Bonds subsequent to the occurrence of an Event of Default under the Bond Resolution.

Original Issue Discount

The Series 2025 Bonds maturing _____ 1 in the years _____, inclusive (collectively, the "Discount Bonds") are being offered and sold to the public at an original issue discount ("OID"). OID is the excess of the stated redemption price at maturity (the face amount) over the "issue price" of such Series 2025 Bonds. The issue price of a Discount Bond is the initial offering price to the public (other than to bond houses, brokers or similar persons acting in the capacity of underwriters or wholesalers) at which a substantial amount of the Discount Bond of the same maturity are sold pursuant to that offering. For federal income tax purposes, OID accrues actuarially to the holder of a Discount Bond over the period to maturity based on the constant interest rate method. With respect to an initial purchaser of a Discount Bond at its issue price, the portion of OID that accrues during the period the purchaser owns the Discount Bond (i) is interest excludable from the purchaser's gross income for federal income tax purposes to the same extent and subject to the same considerations discussed above as other interest on the Series 2025 Bonds, and (ii) is added to the purchaser's tax basis for purposes of determining gain or loss on the maturity, redemption, prior sale or other disposition of that Discount Bond. A purchaser of a Discount Bond at its issue price in the initial public offering who holds that Discount Bond to maturity will realize no gain or loss upon the retirement of that Bond. Registered owners of Discount Bonds should consult their own tax advisers as to the determination for federal income tax purposes of the amount of OID properly accruable each year with respect to the Discount Bond, and as to other federal tax consequences and any state and local tax aspects of owning Series 2025 Bonds.

Original Issue Premium

The Series 2025 Bonds maturing _____ 1, in the years _____, inclusive (collectively, the "Premium Bonds") were offered and sold to the public at a price in excess of their stated redemption price (the principal amount) at maturity. That excess constitutes bond premium. For federal income tax purposes, bond premium is amortized over the period to maturity of the Premium Bonds, based on the yield to maturity of that Premium Bond (or, in the case of a Premium Bond callable prior to maturity, the amortization period and yield may be required to be determined on the basis of an earlier call date that results in the lowest yield on that Premium Bond), compounded semiannually. No portion of the bond premium is deductible by the owner of the Premium Bonds. For purposes of determining the owner's gain or loss on the sale, redemption at maturity or other disposition of a Premium Bond, the owner's tax basis in the Premium Bond is reduced by the amount of bond premium that accrues during the period of ownership. As a result, an owner may realize taxable gain for federal income tax purposes upon the sale or other disposition of a Premium Bond for an amount equal to or less than the amount paid by that owner for the Premium Bond. A purchaser of a Premium Bond at its issue price in the initial public offering who holds that Premium Bond to maturity (or, in the case of a callable Premium Bond, its earlier call date that results in the lowest yield on the Premium Bond) will realize no gain or loss upon the retirement of that Premium Bond. Owners of the Premium Bonds should consult their own tax advisors as to the determination for federal income tax purposes of the amount of bond premium properly accruable each year with respect to the Premium Bonds, and as to other federal tax consequences and any state and local tax aspects of owning Premium Bonds.

Information Reporting and Backup Withholding

Interest paid on tax-exempt bonds such as the Series 2025 Bonds is subject to information reporting to the Internal Revenue Service in a manner similar to interest paid on taxable obligations. This reporting requirement does not affect the excludability of interest on the Series 2025 Bonds from gross income for

federal income tax purposes. However, in conjunction with that information reporting requirement, the Code subjects certain non-corporate owners of Series 2025 Bonds, under certain circumstances, to "backup withholding" at the rate specified in the Code with respect to payments on the Series 2025 Bonds and proceeds from the sale of Series 2025 Bonds. Any amount so withheld would be refunded or allowed as a credit against the federal income tax of such owner of Series 2025 Bonds. This withholding generally applies if the owner of Series 2025 Bonds (i) fails to furnish the payor such owner's social security number or other taxpayer identification number ("TIN"), (ii) furnished the payor an incorrect TIN, (iii) fails to properly report interest, dividends, or other "reportable payments" as defined in the Code, or (iv) under certain circumstances, fails to provide the payor or such owner's securities broker with a certified statement, signed under penalty of perjury, that the TIN provided is correct and that such owner is not subject to backup withholding. Prospective purchasers of the Series 2025 Bonds may also wish to consult with their tax advisors with respect to the need to furnish certain taxpayer information in order to avoid backup withholding.

Florida Tax Matters

It is also the opinion of Bond Counsel that, under existing law, the Series 2025 Bonds and the interest thereon are exempt from taxation under the laws of the State of Florida, except as to estate taxes imposed by Chapter 198, Florida Statutes, as amended, and net income and franchise taxes imposed by Chapter 220, Florida Statutes, as amended.

Federal and State Tax Legislation

From time to time, there are legislative proposals in the Congress and in the states that, if enacted, could alter or amend the federal and state tax matters referred to under this heading "TAX MATTERS" or adversely affect the market value of the Series 2025 Bonds. It cannot be predicted whether or in what form any such proposal might be enacted or whether if enacted it would apply to bonds issued prior to enactment. In addition, regulatory actions are from time to time announced or proposed and litigation is threatened or commenced which, if implemented or concluded in a particular manner, could adversely affect the market value of the Series 2025 Bonds. It cannot be predicted whether any such regulatory action will be implemented, how any particular litigation or judicial action will be resolved, or whether the Series 2025 Bonds or the market value thereof would be impacted thereby. Purchasers of the Series 2025 Bonds should consult their tax advisors regarding any pending or proposed legislation, regulatory initiatives or litigation. The opinions expressed by Bond Counsel are based on existing legislation and regulations as interpreted by relevant judicial and regulatory authorities as of the date of issuance and delivery of the Series 2025 Bonds, and Bond Counsel has expressed no opinion as of any date subsequent thereto or with respect to any pending legislation, regulatory initiatives or litigation.

The above discussion was written to support the promotion and marketing of the Series 2025 Bonds and was not intended or written to be used, and cannot be used, by a taxpayer for purposes of avoiding United States federal income tax penalties that may be imposed. Each taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax advisor.

LEGAL OPINIONS

Legal matters incident to the issuance of the Series 2025 Bonds and with regard to the tax-exempt status of the interest on the Series 2025 Bonds (see "TAX MATTERS" herein) are subject to the legal opinion of Akerman LLP, whose fees and expenses for legal services as Bond Counsel will be paid by the City from a portion of the proceeds of the Series 2025 Bonds. The signed legal opinion, dated and premised on law in effect as of the date of original delivery of the Series 2025 Bonds, will be delivered to the Underwriter at the time of original delivery.

The proposed text of the legal opinion is set forth as APPENDIX D. The actual legal opinion to be delivered may vary from that text if necessary to reflect facts and law on the date of delivery. The opinion will speak only as of its date, and subsequent distribution of it by recirculation of the Official Statement or otherwise shall create no implication that Bond Counsel has reviewed or expresses any opinion concerning any of the matters referenced in the opinion subsequent to its date.

Certain legal matters incident to the issuance of the Series 2025 Bonds will be passed upon for the City by Matthew J. Jones, Esq., City Attorney.

The legal opinions to be delivered concurrently with the delivery of the Series 2025 Bonds express the professional judgment of the attorneys rendering the opinions regarding the legal issues expressly addressed therein. By rendering a legal opinion, the opinion giver does not become an insurer or guarantor of the result indicated by that expression of professional judgment, of the transaction on which the opinion is rendered, or of the future performance of parties to the transaction. Nor does the rendering of an opinion guarantee the outcome of any legal dispute that may arise out of the transaction.

ENFORCEABILITY OF REMEDIES

The remedies available to the owners of the Series 2025 Bonds upon an event of default under the Bond Resolution are in many respects dependent upon judicial actions which are often subject to discretion and delay. Under existing constitutional and statutory law and judicial decisions, including specifically the federal bankruptcy code, the remedies specified by the Bond Resolution and the Series 2025 Bonds may not be readily available or may be limited. The various legal opinions to be delivered concurrently with the delivery of the Series 2025 Bonds, including Bond Counsel's approving opinion, will be qualified, as to the enforceability of the remedies provided in the various legal instruments, by limitations imposed by bankruptcy, reorganization, insolvency or other similar laws affecting the rights of creditors enacted before or after such delivery. See "APPENDIX C — Form of Bond Resolution" attached hereto for a description of events of default and remedies

ADVISORS AND CONSULTANTS

The City has retained certain advisors and consultants in connection with the issuance of the Series 2025 Bonds. These advisors and consultants are compensated from a portion of the proceeds of the Series 2025 Bonds, identified as "Cost of Issuance" under the heading "SOURCES AND USES OF FUNDS" herein, and their compensation is, in some instances, contingent upon the issuance of the Series 2025 Bonds and the receipt of the proceeds thereof.

Financial Advisor. The City has retained Southeastern Investment Securities, L.L.C., Orlando, Florida, as financial advisor (the "Financial Advisor") in connection with the preparation of the City's plan of financing and with respect to the authorization and issuance of the Series 2025 Bonds. The Financial Advisor is not obligated to undertake and has not undertaken to make, an independent verification or to assume responsibility for the accuracy, completeness, or fairness of the information contained in the Official Statement.

Bond Counsel and Disclosure Counsel. Akerman LLP, Jacksonville, Florida, represents the City as Bond Counsel and Disclosure Counsel with respect to the issuance of the Series 2025 Bonds. As Disclosure Counsel, Akerman LLP is not obligated to undertake and has not undertaken to make, an independent verification or to assume responsibility for the accuracy, completeness, or fairness of the information contained in the Official Statement.

UNDERWRITING

Hilltop Securities Inc. (the "Underwriter") has agreed, subject to the proceeding authorizing the issuance of the Series 2025 Bonds, to purchase the Series 2025 Bonds from the City, at a price of $_____ (consisting of the $_____ par amount, plus/less net original issue discount and original issue premium of $_____ and less underwriter's discount of $_____), for the purpose of resale. The Underwriter has furnished the information in this Official Statement pertaining to the public offering price of the Series 2025 Bonds. The public offering price of the Series 2025 Bonds may be changed from time to time by the Underwriter, and the Underwriter may allow a concession from the public offering price to certain dealers. None of the Series 2025 Bonds will be delivered by the City to the Underwriter unless all of the Series 2025 Bonds are so delivered.

RATINGS

Moody's Investors Service, Inc. ("Moody's") has assigned a rating of "[___] ([_____] outlook)" to the Series 2025 Bonds. Such rating reflects only the view of Moody's. There is no assurance that such rating will continue for any given period of time or that it will not be lowered or withdrawn entirely if in the rating agency's judgment circumstances so warrant. A downward change in or withdrawal of any of such rating may have an adverse effect on the market price of the Series 2025 Bonds. An explanation of the significance of Moody's ratings can be received from Moody's at the following address: Moody's Investor Service, Inc., 250 Greenwich Street, New York, New York 10007.

DISCLOSURE MATTERS

Required by Florida Blue Sky Regulations

Florida law requires the City to make a full and fair disclosure of any bonds or other debt obligations which it has issued or guaranteed and which are or have been in default as to principal or interest at any time after December 31, 1975 (including bonds or other debt obligations for which it has served as a conduit issuer). The City is not and has not been in default as to principal of and interest on bonds or other debt obligations to which revenues of the City are pledged.

Although the City is not aware of any other default, it has not undertaken an independent review of bonds or other debt obligations for which it served only as a conduit issuer. To the extent any of such bonds or other debt obligations are in default as to the payment of principal and interest, the obligation of the City thereunder is limited solely to funds received from the party borrowing the proceeds of such bonds or other debt obligations, and the City is not obligated to pay principal of and interest on such bonds or debt obligations from any other funds of the City.

Certificate as to Official Statement

The execution and delivery of this Official Statement has been duly authorized by the City. At the time of delivery of Series 2025 Bonds to the Underwriter, the City will provide to the Underwriter a certificate (which may be included in a consolidated closing certificate of the City), signed by those City officials who signed this Official Statement, relating to the accuracy and completeness of this Official Statement and to its being a "final official statement" in the judgment of the City for the purposes of SEC Rule 15c2-12(b)(3).

Continuing Disclosure

The City has covenanted for the benefit of the Series 2025 Bondholders to provide certain financial information and operating data relating to the City and the Series 2025 Bonds in each year (the "Annual Report"), and to provide notices of the occurrence of certain enumerated events in order to assist the

Underwriter in complying with the continuing disclosure requirements of Rule 15c2-12 adopted by the SEC (the "Rule"). Such covenant will only apply so long as the Series 2025 Bonds remain outstanding. The Annual Report and any notices of enumerated events will be filed by the City with the Municipal Securities Rulemaking Board's Electronic Municipal Market Access ("EMMA") system for municipal securities disclosures as described in the proposed form of Continuing Disclosure Certificate attached hereto as APPENDIX E (the "Continuing Disclosure Certificate") to be executed by the City at the time of issuance of the Series 2025 Bonds. The City will retain Digital Assurance Certification LLC, as dissemination agent.

The specific nature of the financial information, and of the type of events which trigger a disclosure obligation, and other details of the undertaking are described in "APPENDIX E — Form of Continuing Disclosure Certificate" attached hereto. Failure of the City to comply with the provisions of the Continuing Disclosure Certificate will not constitute an event of default under the Bond Resolution. It is the position of the City that the sole and exclusive remedy of any holder of a Series 2025 Bond for enforcement of the provisions of the Continuing Disclosure Certificate will be an action of mandamus or specific performance to cause the City to comply with its obligations thereunder.

The undertakings described above may be amended or modified from time to time in accordance with the terms of the Continuing Disclosure Certificate. In addition, the City will reserve the right to terminate its obligation to provide annual financial information and notices of material events if and when the City no longer remains an obligated person with respect to the Series 2025 Bonds within the meaning of the Rule. See "APPENDIX E — Form of Continuing Disclosure Certificate."

With respect to the Series 2025 Bonds, no party other than the City is obligated to provide, nor is expected to provide, any continuing disclosure information with respect to the Rule.

Historical Compliance with Continuing Disclosure Undertakings

The City has undertaken certain continuing disclosure obligations in prior continuing disclosure certificates in connection with its outstanding debt to provide certain financial and operating information and notices to EMMA. Within the last 5 years, the City has complied in all material respects with its existing continuing disclosure undertakings.

The City staff has reviewed the requirements of all its continuing disclosure undertaking with Disclosure Counsel. The City implemented procedures for ensuring compliance with the continuing disclosure requirements, including the designation of an officer that is responsible for continuing disclosure, subject to supervision of the City's Finance Director and the City Clerk. The City is undertaking a review of procedures and actions to assist with notification of rating changes and filing timelines. The City does not anticipate that there will be future compliance failures.

ACCURACY AND COMPLETENESS OF OFFICIAL STATEMENT

The references, excerpts and summaries of all documents, resolutions and ordinances referenced herein do not purport to be complete, comprehensive and definitive and each such reference, summary or excerpt is qualified in its entirety by reference to each such document, resolution and ordinance for full and complete statements of all matters of fact relating to Series 2025 Bonds, the security for and the repayment of Series 2025 Bonds and the rights and obligations of the holders thereof and to each such statute, report or instrument.

CITY OF PORT ORANGE, FLORIDA

By: /s/
Mayor

APPENDIX A

GENERAL INFORMATION PERTAINING TO THE CITY OF PORT ORANGE, FLORIDA AND VOLUSIA COUNTY, FLORIDA

The following information regarding the City of Port Orange, Florida, and Volusia County, Florida, is included only for the purposes of supplying general background information regarding the City. The information has been compiled on behalf of the City and such compilation involved oral and written communication with the various sources indicated. The information is subject to change, although efforts have been made to update the information where practicable.

[UPDATE]

CITY OF PORT ORANGE, FLORIDA

General Description and Location

The City of Port Orange, Florida (the "City"), encompasses approximately 28.8 square miles of land area. The City was established in 1867, was incorporated as a town in 1913, and in 1925 was incorporated as a city. The City is located in eastern Volusia County, Florida (the "County") on the Atlantic coast, immediately south of the City of Daytona Beach, 100 miles south of the City of Jacksonville, 50 miles northeast of the City of Orlando, and approximately 45 miles north of the Cities of Titusville and Cape Canaveral.

The City is one of seven cities in the Halifax Area, in addition to four unincorporated communities. The Halifax Area consists of a peninsula section which consists of a long and narrow barrier strip lying between the Atlantic Ocean and the Halifax River and a mainland section which extends westward three or four miles from the Halifax River. The peninsula and mainland sections are connected by six bridges: one in Ormond Beach; four in Daytona Beach; and one at Port Orange. All bridges allow easy access to the 18-mile-long ocean beach.

VOLUSIA COUNTY, FLORIDA

Volusia County

The County is located in the eastern part of the State of Florida. It is bordered by the Atlantic Ocean to the east, Flagler and Putnam Counties to the north, Lake County to the west, and to the south by Seminole and Brevard Counties. The County lies approximately 100 miles south of Jacksonville, 119 miles northeast of Tampa, 34 miles northeast of Orlando and 231 miles from Tallahassee. The County was established in 1854 and became the 30th county in the State of Florida. In 1888, an election changed the County seat from Enterprise to Deland where it remains today.

Population

The 2024 population of Volusia County was approximately [_____] while the City of Port Orange had a population of approximately [_____] for the year 2024. The following table depicts population trends.

CITY OF PORT ORANGE, FLORIDA
AND VOLUSIA COUNTY, FLORIDA
POPULATION TRENDS 1970-2011

Fiscal Year Ended	Port Orange Population	% Change During the Period	Volusia County Population	% Change During the Period
1970	3,781	-	169,487	-
1980	18,756	17.06%	258,762	4.32%
1990	35,317	6.53	370,737	3.66
1995	39,750	2.39	405,578	1.81
2000	46,629	3.24	443,343	1.80
2010	56,402		505,050	
2015	58,656		503,851	
2016				
2017				
2018				
2019				
2020				
2021				
2022				
2023				
2024				
2025				

Source: City population data for 1970, 1980, 1990, 2000, 2010 and 2020 are from the U.S. Department of Commerce, Bureau of the Census; estimated City population data for the remaining years was provided by the City. County population data for 1970, 1980, 1990, 2000, 2010 and 2020 are from the U.S. Department of Commerce, Bureau of the Census; population data for the remaining years from Bureau of Economic and Business Research, University of Florida.

Form of Government

The City is served by a Council-Manager form of government with an elected Mayor and four (4) Council Members. The Mayor and the Council Members are elected for staggered four-year terms. The City Council is governed by the City Charter and by state and local laws and regulations. The City Council is responsible for the establishment and adoption of policy. The execution of such policy is the responsibility of the Council appointed City Manager**.**

Listed below are the current Mayor and Council Members, their term expiration dates and their principal occupations.

Council Members	Position	District	Term Expires (December)	Occupation
Scott Stiltner	Mayor		2028	City Police Officer (Retired)
Jonathan Foley	Council Member	1	2026	Entertainment
Tracy Grubbs	Vice Mayor/Council Member	2	2026	Small Business Owner
Shawn Goepfert	Council Member	3	2028	Marketing
Lance Green	Council Member	4	2026	Construction

Accounting and Budgetary Process

The City follows these procedures in establishing the budgetary data reflected in the financial statements. No later than 60 days before the end of the fiscal year, the City Manager submits to the City Council a proposed operating budget for the fiscal year commencing the following October 1. The operating budget includes proposed expenditures and the means of financing them. Public hearings are conducted to obtain taxpayer comments. Prior to October 1, the budget is legally enacted through passage of a resolution. Additionally, the City Council may make supplemental appropriations for the year up to the amount of revenues in excess of those estimated. Once or twice a year, or as needed, a formal resolution (or ordinance) is drawn up summarizing all changes made previously and any adjustments appropriated at that time.

Employee's Pension Plans

The City maintains three separate single-employer, defined benefit pension plans. The City of Port Orange Fire and Rescue Pension Fund (the "Fire Plan") covers all of the City's fire and rescue personnel; the City of Port Orange Police Pension Fund (the "Police Plan") covers all of the City's police officers; the City of Port Orange General Employees' Defined Benefit Pension Fund (the "General Employee Plan") covers all other general employees of the City. These plans contain the assets, liabilities and net assets of each respective plan. The City also has a single employer healthcare plan for retired employees, the Post Retirement Benefits Plan. These defined benefit plans do not issue stand-alone financial reports and are not included in any other retirement system's or entity's financial report.

Eligible employees of the Fire Plan, Police Plan and General Employee Plan consist of full time state certified firefighters and/or paramedics, full-time sworn police officers, and other general employees, respectively, of the City.

The General Employee Plan originated as a defined contribution plan. However, on October 1, 2003, the defined contribution plan was terminated and converted into a defined benefit plan and the General Employee Plan was closed to new members effective September 30, 2010. General employees hired on or after October 1, 2010 may participate in the ICMA-RC Money Purchase Plan and Trust for general employees (401A Defined Contribution Plan). Members participating in a bargaining unit will continue to have access to the General Employee Plan unless this option is removed through future collective bargaining processes.

All specifics of various funding methods and determination of benefits are outlined in Chapters 175, 185 and 112 of the Florida Statutes. These statutes provide, in general, that funds are to be accumulated from employee contributions, City contributions, State appropriations (Police Plan and Fire Plan only), and

investment earnings from accumulated funds. The statutes also provide that should the accumulated funds at any time be insufficient to meet and pay the benefits due, the City shall supplement the funds by an appropriation from current funds or from any revenues which may be lawfully used for said purposes in an amount sufficient to make up the deficiency.

The following chart summarizes the City's net pension liability and funded percent of the Fire Plan, Police Plan and General Employee Plan as of fiscal year ended 2023 and 2024. For an explanation of such terms and the calculation thereof, see Footnote ([__]) to the City's Financial Statements attached as APPENDIX A.

	Police Plan		Fire Plan		General Employees Plan	
Valuation Date (September 30)	Net Pension Liability	Funded Percent	Net Pension Liability	Funded Percent	Net Pension Liability	Funded Percent
2023	$	%	$	%	$	%
2024						

Dollar amounts in Millions.
Source: City of Port Orange Annual Comprehensive Financial Report

Additional information relating to the City's pension and post-retirement benefits plans, including the funding status thereof, is presented in APPENDIX B, the Annual Comprehensive Financial Report of the City for the Fiscal Year ended September 30, 2024, in footnotes ([__]), ([__]) and ([__]) thereof.

The City has been addressing unfunded liability by making payments in excess of legal requirements and expects to continue to improve the unfunded position of these plans. Nonetheless, this funding does take resources that would otherwise be available to the City for other purposes and is in excess of legal requirements; although the City currently expects to continue to improve the unfunded position, there is no assurance that the City will be able to continue the excess contribution. In addition, adverse financial market events could reduce the value of plan assets and require additional funding for the employee plans.

CITY OF PORT ORANGE, FLORIDA
PROPERTY TAX RATES – ALL OVERLAPPING GOVERNMENTS
LAST TEN FISCAL YEARS
September 30, 2024

	City of Port Orange				
FY	Operating	Debt Service	Total	School District	Volusia County
2015					
2016					
2017					
2018					
2019					
2020					
2021					
2022					
2023					
2024					

FY	Florida Inland Nav. Dist.	Volusia Hospital District	Halifax Hospital District	Ponce DeLeon Inlet and Port Authority	St. Johns River Water Management District	Mosquito Control District
2015						
2016						
2017						
2018						
2019						
2020						
2021						
2022						
2023						
2024						

Source: Volusia County Property Tax Appraiser - Report DR-403 BM
2024 Tax Rolls - Municipalities

The following table shows the total outstanding general obligation debt of the City and the ratio of such debt to the City's actual taxable property values and to the City's obligation on a per capita basis for the last ten (10) Fiscal Years.

Ratio of Net General Obligation Debt
City of Port Orange, Florida

Fiscal Year Ended September 30	Assessed Taxable Value[(1)]	Net General Bonded Debt	Assessed Net General Bonded Debt	Estimated Population[(2)]	Net General Bonded Debt Per Capita
2015	$	$	%		$
2016					
2017					
2018					
2019					
2020					
2021					
2022					
2023					
2024					

Source: (1) Volusia County Property Tax Appraiser
(2) University of Florida, Bureau of Economic and Business Research

The following table shows the general obligation direct and overlapping debt of the City, as of September 30, 2024, and the estimated percent of such debt that is applicable to the City. For more information concerning the general obligation debt of the City, see APPENDIX B – "BASIC FINANCIAL STATEMENTS OF THE CITY FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 2024."

Direct and Overlapping Debt
City of Port Orange, Florida

Governmental Unit	Debt Outstanding	Estimated Percentage Applicable to City [(1)]	City's Estimated Share of Overlapping Net Debt

Source: City of Port Orange, Florida Annual Comprehensive Financial Report for Fiscal Year Ended September 30, 2024.

(1) Percentage applicable to City was determined by taking the City's assessed taxable value and dividing it by Volusia County's assessed taxable value for tax year [20__].

PRINCIPAL EMPLOYERS
September 30, 2024
CITY OF PORT ORANGE, FLORIDA

Employer	Total Employees	Rank

Sources:

CIVILIAN LABOR FORCE SUMMARY
VOLUSIA COUNTY, FLORIDA

Calendar Year	Civilian Labor Force	Employment	Unemployment	Annual Average Percentage Unemployment
2015				
2016				
2017				
2018				
2019				
2020				
2021				
2022				
2023				
2024				

Source: Volusia County Data and Reports Page

UNEMPLOYMENT STATISTICS

	City of Port Orange					State of Florida				
	2020	2021	2022	2023	2024	2020	2021	2022	2023	2024
January	%	%	%	%	%	%	%	%	%	%
February										
March										
April										
May										
June										
July										
August										
September										
October										
November										
December										

Source: State of Florida, Department of Economic Opportunity

BUILDING PERMIT ACTIVITY
CITY OF PORT ORANGE, FLORIDA
LAST TEN YEARS

Fiscal Year Ended	Commercial Construction Applications	Additional Commercial Permitted Value	Residential Construction Applications	Additional Residential Permitted Value
2015				
2016				
2017				
2018				
2019				
2020				
2021				
2022				
2023				
2024				

Source: City of Port Orange, Florida

Tourism and Recreation

The City is located immediately south of Daytona Beach and as a result is impacted by the year-round tourism industry. The many visitors are drawn to the area due to the mild climate, desirable beaches and excellent Atlantic Ocean-front accommodations. The Intracoastal Waterway, which parallels the beach, the St. John's River and its numerous tributaries, estuaries and lakes provide boating, fishing and year-round recreation.

Central Florida now draws more than [___] million tourists annually, many of who include the County as part of a regional package of places to visit. There are 47 miles of Atlantic Ocean beaches centered on Daytona Beach. Major attractions convenient to the City include the Daytona Beach International Speedway in Daytona Beach, Walt Disney World and Universal Studios in Orlando and the Kennedy Space Center at Cape Canaveral.

Community Facilities

The City's recreation department provides various facilities for its residents, including a municipal golf course, [26] athletic fields, [18] tennis courts, [10] playgrounds, [8] boat ramps, [6] boardwalks/fishing piers, [2] adult activity centers and [2] gymnasiums. The recreation department offers a wide range of athletic programs for adults and youths. A variety of summer programs are offered for youths. Numerous fraternal and civic organizations, as well as city departments, utilize the activities center and civic center for meetings, classes and special events and other community activities. The City currently operates [28] parks and facilities with more than [485] acres of park land.

Healthcare Facilities

Halifax Health Medical Center of Port Orange is an [__]-bed community hospital that features a round-the-clock Emergency Department, four operating rooms and private patient rooms. The Emergency Department is open 24 hours a day, seven days a week, with a total of [__] beds. [__] of the [__] beds are designated as "Fast Track" beds for patients with minor injuries and illnesses. Highly trained emergency physicians and nurses treat most emergencies on-site.

Transportation Facilities

The Halifax Area is served by an adequate highway system of main north arteries, including U.S. Highway 1 and State Highway A1A, which joins U.S. Highway 1 at Port Orange via the Port Orange Bridge, and U.S. Highway 92, which runs west across the state to Tampa. Interstate Highway 4 provides a limited access route from the Halifax area to the Orlando and Tampa-St. Petersburg areas and connects to other north-south expressways. Interstate Highway 95 provides rapid highway transportation along the entire Atlantic Coast.

Transportation by water is available through the Intracoastal Waterway, which is used by private yachts, tug boats, barges, and similar craft. The Ponce de Leon Inlet affords access to the Atlantic Ocean from the Intracoastal Waterway and is used by fishing and pleasure craft.

The Halifax Area derives freight service by the main line of the Florida East Coast Railway. Greyhound/Trailways bus lines furnish interstate bus transportation to the Halifax Area. Rail transportation is available by AMTRAK at DeLand.

Air travel to the Daytona Beach International Airport is available by Delta Airlines, American Airlines, Avelo and Breeze. Additional private air service and executive air travel as well as air freight are provided through the New Smyrna Beach Municipal Airport, DeLand Municipal Airport, Ormond Beach Municipal Airport and Spruce Creek Airport, all located within the County. Additional international and domestic air service is provided by Orlando International Airport in adjacent Orange County.

Educational Facilities

The City has [six] elementary schools, [two] middle school and [two] senior high schools. Enrollment for the [2024/2025] school year is shown below:

Cypress Creek Elementary	Creekside Middle School
Horizon Elementary	Silver Sands Middle School
Port Orange Elementary	
Spruce Creek Elementary	
Sugar Mill Elementary	Atlantic High School
Sweetwater Elementary	Spruce Creek High School

There are currently [69] public schools in Volusia County serving approximately [_____] students from kindergarten through twelfth grade. There are [45] elementary, [12] middle, [1] K-8 school, [9] high schools and [1] alternative education centers within the school system. All public schools are operated by the Volusia County School District and offer a variety of exceptional student education programs. In addition, the School District sponsors [8] charter schools.

The area is served by five colleges and universities. Embry-Riddle Aeronautical University, Bethune Cookman College, and Daytona State College are all based locally. The University of Central

Florida has a local branch campus. Stetson University is located less than 30 minutes away in the City of Deland.

Embry-Riddle is a private, fully accredited, aviation-oriented institution of higher education. A Daytona Beach landmark since 1965 when it moved from Miami, Embry-Riddle provides students with flight training and degree programs in such fields as aeronautical engineering, aviation management, applied mathematics and aeronautical service. The 100-acre campus complex is adjacent to Daytona Beach International Airport.

Stetson University in Deland is a private university offering both bachelor and master degree programs. Bethune-Cookman College in Daytona Beach is a private 4-year liberal arts college. Orlando's University of Central Florida maintains a regional campus in Daytona Beach offering bachelor and master degree programs in such areas as business administration, education, engineering and computer sciences.

Daytona State College was created in 1958 as Florida's "pilot" comprehensive community college at the time named Daytona Beach Community College. Since the 2006-07 school year, DBCC has offered bachelor degree programs. Daytona State College currently serves students at its main campus in Daytona Beach as well as [four] satellite locations.

The foregoing information regarding educational facilities was derived from the Volusia County Department of Economic Development and the Volusia County School Board.

APPENDIX B

ANNUAL COMPREHENSIVE FINANCIAL REPORT FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 2024

APPENDIX C

FORM OF BOND RESOLUTION

APPENDIX D

FORM OF BOND COUNSEL OPINION

APPENDIX E

FORM OF CONTINUING DISCLOSURE CERTIFICATE

This Continuing Disclosure Certificate (the "Disclosure Certificate") is executed and delivered by the City of Port Orange, Florida (the "City") in connection with the issuance of its $38,000,000* Capital Improvement Refunding Revenue Bonds, Series 2025 (the "Bonds"). The Bonds are being issued pursuant to Ordinance No. 2025-15, enacted by the City Council of the City on May 6, 2025, as supplemented by Resolution No. 2025-28 adopted by the City Council of the City on May [22], 2025, as supplemented by Resolution No. 2025-29 adopted by the City Council of the City on May [22], 2025 (together, the "Resolution"). The City covenants and agrees as follows:

SECTION 1. PURPOSE OF THE DISCLOSURE CERTIFICATE. This Disclosure Certificate is being executed and delivered by the City for the benefit of the Holders and Beneficial Owners of the Bonds and in order to assist the Participating Underwriter in complying with the continuing disclosure requirements of Securities and Exchange Council Rule 15c2-12 promulgated by the Securities and Exchange Council ("SEC") pursuant to the Securities Exchange Act of 1934, as the same may be amended from time to time.

SECTION 2. DEFINITIONS. In addition to the definitions set forth in the Indenture which apply to any capitalized term used in this Disclosure Certificate unless otherwise defined in this Section, the following capitalized terms shall have the following meanings:

"Annual Report" shall mean any Annual Report provided by the City pursuant to, and as described in, Sections 3 and 4 of this Disclosure Certificate.

"Beneficial Owner" shall mean any person which (a) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Bonds (including persons holding Bonds through nominees, depositories or other intermediaries), or (b) is treated as the owner of any Bonds for federal income tax purposes.

"Dissemination Agent" shall mean initially Digital Assurance Certification LLC, as dissemination agent, or any successor Dissemination Agent designated in writing by the City, and which has filed with the City a written acceptance of such designation.

"Financial Obligation" means a (i) debt obligation; (ii) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (iii) guarantee of a debt obligation or derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; provided, however, the term "financial obligation" excludes municipal securities for which a final official statement has been provided to the MSRB consistent with the Rule.

"Listed Events" shall mean any of the events listed in Section 5(a) of this Disclosure Certificate.

"MSRB" means the Municipal Securities Rulemaking Board.

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*Preliminary, subject to change.

"Participating Underwriter" shall mean the original underwriter of the Bonds required to comply with the Rule in connection with offering of the Bonds.

"Repository" shall mean the MSRB and each State Repository.

"Rule" shall mean the continuing disclosure requirements of Rule 15c2-12 adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time.

"State" shall mean the State of Florida.

"State Repository" shall mean any public or private repository or entity designated by the State as a state information depository for the purpose of the Rule and recognized as such by the Securities and Exchange Commission. As of the date of this Certificate, there is no State Repository.

SECTION 3. PROVISION OF ANNUAL REPORTS.

(a) The City shall, or shall cause the Dissemination Agent to, not later than the May 1 following the end of the City's fiscal year (presently ending September 30), commencing with the report for the Fiscal Year 2025, provide to each Repository an Annual Report which is consistent with the requirements of Section 4 of this Disclosure Certificate. The Annual Report may be submitted as a single document or as separate documents comprising a package, and may cross-reference other information as provided in Section 4 of this Disclosure Certificate; provided that the audited financial statements of the City may be submitted separately from the balance of the Annual Report and later than the date required above for the filing of the Annual Report if they are not available by that date, but the City shall, or shall cause the Dissemination to submit the audited financial statements to be submitted not later than the July 1 following the end of the City's fiscal year. The City may adjust the May 1 deadline for filing the Annual Report upon change of its fiscal year by providing written notice of such change and the new deadline for filing the Annual Report (the "New Annual Filing Date") to the Disclosure Dissemination Agent and the MSRB, provided that the period between May 1 and the New Annual Filing Date shall not exceed one year. If the City's fiscal year changes, it shall give notice of such change and any New Annual Filing Date in the same manner as for a Listed Event under Section 5(c).

(b) Not later than fifteen (15) Business Days prior to said date, the City shall provide the Annual Report to the Dissemination Agent (if other than the City). If the City is unable to provide to the Repositories an Annual Report (other than the audited financial statements described in subsection (a) above) by the date required in subsection (a), the City shall send, or cause to be sent, a notice to (i) the MSRB, and (ii) the State Repository, if any, in substantially the form attached hereto as Exhibit A.

(c) If the Dissemination Agent is other than the City, the Dissemination Agent shall file a report with the City certifying that the Annual Report has been provided pursuant to this Disclosure Agreement, stating the date it was provided to EMMA.

SECTION 4. CONTENT OF ANNUAL REPORTS. The City's Annual Report shall contain or include by reference the following:

(a) The audited financial statements of the City for the prior Fiscal Year, prepared in accordance with generally accepted accounting principles as promulgated to apply to governmental entities from time

to time by the Governmental Accounting Standards Board. If the City's audited financial statements are not available by the time the Annual Report is required to be filed pursuant to Section 3(a), the Annual Report shall contain unaudited financial statements in a format similar to the financial statements contained in the final Official Statement, and the audited financial statements shall be filed in the same manner as the Annual Report when they become available.

(b) The following financial information and operating data in tabular form from the Official Statement under the following titles:

(i) status of the legally available Non-Ad Valorem Revenues presented in a manner consistent with the presentation of such information in this Official Statement under the heading "HISTORICAL LEGALLY AVAILABLE NON-AD VALOREM REVENUES" and "STATEMENT OF REVENUES, EXPENDITURES AND CHANGES IN FUND BALANCE".

The information provided under this Section 4(b) may be included by specific reference to other documents, including official statements of debt issues of the City or related public entities, which have been submitted to each of the Repositories or the Securities and Exchange Commission. If the document included by reference is a final official statement, it must be available from the Municipal Securities Rulemaking Board. The City shall clearly identify each such other document so included by reference.

SECTION 5. REPORTING OF SIGNIFICANT EVENTS.

(a) Pursuant to the provisions of this Section 5, the City shall give, or cause to be given, to each Repository in a timely manner not in excess of ten business days after the occurrence of the event, notice of the occurrence of any of the following events (each, a "Listed Event") with respect to the Bonds:

1. principal and interest payment delinquencies;

2. non-payment related defaults, if material;

3. unscheduled draws on the debt service reserves reflecting financial difficulties;

4. unscheduled draws on credit enhancements reflecting financial difficulties;

5. substitution of credit or liquidity providers, or their failure to perform;

6. adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the Bonds;

7. modifications to rights of the Holders of the Bonds;

8. Bond calls, if material, and tender offers;

9. defeasances;

10. release, substitution, or sale of property securing repayment of the Bonds, if material;

11. rating changes;

12. bankruptcy, insolvency, receivership or similar event of the City (which is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent or similar officer for the City in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the City, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court governmental authority having supervision or jurisdiction over substantially all of the assets or business of the City;

13. the consummation of a merger, consolidation, or acquisition involving the City or the sale of all or substantially all of the assets of the City, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;

14. the appointment of a successor or additional trustee or the change of name of the trustee, if material;

15. incurrence of a Financial Obligation of the City, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the City, any of which affect security holders, if material; and

16. a default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the City, any of which reflect financial difficulties.

SECTION 6. SUBMISSION OF INFORMATION TO THE MSRB. The information required to be disclosed pursuant to Sections 3 and 5 of this Disclosure Certificate shall be submitted to the MSRB through its Electronic Municipal Market Access system ("EMMA"). Subject to future changes in submission rules and regulations, such submissions shall be provided to the MSRB, through EMMA, in portable document format ("PDF") files configured to permit documents to be saved, viewed, printed and retransmitted by electronic means. Such PDF files shall be word-searchable (allowing the user to search for specific terms used within the document through a search or find function available in a software package).

Subject to future changes in submission rules and regulations, at the time that such information is submitted through EMMA, the City, or any Dissemination Agent engaged by the City pursuant to Section 8 hereof, shall also provide to the MSRB information necessary to accurately identify:

(a) the category of information being provided;

(b) the period covered by the financial statements and any additional financial information and operating data being provided;

(c) the issues or specific securities to which such submission is related or otherwise material (including CUSIP number, City name, state, issue description/securities name, dated date, maturity date, and/or coupon rate);

(d) the name of any obligated person other than the City;

(e) the name and date of the document being submitted; and

(f) contact information for the submitter.

SECTION 7. TERMINATION OF REPORTING OBLIGATION. The City's obligations under this Disclosure Certificate shall terminate upon the legal defeasance, prior redemption or payment in full of all of the Bonds. If such termination occurs prior to the final maturity of the Bonds, the City shall give notice of such termination in the same manner as for a Listed Event under Section 5(c).

SECTION 8. DISSEMINATION AGENT. The City may, from time to time, appoint or engage a Dissemination Agent to assist it in carrying out its obligations under this Disclosure Certificate, and may discharge any such Dissemination Agent, with or without appointing a successor Dissemination Agent.

SECTION 9. AMENDMENT; WAIVER. Notwithstanding any other provision of this Disclosure Certificate, the City may amend this Disclosure Certificate, and any provision of this Disclosure Certificate may be waived, provided that the following conditions are satisfied:

(a) If the amendment or waiver relates to the provisions of Sections 3(a), 4, or 5(a), it may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature or status of the City, or the type of business conducted;

(b) The undertaking, as amended or taking into account such waiver, would, in the opinion of nationally recognized bond counsel, have complied with the requirements of the Rule at the time of the original issuance of the Bonds, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and

(c) The amendment or waiver either (i) is approved by the Holders of the Bonds in the same manner as provided in the Indenture for amendments to the Indenture with the consent of Holders, or (ii) does not, in the opinion of nationally recognized bond counsel, materially impair the interests of the Holders or Beneficial Owners of the Bonds.

In the event of any amendment or waiver of a provision of this Disclosure Certificate, the City shall describe such amendment in the next Annual Report, and shall include, as applicable, a narrative explanation of the reason for the amendment or waiver and its impact on the type (or in the case of a change of accounting principles, on the presentation) of financial information or operating data being presented by the City. In addition, if the amendment relates to the accounting principles to be followed in preparing financial statements, (i) notice of such change shall be given in the same manner as for a Listed Event under Section 5(c), and (ii) the Annual Report for the year in which the change is made should present a comparison (in narrative form and also, if feasible, in quantitative form) between the financial statements as prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles.

SECTION 10. ADDITIONAL INFORMATION. Nothing in this Disclosure Certificate shall be deemed to prevent the City from disseminating any other information, using the means of dissemination set forth in this Disclosure Certificate or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Certificate. If the City chooses to include any information in any Annual Report or notice of occurrence of a Listed Event in addition to that which is specifically required by this Disclosure Certificate, the City shall have no obligation under this Certificate to update such information or include it in any future Annual Report or notice of occurrence of a Listed Event.

SECTION 11. DEFAULT. In the event of a failure of the City to comply with any provision of this Disclosure Certificate, any Holder or Beneficial Owner of the Bonds may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the City to comply with its obligations under this Disclosure Certificate; provided, however, the sole remedy under this Disclosure Certificate in the event of any failure of the City to comply with the provisions of this Disclosure Certificate shall be an action to compel performance. A default under this Disclosure Certificate shall not be deemed a default or an event of default under the Bond Resolution.

SECTION 12. DUTIES, IMMUNITIES AND LIABILITIES OF DISSEMINATION AGENT. The Disclosure Dissemination Agent shall have no duty with respect to the content of any disclosures or notice made pursuant to the terms hereof. The Disclosure Dissemination Agent shall have no duty or obligation to review or verify any information, disclosures or notices provided to it by the City and shall not be deemed to be acting in any fiduciary capacity for the City, the Holders of the Bonds or any other party. The Dissemination Agent shall have only such duties as are specifically set forth in this Disclosure Certificate, and the City agrees, to the extent permitted by law and solely from the Pledged Funds, as defined in the Indenture, to indemnify and save the Dissemination Agent, its officers, directors, employees and agents, harmless against loss, expense and liabilities which it may incur arising out of or in the exercise or performance of its powers and duties hereunder, including the costs and expenses (including attorneys' fees) of defending against any claim of liability, but excluding liabilities due to the Dissemination Agent's negligence or willful misconduct. The obligations of the City under this Section shall survive resignation or removal of the Dissemination Agent and payment of the Bonds.

SECTION 13. BENEFICIARIES. This Disclosure Certificate shall inure solely to the benefit of the City, the Dissemination Agent, the Participating Underwriters and Holders and Beneficial Owners from time to time of the Bonds, and shall create no rights in any other person or entity.

Date: [_____], 2025

CITY OF PORT ORANGE, FLORIDA

(SEAL)

By:_____
Mayor

ATTEST:

_____
Clerk

APPENDIX F

BOOK-ENTRY PROVISIONS

The information in this section concerning DTC and DTC's book-entry system has been obtained from DTC and neither the City nor the Underwriter makes any representation or warranty or takes any responsibility for the accuracy or completeness of such information.

DTC will act as securities depository for the Series 2025 Bonds. The Series 2025 Bonds will be issued as fully registered securities registered in the name of Cede & Co. (DTC's partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully registered Series 2025 Bond certificate will be issued for each maturity of the Series 2025 Bonds, each in the aggregate principal amount of such maturity, and will be deposited with DTC.

DTC, the world's largest depository, is a limited-purpose trust company organized under the New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code, and a "clearing agency" registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments from over 100 countries that DTC's participants ("Direct Participants") deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants' accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly owned subsidiary of The Depository Trust & Clearing Corporation ("DTCC"). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly ("Indirect Participants"). The Direct Participants and the Indirect Participants are collectively referred to herein as the "DTC Participants". DTC has a Standard & Poor's rating of AA+. The DTC rules applicable to its DTC Participants are on file with the Securities and Exchange Commission (the "SEC"). More information about DTC can be found at www.dtcc.com.

Purchases of Series 2025 Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Series 2025 Bonds on DTC's records. The ownership interest of each actual purchaser of each Series 2025 Bond (each a "Beneficial Owner") is in turn to be recorded on the Direct and Indirect Participants' records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Series 2025 Bonds are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in the Series 2025 Bonds, except in the event that use of the book-entry system for the Series 2025 Bonds is discontinued.

To facilitate subsequent transfers, all Series 2025 Bonds deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of the Series 2025 Bonds with DTC and

their registration in the name of Cede & Co. or such other DTC nominee do not affect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Series 2025 Bonds; DTC's records reflect only the identity of the Direct Participants to whose accounts such Series 2025 Bonds are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of Series 2025 Bonds may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the Series 2025 Bonds, such as redemptions, tenders, defaults, and proposed amendments to the Series 2025 Bond documents. For example, Beneficial Owners of Series 2025 Bonds may wish to ascertain that the nominee holding the Series 2025 Bonds for their benefit has agreed to obtain and transmit notices to Beneficial Owners. In the alternative, Beneficial Owners may wish to provide their names and addresses to the Registrar and request that copies of notices be provided directly to them.

Redemption notices shall be sent to DTC. If less than all of the Series 2025 Bonds or a maturity are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such series or maturity to be redeemed.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to the Series 2025 Bonds unless authorized by a Direct Participant in accordance with DTC's procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the City as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts the Series 2025 Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Principal and interest payments on the Series 2025 Bonds will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from the City or the Paying Agent on a payment date in accordance with their respective holdings shown on DTC's records. Payments by DTC Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name", and will be the responsibility of such DTC Participant and not of DTC nor its nominee, the Paying Agent, or the City, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of principal and interest on the Series 2025 Bonds, as applicable, to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the City and/or the Paying Agent, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

DTC may discontinue providing its services as depository with respect to the Series 2025 Bonds at any time by giving reasonable notice to the City or the Paying Agent. Under such circumstances, in the event that a successor depository is not obtained, Series 2025 Bond certificates are required to be printed and delivered.

Subject to the policies and procedures of DTC (or any successor securities depository), the City may decide to discontinue use of the system of book-entry transfers through DTC upon compliance with any applicable DTC rules and procedures. In that event, Series 2025 Bond certificates will be printed and delivered.

So long as Cede & Co. is the registered owner of the Series 2025 Bonds, as nominee of DTC, reference herein to the Bondholders or Registered Owners of the Series 2025 Bonds will mean Cede & Co., as aforesaid, and will not mean the Beneficial Owners of the Series 2025 Bonds.

The City can make no assurances that DTC will distribute payments of principal of, redemption price, if any, or interest on the Series 2025 Bonds to the Direct Participants, or that Direct and Indirect Participants will distribute payments of principal of, redemption price, if any, or interest on the Series 2025 Bonds or redemption notices to the Beneficial Owners of such Series 2025 Bonds or that they will do so on a timely basis, or that DTC or any of its Participants will act in a manner described in this Official Statement. The City is not responsible or liable for the failure of DTC to make any payment to any Direct Participant or failure of any Direct or Indirect Participant to give any notice or make any payment to a Beneficial Owner in respect to the Series 2025 Bonds or any error or delay relating thereto.

The rights of holders of beneficial interests in the Series 2025 Bonds and the manner of transferring or pledging those interests are subject to applicable state law. Holders of beneficial interests in the Series 2025 Bonds may want to discuss the manner of transferring or pledging their interest in the Series 2025 Bonds with their legal advisors.

NEITHER THE CITY NOR THE PAYING AGENT SHALL HAVE ANY OBLIGATION WITH RESPECT TO ANY DEPOSITORY PARTICIPANT OR BENEFICIAL OWNER OF THE SERIES 2025 BONDS DURING SUCH TIME AS THE SERIES 2025 BONDS ARE REGISTERED IN THE NAME OF A SECURITIES DEPOSITORY PURSUANT TO A BOOK-ENTRY ONLY SYSTEM OF REGISTRATION.

EXHIBIT C

Form of
Escrow Deposit Agreement

CITY OF PORT ORANGE, FLORIDA
and

THE BANK OF NEW YORK TRUST MELLON COMPANY, N.A.

as Escrow Agent

ESCROW DEPOSIT AGREEMENT
Relating to the
City of Port Orange, Florida
[Stormwater Utility Revenue Bonds, Series 2005]
[Capital Improvement Refunding Revenue Bonds, Series 2014]

Dated as of _____, 2025

ESCROW DEPOSIT AGREEMENT

THIS ESCROW DEPOSIT AGREEMENT (the "Agreement") made and entered into as of _____, 2025, by and between the City of Port Orange, Florida (the "City") and The Bank of New York Mellon Trust Company, N.A., a national banking association, as Escrow Agent (the "Escrow Agent").

WITNESSETH:

WHEREAS, the City has heretofore issued its [Stormwater Utility Revenue Bonds, Series 2005][Capital Improvement Revenue Bonds, Series 2014], dated _____, maturing in the years ____ to _____, of which an aggregate principal amount of $_____ is currently outstanding (the "Refunded Bonds") and

WHEREAS, the City has issued its $_____ Capital Improvement Refunding Revenue Bonds, Series 2025 (the "Series 2025 Bonds"), pursuant to the provisions of Resolution No. 2025-[__], adopted May [__], 2025 (the "Resolution"), a portion of the proceeds of which Series 2025 Bonds shall be deposited with the Escrow Agent to provide, with certain other available moneys of the City, sufficient moneys for the redemption of the Refunded Bonds; and

WHEREAS, a portion of the proceeds derived from the sale of the Series 2025 Bonds, together with the other available moneys of the City, will be sufficient to pay when due the principal of and interest on the Refunded Bonds as more specifically set forth in this Agreement; and

WHEREAS, in order to provide for the proper and timely application of the moneys deposited hereunder, it is necessary for the City to enter into this Agreement with the Escrow Agent;

NOW, THEREFORE, the City, in consideration of the foregoing and the mutual covenants set forth in this Agreement and in order to secure the payment of the principal of and interest on all of the Refunded Bonds according to their tenor and effect, does hereby agree as follows:

ARTICLE I

CREATION AND CONVEYANCE OF TRUST ESTATE

Section 1.01. Creation and Conveyance of Trust Estate. The City grants, warrants, remises, releases, conveys, assigns, transfers, aliens, pledges, sets over and confirms unto the Escrow Agent and to its successors in the trust created pursuant to this Agreement, and to it and its assigns forever, all and singular the property hereinafter described, to wit:

DIVISION I

All right, title and interest in and to $[_____] in moneys deposited directly with the Escrow Agent and derived from the proceeds of the Series 2025 Bonds upon issuance and delivery of the Series 2025 Bonds and execution of and delivery of this Agreement (the "Series 2025 Bond Proceeds") and $[_____] in moneys of the City (the "Other Moneys").

DIVISION II

Any and all other property of every kind and nature from time to time hereafter, by delivery or by writing of any kind, conveyed, pledged, assigned or transferred as and for additional security hereunder by the City, or by anyone on behalf of the City to the Escrow Agent for the benefit of the Refunded Bonds.

DIVISION III

All property which is by the express provisions of this Agreement required to be subject to the pledge of this Agreement and any additional property that may, from time to time hereafter, by delivery or by writing of any kind, by the City, or by anyone in its behalf, be subject to the pledge of this Agreement.

TO HAVE AND TO HOLD, all and singular, the Trust Estate (as such term is hereinafter defined), including all additional property which by the terms of this Agreement has or may become subject to the encumbrances of this Agreement, unto the Escrow Agent, and its successors and assigns, forever, in trust, however, for the sole benefit and security of the holders from time to time of the Refunded Bonds, but if the principal of and interest on all of the Refunded Bonds shall be fully and promptly paid when due, upon the maturity or earlier redemption of the Refunded Bonds, in accordance with their terms and the terms of this Agreement, then this Agreement shall be and become void and of no further force and effect except as otherwise provided in this Agreement; otherwise the same shall remain in full force and effect, and upon the trusts and subject to the covenants and conditions hereinafter set forth.

ARTICLE II

DEFINITIONS

Section 2.01. Definitions. In addition to words and terms elsewhere defined in this Agreement, the following words and terms as used in this Agreement shall have the following meanings, unless some other meaning is plainly intended. Capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in the Resolution.

"Trust Estate" shall mean the property, rights and interests described or referred to under Divisions I, II, III and IV in Article I above.

Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Words importing the singular number shall include the plural number and vice versa unless the context shall otherwise indicate. The word "person" shall include corporations, associations, natural persons and public bodies unless the context shall otherwise indicate. Reference to a person other than a natural person shall include its successors.

ARTICLE III

ESTABLISHMENT OF ESCROW DEPOSIT TRUST FUND; FLOW OF FUNDS

Section 3.01. Creation of Escrow Deposit Trust Fund and Deposit of Moneys. There is created and established with the Escrow Agent a special and irrevocable trust fund designated "City of Port Orange, Florida [Stormwater Utility Revenue Bonds, Series 2005] [Capital Improvement Refunding Revenue Bonds, Series 2014] Escrow Deposit Trust Fund" (the "Escrow Deposit Trust Fund"), to be held by the Escrow Agent for the sole benefit of the holders of the Refunded Bonds and accounted for separate and apart from the other funds of the City and, to the extent required by law, of the Escrow Agent.

Concurrently with the delivery of this Agreement, the City herewith causes to be deposited with the Escrow Agent and the Escrow Agent acknowledges receipt of immediately available moneys for deposit in the Escrow Deposit Trust Fund in the amount of $[_____], which is sufficient (without investment) to pay the principal of and interest to become due on the Refunded Bonds, as more particularly described in Schedule C.

Section 3.02. Payment of Refunded Bonds. The Series 2014 Bond Proceeds and Other Moneys received by the Escrow Agent will be sufficient to pay as the same are due all principal and redemption price of and interest on the Refunded Bonds. Notwithstanding the foregoing, if the amounts deposited in the Escrow Deposit Trust Fund are insufficient to make said payments of principal and interest, the City shall cause to be deposited into the Escrow Deposit Trust Fund the amount of any deficiency immediately upon notice from the Escrow Agent.

Section 3.03. Irrevocable Trust Created. The deposit of moneys and Escrow Securities or other property hereunder in the Escrow Deposit Trust Fund shall constitute an irrevocable deposit of said moneys and other property hereunder for the sole benefit of the holders of the Refunded Bonds, subject to the provisions of this Agreement. The holders of the Refunded Bonds, subject to the provisions of this Agreement, shall have an express lien on all moneys and other property in the Escrow Deposit Trust Fund. The moneys deposited in the Escrow Deposit Trust Fund and other property hereunder shall be held in trust by the Escrow Agent, and shall be transferred in the necessary amounts as hereinafter set forth, to the paying agents for the Refunded Bonds for the payment of the principal of and interest and premium, if any, on the Refunded Bonds, as more specifically set forth in Schedule C.

Section 3.04. Transfers from Escrow Deposit Trust Fund; Instructions to Call for Redemption. The Escrow Agent shall, no later than the payment date for the Refunded

Bonds, as specified in Schedule C, transfer from the Escrow Deposit Trust Fund to the paying agent for the Refunded Bonds amounts sufficient to pay the principal of, redemption premium, if any and interest on the Refunded Bonds, as specified in Schedule C. The City irrevocably determines to call for redemption the Refunded Bonds on the call date of [_____] at the redemption price of 100% of their principal amount plus accrued and unpaid interest to the date fixed for redemption. The City hereby instructs the Paying Agent for the Refunded Bonds, to send notice of redemption, substantially in the form attached hereto as Schedule D, of the Refunded Bonds to be redeemed prior to maturity in accordance with the provisions of the instruments authorizing the Refunded Bonds.

Section 3.05. No Investment. The Escrow Agent shall not invest or reinvest funds in the Escrow Deposit Trust.

Section 3.06. Escrow Deposit Trust Fund Constitutes Trust Fund. The Escrow Deposit Trust Fund created and established pursuant to this Agreement shall be and constitutes a trust fund for the purposes provided in this Agreement and shall be kept separate and distinct from all other funds of the City and, to the extent required by law, of the Escrow Agent and used only for the purposes and in the manner provided in this Agreement.

Section 3.07. Transfer of Funds After All Payments Required by this Agreement are Made. After all of the transfers by the Escrow Agent to the paying agent for payment of the principal of, redemption premium, if applicable, and interest on the Refunded Bonds provided in Schedule C have been made, all remaining moneys and securities, together with any income and interest thereon, in the Escrow Deposit Trust Fund shall be paid to the City; provided, however, that no such transfers shall be made until all of the principal of and interest on the Refunded Bonds have been paid.

ARTICLE IV

CONCERNING THE ESCROW AGENT

Section 4.01. Liability of Escrow Agent. The Escrow Agent shall not be liable in connection with the performance of its duties hereunder except for its own negligence or wilful misconduct. The Escrow Agent shall not be liable for any loss resulting from any investments made pursuant to the terms of this Agreement. The Escrow Agent shall not be liable for the accuracy of the calculations as to the sufficiency of moneys and of the principal amount of the Escrow Securities and the earnings thereon to pay the Refunded Bonds. So long as the Escrow Agent applies any moneys, Escrow Securities and interest earnings therefrom to pay the Refunded Bonds as provided in this Agreement, and complies fully with the terms of this Agreement, the Escrow Agent shall not be liable for any deficiencies in the amounts necessary to pay the Refunded Bonds caused by such calculations. It is expressly understood and agreed that the Escrow Agent's duties and obligations in connection with this Agreement are confined to those expressly defined herein and no implied covenants or obligations should be read into this Agreement against the Escrow Agent. The Escrow Agent may act through its agents and attorneys appointed

with due care, and shall not be responsible for any willful misconduct or negligence on the part of any such person so appointed. Any payment obligation of the Escrow Agent hereunder shall be paid from, and is limited to funds established and maintained under this Agreement; the Escrow Agent shall not be required to expend its own funds for the performance of its duties hereunder. Notwithstanding any provision herein to the contrary, in no event shall the Escrow Agent be liable for special, indirect or consequential loss or damage of any kind whatsoever (including but not limited to lost profits), even if the Escrow Agent has been advised of the likelihood of such loss or damage and regardless of the form of action. The Escrow Agent shall not be responsible or liable for any failure or delay in the performance of its obligation under this Agreement arising out of or caused, directly or indirectly, by circumstances beyond its reasonable control, including, without limitation, acts of God; earthquakes; fire; flood; hurricanes or other storms; wars; terrorism; similar military disturbances; sabotage; epidemic; pandemic; riots; interruptions; loss or malfunctions of utilities, computer (hardware or software) or communications services; accidents; labor disputes; acts of civil or military authority or governmental action; it being understood that the Escrow Agent shall use commercially reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as reasonably practicable under the circumstances.

The Escrow Agent shall have no lien, security interest or right of set-off whatsoever upon any of the moneys or investments in the Escrow Deposit Trust Fund for the payment of fees or expenses for the services rendered by the Escrow Agent under this Agreement.

Section 4.02. Permitted Acts. The Escrow Agent and its affiliates may become the owner of all or may deal in the Refunded Bonds as fully and with the same rights as if it were not the Escrow Agent.

Section 4.03. Payment to Escrow Agent. The City shall pay to the Escrow Agent a fee of $[_____] for the services rendered by it hereunder and also its reasonable expenses, charges and other disbursements and those of its attorneys, agents and employees incurred in and about the administration and execution of the trusts created pursuant to this Agreement, and the performance of its powers and duties hereunder, including, without limitation, all advances, counsel fees, costs and other expenses reasonably made or incurred by the Escrow Agent in connection with such services.

The City further agrees to indemnify and hold the Escrow Agent harmless, to the extent allowed by law, against any liabilities which it may incur in the exercise and performance of its powers and duties hereunder and which are not due to its negligence or willful misconduct. Indemnification provided under this Section 4.03 shall survive the termination of this Agreement or the earlier resignation or removal of the Escrow Agent.

Whenever the Escrow Agent shall deem it necessary or desirable that a matter be proved or established prior to taking, suffering or omitting any action under this Agreement, such matter may be deemed to be conclusively established by a certificate signed by an authorized officer of the City. The Escrow Agent may conclusively rely, as to the correctness of statements, conclusions and opinions therein, upon any certificate, report, opinion or other document furnished to the City pursuant to any provision of this

Agreement. The Escrow Agent shall be protected and shall not be liable for acting or proceeding, in good faith, upon such reliance and the City shall be under no duty to make any investigation or inquiry as to any statements contained or matters referred to in any such instrument. The Escrow Agent may consult with counsel, who may be counsel to the City or independent counsel, with regard to legal questions, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith in accordance herewith. Prior to retaining such independent counsel, the Escrow Agent shall notify the City of its intention to retain counsel.

Section 4.04. Resignation or Removal of Escrow Agent. The Escrow Agent, at the time acting hereunder, may at any time resign and be discharged from the duties and obligations hereby created by giving not less than thirty (30) days' written notice to the City and by mailing notice thereof, specifying the date when such resignation will take effect, to the City and the Paying Agent for the Refunded Bonds, but no such resignation shall take effect unless a successor Escrow Agent shall have been appointed by the City and such successor Escrow Agent shall have accepted such appointment, in which event such resignation shall take effect immediately upon the appointment and acceptance of a successor Escrow Agent.

The Escrow Agent may be removed at any time by an instrument or concurrent instruments in writing, delivered to the Escrow Agent, to the City and signed by the holders of majority in aggregate principal amount of the Defeased Bonds then outstanding.

In the event the Escrow Agent hereunder shall resign or be removed, or be dissolved, or shall be in the course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or in case the Escrow Agent shall be taken under the control of any public officer or officers, or of a receiver appointed by a court, a successor shall be appointed by the City. The City shall mail notice of any such appointment made by it to the Paying Agent for the Refunded Bonds.

In the event that no appointment of a successor Escrow Agent or a temporary successor Escrow Agent shall have been made by the City pursuant to the foregoing provisions of this Section 4.04 within sixty (60) days after written notice of resignation of the Escrow Agent has been given to the City, the holder of any of the Refunded Bonds or any retiring Escrow Agent may apply to any court of competent jurisdiction for the appointment of a successor Escrow Agent, and such court may thereupon, after such notice, if any, as it shall deem proper, appoint a successor Escrow Agent.

In the event of replacement or resignation of the Escrow Agent, the Escrow Agent shall remit to the City the prorated portion of prepaid fees not yet incurred or payable less any termination fees and expenses at the time of discharge.

Any corporation into which the Escrow Agent, or any successor to it in the trusts created by this Agreement, may be merged or converted or within which it or any successor to it may be consolidated, or any corporation resulting from any merger, conversion, consolidation or tax-free reorganization to which the Escrow Agent or any successor to it shall be a party, or any corporation to which the Escrow Agent or successor to it shall sell or

transfer all or substantially all of its corporate trust business, shall be the successor Escrow Agent under this Agreement without the execution or filing of any paper or any other act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

ARTICLE V

MISCELLANEOUS

Section 5.01. Amendments to this Agreement. This Agreement is made for the benefit of the holders from time to time of the Refunded Bonds and shall not be repealed, revoked, altered or amended without the written consent of all such holders of the Refunded Bonds, the Escrow Agent and the City; provided, however, that the City and the Escrow Agent may, without the consent of, or notice to, such holders, enter into such agreements supplemental to this Agreement which shall not adversely affect the rights of such holders and shall not be inconsistent with the terms and provisions of this Agreement for any one or more of the following purposes:

(a) to cure any ambiguity or formal defect or omission in this Agreement; or

(b) to grant to or confer upon the Escrow Agent for the benefit of the holders of the Refunded Bonds any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Escrow Agent.

The Escrow Agent shall be entitled to rely conclusively upon an unqualified opinion of a nationally recognized counsel in the field of law relating to municipal bonds with respect to compliance with this Section.

Section 5.02. Severability. If any one or more of the covenants or agreements provided in this Agreement on the part of the City or the Escrow Agent to be performed should be determined by a court of competent jurisdiction to be contrary to law, such covenant or agreement shall be deemed and construed to be severable from the remaining covenants and agreements contained in this Agreement and shall in no way affect the validity of the remaining provisions of this Agreement.

Section 5.03. Agreement Binding. All the covenants, proposals and agreements in this Agreement contained by or on behalf of the City or by or on behalf of the Escrow Agent shall bind and inure to the benefit of their respective successors and assigns, whether so expressed or not.

Section 5.04. Notices to Escrow Agent and City. Any notice, demand, direction, request or other instrument authorized or required by this Agreement to be given to or filed with the Escrow Agent or the City, shall be deemed to have been sufficiently given or filed for all purposes of this Agreement if personally delivered and receipted for, or if sent by registered or certified United States mail, return receipt requested, addressed as follows:

(a) City of Port Orange

1000 City Center Circle
Port Orange, Florida 32129
Attention: City Manager

(b) The Bank of New York Mellon Trust Company, N.A.
4655 Salisbury Road, Suite 300
Jacksonville, Florida 32256
Attention: Corporate Trust Department

Either party to this Agreement may, by notice sent to the other party to this Agreement, designate a different or additional address to which notices under this Agreement are to be sent.

Section 5.05. Termination. This Agreement shall terminate when all transfers and payments required to be made by the Escrow Agent under the provisions of this Agreement shall have been made.

Section 5.06. Execution by Counterparts. This Agreement may be executed in several counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.

Section 5.07. Governing Law. The terms of this Agreement shall be governed by the laws of the state of Florida, without regard to conflict of law principles.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed by its duly authorized officers and its official seal or corporate seal, as the case may be, to be hereunto affixed and attested as of the date first above written.

CITY OF PORT ORANGE, FLORIDA

By: _____
Mayor

(SEAL)

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.,
as Escrow Agent

By: _____
Vice President

SCHEDULE A

Refunded Bonds

The Refunded Bonds are the City of Port Orange, Florida [Stormwater Utility Revenue Bonds, Series 2005][Capital Improvement Revenue Bonds, Series 2014] maturing on or after [_____, 2025], as follows:

CUSIP No.	Maturity Date October l,	Principal Amount	Interest Rate
		$	%

The Refunded Bonds will be called for redemption on [_____, 2025] at the price of 10_% of the principal amount thereof.

SCHEDULE B

INVESTMENT OF FUNDS

The escrow funds shall be [held in cash and not invested][invested in _____].

SCHEDULE C

SCHEDULE OF PAYMENTS ON
Refunded Bonds

Date	Called Principal	Interest	Premium	Total
	$	$	$	$

SCHEDULE D

FORM OF NOTICE OF REDEMPTION

NOTICE OF REDEMPTION

CITY OF PORT ORANGE, FLORIDA [STORMWATER UTILITY REVENUE BONDS, SERIES 2005][CAPITAL IMPROVEMENT REFUNDING REVENUE BONDS, SERIES 2014]

Dated _____

NOTICE IS HEREBY GIVEN to the Holders of the above-referenced bonds (the "Bonds") that, pursuant to the Resolution authorizing the Bonds, all outstanding Bonds becoming due on or after [_____ 1, 2025], have been called for redemption on [_____, 2025] (the Redemption Date), at a redemption price equal to 10_% of the principal amount of the Bonds called for redemption, plus accrued interest to the Redemption Date. The CUSIP number, maturity date, principal amount and interest rate of the Bonds called for redemption are:

CUSIP No.	Maturity Date October l,	Principal Amount	Interest Rate
		$	%

_____

$

Please forward your called Bond(s) for redemption to The Bank of New York Mellon Trust Company, N.A. (the "Paying Agent") as follows:

By Hand or Overnight:
The Bank of New York
Corporate Trust Operations
111 Sanders Creek Parkway

East Syracuse, NY 13057

Registered or certified insured mail is suggested when submitting Bonds for payment.

By: The Bank of New York Trust Mellon Company, N.A.

Please include with your Bond(s) information regarding to whom your Bond(s) should be returned and the appropriate address in the event the called Bonds are not redeemed on the Redemption Date, as described below. Also, please include IRS Form W-9, if applicable.

Moneys sufficient to pay the redemption price and accrued interest on the called Bonds have been deposited with the Escrow Agent.

CITY OF PORT ORANGE, FLORIDA

By: THE BANK OF NEW YORK
MELLON TRUST COMPANY, N.A.
as Paying Agent

Dated : _____

*No representation is made as to the correctness or accuracy of the CUSIP Number either as printed on the Bonds or as contained in this Notice of Redemption. Reliance may only be placed on the identification information printed on the Bonds and contained in this notice.